

# REVIEW INTO THE DEATH OF GAËTAN MOOTOO

BY JAMES LADDIE QC

## A. INTRODUCTION

1. This report is the outcome of an independent investigation into the circumstances preceding the death of Gaëtan Mootoo, a long-serving employee of the International Secretariat (“IS”) of Amnesty International (“AI” or “Amnesty”).
2. Throughout this report, I shall refer to the deceased as “Gaëtan”. In doing so, I intend no discourtesy to his widow and son. However, having conducted extensive interviews over the course of months, and listened to all witnesses refer to him by his first name, it seems unduly formal now to revert to referring to him by his surname.
3. Gaëtan died by his own hand in his office in Amnesty’s French Section in Paris some time during the night of 25/26 May 2018. He was 65 years old and had been an employee of Amnesty for 32 years. He was one of the longest serving employees in the Amnesty movement.
4. Gaëtan left a note, partly in manuscript and partly typed.<sup>1</sup> Most of the note is addressed to his immediate family and contains nothing material to this investigation. However, the typed introductory section reads as follows (so far as relevant):

“Ma Chérie / Ma Dear Robin

J’aurais voulu vous écrire une lettre plus longue, je n’ai plus la force, je suis très fatigué....

Depuis quelques années surtout depuis la fin de 2014, je ne vais pas très bien, je n’en ai parlé à personne. A cela s’est ajouté un surcroît de travail, j’ai fait une demande d’aide, cela n’a pas été possible. J’aime ce que je fais et je voudrais le faire correctement. Je sens que je ne pourrais plus continuer de cette façon, d’où cette décision...”

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<sup>1</sup> Despite extensive efforts, the computer file containing the typed section of the note has not been located. It would have been helpful to know when the document was created.

“My Darling / My Darling Robin

I would have wanted to write you a longer letter, but I no longer have the energy, I’m very tired...

For a number of years but mostly since the end of 2014, I haven’t been feeling very good, though have spoken about it to nobody. In addition, there has been so much work and though I made a request for help, that wasn’t possible. I love what I do and I want to do it properly. I feel that I could no longer go on in this way, hence this decision...

5. It is clear from the above that Gaëtan’s work played a major part in his ultimate decision.
6. Gaëtan’s death is a shocking tragedy. It is not surprising that there was a call from his colleagues for an independent investigation into Gaëtan’s death (to go alongside the necessary French state procedures). That call coincided with a desire at senior management level to better understand what happened, what went wrong and what lessons might be learned. This report is the outcome of that investigation.

## B. TERMS OF REFERENCE

7. This investigation was commissioned by the Secretary General with the full endorsement of the International Board and in consultation with Amnesty France. An Oversight Group of Section Directors was constituted. The Section Directors are: Kate Allen (UK), Seydi Gassama (Senegal) and Manon Schick (Switzerland).
8. The original terms of reference, agreed on or about 1 July 2018, were as follows:
  - “A. Did Amnesty International (International Secretariat) discharge its duty of care to Gaëtan Mootoo?
  - B. What are the major lessons that Amnesty International can learn from this tragic incident?
  - C. What additional measures, if any, would you recommend to ensure adequate support to our staff and their wellbeing, including those experiencing exceptional levels of stress?”
9. As the investigation proceeded, the Oversight Group took the decision to instruct wellbeing experts – The KonTerra Group – to undertake a specific project in relation to (C) above. I fully support that decision, one consequence of which is that this report will focus on (A) and (B), and will make only tentative suggestions in relation to (C). I have met with KonTerra and am confident that they are in a better position than I am to assess what changes, if any, Amnesty ought to be making in terms of provision of wellbeing services.

10. Having set out the terms of reference above, it is important to be clear as to what this report does not address. In the course of the investigation, there was a certain amount of misunderstanding from witnesses as to what falls within its scope.

- a. My review does not address questions of whether AI has breached its duty of care to others. I was approached by about 10 potential witnesses who wished to share their own experiences of alleged mistreatment by Amnesty even though most of them knew little or nothing about Gaëtan's situation. I explained to them that they were free to share those experiences but that I would not be investigating them. That is not to say that such evidence was irrelevant. To focus on Gaëtan's own circumstances, to the exclusion of all else, would indeed be too narrow. If I received evidence to suggest that there was an institutional or cultural problem which affected or touched upon Gaëtan's treatment, then that evidence would be taken into account.
- b. The review does not address AI's reaction to Gaëtan's death. Plainly, that falls outside the scope of the terms of reference. However, I was struck by the large number of witnesses who criticised the manner in which Gaëtan's death was addressed, and I do not think that it would be right to pretend that that evidence was not received. Particular concern was raised about three matters: first, circulating news of his death via WhatsApp message; second, producing a "Questions and Answers" form which rushed to exculpate Amnesty from any responsibility for his death without the same having been investigated;<sup>2</sup> third, failing to offer psychological support to those who were closest to Gaëtan. I emphasise that I have not investigated any of these complaints but they were sufficiently numerous that it is worth flagging them up.
- c. Finally, the report does not examine why Gaëtan committed suicide. I am prepared to assume that Gaëtan's work situation played a significant role in his decision – that is the natural reading of at least part of the note that he left behind. But it would be unsafe to proceed on the basis that this was the only reason. Of course, one will never know the true or full reason for Gaëtan's actions, but an attempt to get closer to the full picture would require invasive investigations into his family life, his finances and his medical records. The first line of the second paragraph of his suicide note behind suggests that there may have been an issue which Gaëtan had kept entirely to himself. This sort of invasive avenue of inquiry is unnecessary in order to answer the central question in this investigation, namely whether AI complied with its duty of care.

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<sup>2</sup> I understand that senior management has since apologised for this.

## C. METHODOLOGY

### I. WITNESSES

11. The principal means of obtaining evidence was via witnesses. On about 12 July 2018, the Oversight Group circulated an email to all IS staff identifying me as the independent reviewer and providing contact details for people to get in touch with me. It was anticipated that the contact details would be passed to those who were employed elsewhere in AI or who had left the organisation altogether.
12. I was also provided with contact details of some key individuals. These details came into my possession from three sources: first, some individuals contacted me and recommended that I speak to so-and-so; second, the Oversight Group supplied me with a spreadsheet with a number of individuals' contact details; third, Mme Mootoo's lawyer, Hélène Gacon, furnished me with a list of potential witnesses.
13. In almost all cases, the first exchanges were by email. I sought an outline of the witness's relevant evidence in writing first of all. This has two advantages. First, it enabled the witness to think carefully about what they knew and how they knew it. Given that some of the evidence went back many years, having the space to give due consideration to fading memories is important. Second, having an outline account in writing enabled me to decide whether it would be sensible to go further and arrange an interview with each witness.
14. It was perhaps unsurprising that almost all the people who contacted me were peers or former colleagues of Gaëtan. It was anticipated that this group of people were most likely to be critical of AI's treatment of Gaëtan and it made sense for me to gather their evidence first. Inevitably there was some overlap, but the broad sequence of evidence-gathering was that evidence was gathered from peers and former colleagues between the end of July and mid-September. Then I began contacting managers in order to "put the case" to them.
15. A majority of witnesses wrote to me from non-Amnesty email addresses. Many witnesses approached me to indicate that they were willing in principle to contribute to the investigation but wanted first to know what confidentiality safeguards existed. The extent to which this occurred is surprising, not least because many of the people raising these concerns are no longer employed by Amnesty and some are not even working in the human rights NGO sector. I am bound to report that there is a fear on the part of current and former IS staff that they might be subject to some form of reprisal or bad-mouthing if their identities as witnesses was to be known.
16. In order to ensure that the investigation remained viable, I informed each potential witness of the steps that would be taken to preserve their anonymity:

- a. First, the default position in my report is that nobody will be identified or identifiable as a witness. In some instances this has meant that I have had to exclude from the report direct citation of some material that, if quoted, would identify the relevant witness.
- b. Second, the materials created by me in the course of the investigation (email exchanges, records of interviews etc) belong to me and not to Amnesty. Amnesty agreed that they will remain my property and cannot be disclosed to them.

The effect of these steps was – in almost all cases – to allow the witness to come forward and give evidence. Unfortunately, there was a small number of cases where witnesses did not feel sufficiently confident in the confidentiality protection to give evidence.

17. Having pointed out the widespread fear of reprisals etc, it is only fair to point out that in my dealings with the Oversight Group, I received no indication whatsoever that there might be any hostility towards any witness, regardless of what he or she might say to me. The Oversight Group has not sought to influence this investigation in any way and our contacts have been limited to updates as to the rate of progress and discussions about the integration of this investigation with others. All communications from the Oversight Group have been consistent with them sharing a genuine desire to get to the truth, however painful that may be for Amnesty.
18. In all, I received written evidence from 77 witnesses. There were a small number of additional witnesses who either failed to respond to my overtures or stated that they were unwilling to contribute. I had interviews with 25 witnesses, of whom 4 did not send me written evidence. The shortest interview lasted 45 minutes. All others lasted at least an hour. The longest interview took two sessions over 4 hours.

## II. DOCUMENTS

19. I was supplied with an initial bundle of documents by Nick Williams, Senior Legal Counsel at the IS. This had been compiled by asking key individuals to produce relevant documents (including emails) and by gathering relevant policy and consultation documents. I asked for various additional documents to be sought, mostly relating to HR. These documents were very helpful in forming a picture of the environment at AI in relation to the Global Transition Programme (“GTP”) and in seeing the nature of Gaëtan’s communications with management in the period 2014-2018.
20. I also asked witnesses to send me any relevant documents that they had. This resulted in a substantial number of additional documents, and it was reassuring to discover that there was a considerable overlap with documents that I had already received. However, there were plenty of new documents which were not in the original bundle. There is nothing

remotely sinister about this, since many of these were private emails between Gaëtan and his colleagues in which he was forthcoming about his perception of problems at work.

21. The Oversight Group authorised me to obtain access to a shadow copy of Gaëtan's mailbox and performed a number of keyword searches. Ultimately, I formed the view that this was a less useful exercise than originally anticipated. Gaëtan raised concerns openly and this is not a case in which one is looking for a missing document to unlock the whole of the narrative.
22. In all, I would estimate that I have reviewed over 500 documents covering well over 1,500 pages.

### III. TRAVEL

23. As part of the investigation, I made three trips abroad:

- a. First, to Paris at the end of July, to meet Martyne Perrot Mootoo and Robin Mootoo, at the offices of Mme Gacon. I had only just been instructed by this stage and was not in a position to ask them many questions. However, it soon became clear that Gaëtan had shielded them from the unhappiness that he felt at work and that they were more shocked than anyone at the tragic turn of events. I was impressed by their dignity and resolve, and take this opportunity to record in writing my deepest condolences to them.
- b. Second, to Dakar at the beginning of September, to meet the West Africa team. I was there for 2 full days and had 8 interviews. It was evident that there was a real *esprit de corps* about the team. One interviewee told me that Gaëtan's death had brought them closer together. I left humbled by the dedication to human rights work that they are doing in challenging circumstances.
- c. Third, to Paris in mid-October, to AI France. I was there for a day and had 3 interviews (regrettably, it was not possible to speak to as many people as I would have liked).<sup>3</sup> It was very helpful to obtain a picture of the place where Gaëtan spent most of his working life and where he ended it.

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<sup>3</sup> I was unable to speak to one witness because of time constraints (my own need to catch a train), though an interview was later held with that witness by telephone. More significantly, perhaps, no other person from the French Section contacted me to seek an interview even though an email had been circulated around all staff letting them know that I would be coming. This underwhelming response is consistent with my later findings of fact as to Gaëtan's relations with AI France.

#### IV. OTHER INVESTIGATIONS

24. It was initially anticipated that this investigation would be integrated with other ongoing investigations. In particular, there have been two concurrent investigations of which I am aware. The first is an investigation by the French Social Security office. This has resulted in a declaration that Gaëtan's death falls to be regarded as a workplace incident. The report was sent to me by Mme Gacon, but is insufficiently detailed for me to be able to place any weight upon it.
25. The second investigation has been carried out by AI France CHSCT (health, security and working conditions committee). I am aware that this committee has conducted its own evidence-gathering exercise and has produced its own report. I have been sent a copy but have not read it. I have concluded that it would be inappropriate for me to read the conclusions of that committee when its conclusions have been based on evidence which I have not read or seen. I am wary of the danger of unconscious influence – i.e. the possibility that my findings might be influenced by those of other investigators if I read their report. I have accordingly agreed with the Oversight Group that my investigation should be kept separate from the CHSCT one. I believe that the terms of reference for that investigation are not the same as those governing mine. Nonetheless, there is a risk of inconsistency of findings. That may be undesirable but the world is a complicated place and there is room for different investigators to reach different conclusions about the same broad set of facts.

#### V. GENERAL OBSERVATIONS ON THE EVIDENCE

26. Whilst I am wary of the danger of generalising, the evidence tended to fall into two camps. First, evidence given by those who had known Gaëtan a long time and who had been employed by AI pre-2014. These witnesses considered that AI had been irreversibly changed for the worse by the GTP and that the Senior Leadership Team ("SLT") had pursued a dogmatic at-any-cost race to implement that programme, heedless of the effect of that exercise on long-standing staff such as Gaëtan. Second, those of the witnesses who were either part of the GTP management or who were recruited after GTP, tended to say that AI was now a more effective human rights organisation and, even if recognising that some aspects of GTP might have been managed better, denied that there was disregard of the most experienced staff. I readily accept that the witnesses from whom I took evidence do not cover the whole spectrum of the AI organisation and that, for the most part, they were drawn from particular parts of it. It is possible that that has had some distorting effect but the polarisation of views was nonetheless startling.
27. I do consider that witnesses were trying to be as helpful as possible. Across all the interviews there were only two occasions when I considered that a witness was being economical with the truth.

28. I have no hesitation in saying that Gaëtan Mootoo was a great man (see below). But I detected a tendency quite early on for witnesses to lionize him. For understandable reasons related to his long and loyal service, his generosity and the tragic circumstances of his death, there was a reluctance for witnesses to deviate from a narrative that he was beyond criticism. It seemed to me that this was not only unhelpful, it was also a departure from the standards that Gaëtan himself held so dear throughout his life. If Amnesty's mission is to shine a light into the darkest corners, then one mustn't flinch from what is found there.
29. As indicated above, I found much less reluctance to criticise senior management. It is worth making the point that there is a danger that those who contacted me are a self-selecting group of people i.e. those who are strong supporters of Gaëtan and/or committed opponents of the way that GTP was carried out. It is not really possible for me to measure for this possibility, merely to note it.

## D. THE LAW

30. I have been asked to undertake this investigation having regard to principles of both English and French law.
31. As to English law, I have appended at Appendix I a summary of the applicable principles. For current purposes it suffices to note the following:
- a. In the context of the employment relationship, the overall duty of care consists of a number of different types of duty.
  - b. The key duty for my purposes is the duty to provide a safe system of work.
  - c. Another duty imposed upon both parties to an employment relationship is the duty of mutual trust and confidence i.e. the obligation not to behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.
  - d. An employer's duties are not suspended in any way merely because the employee is located in a different location from the one in which the employer is based, under the roof of a different legal entity. In this case, the mere fact that Gaëtan, an employee of IS, was stationed in Paris, in the offices of AI France, makes no difference at all to IS's obligations towards him. To the extent that those obligations were left to AI France to fulfil, AI France became the agent of IS, but the agent's failures (if any) remain the liability of the principal.



32. As to French law, I attach, at Appendix II, a note helpfully prepared by lawyers in the Paris office of Herbert Smith Freehills. I have used this note as the basis for my conclusion as to French law.

## E. FINDINGS OF FACT

33. The following sections contain my findings of fact. They are set out in a manner which attempts to meld the thematic with the chronological. However, this has been a challenging exercise and it has often been difficult to decide in which section a particular piece of evidence ought to be placed. Necessarily, in order to maintain proportionality, I have had to focus on the key evidence under each sub-heading.
34. Apart from the first section, each of the sub-headings reflects areas in which Gaëtan expressed some unhappiness at some point in the years 2014-2018. In conducting this exercise, I have tried to have regard to the apparent significance of each issue to Gaëtan himself, having regard to what he communicated to his managers and his confidants.

### I. GAËTAN'S CAREER AT AI BEFORE THE GTP

35. Amnesty is perhaps the best-known and most effective human rights organisation in the world. Founded in London in 1961, it received the Nobel Peace Prize in 1977 and has long been at the forefront of human rights protection. In particular, it has gained a well-deserved reputation for painstaking and reliable research, often carried out in dangerous environments. Amnesty research is routinely relied upon by governments, media organisations, international political alliances and other interested parties as a basis for confronting human rights violations.
36. Structurally, the core of Amnesty was (and still is) the International Secretariat, based in Central London. In the years after its inception, Amnesty opened offices across the world. These are known as "Sections".<sup>4</sup> An early Section opened in Paris.
37. Amnesty has always conducted research and other work in parts of the world far away from Europe. Historically, much of that work was conducted from London, but that was not always the case. An outpost of the IS was formed in the Paris office under the leadership of [REDACTED], who held the title Paris Research Attaché. She conducted research into Francophone West Africa.

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<sup>4</sup>There was another kind of office known as a "Structure", which is an aspiring "Section" but for current purposes these fall under the broader heading of "Sections".

38. In 1986, [REDACTED] hired Gaëtan as a research assistant. Born and raised in Mauritius, Gaëtan had no background in research but he had worked well with migrant workers in Paris before his employment by AI. He and [REDACTED] formed an effective team and made many relevant in contacts in Paris before her departure in 1991. Shortly after, this unofficial IS outpost became the Paris Research Office (“**PRO**”) and saw the recruitment of [REDACTED] as a researcher. Gaëtan was promoted to a full researcher, too. They were line managed by [REDACTED], head of Africa Research in London, but they plainly enjoyed significant autonomy in terms of their working practices: they were able to initiate work, visit target countries, telephone contacts and write up their own reports for action and publication.
39. Over the years, the PRO became part of the Africa Programme, still ostensibly managed from London. The team grew and there were two important additions: [REDACTED], a campaigner (and later manager), and [REDACTED], a Research and Campaigns Assistant (“**RCA**”). The team occupied three offices facing the gardens on the second floor of the French Section in Paris. The largest office was occupied by Gaëtan.
40. The PRO was immensely successful. Much of that success was built on the remarkable partnership of Gaëtan and [REDACTED]. Witnesses referred to them as the “*dream team*”. Whilst their country coverage changed over time, by the end of their partnership they were covering 9 West African countries. These territories were shared between them and they developed a unique method of working. Whilst both were researchers, they had different but complementary interests. Gaëtan enjoyed going on missions i.e. field trips, more than [REDACTED]. Witnesses have spoken of his zest for being in the field, for meeting people and drawing out their evidence via empathetic questions. As he travelled more and more throughout the region, he developed a remarkable network of contacts in local rights organisations, religious institutions, military and government. He was able to have access – often at quite short notice – to many of the key players in these countries. It is apparent that he made friends wherever he travelled, because he was welcomed back with open arms time and again, and I have received numerous accounts of Gaëtan being remembered by locals in Burkina Faso, Mali and the Ivory Coast many years after he first travelled there. Colleagues have spoken of his indefatigable energy and his calmness under pressure, both of which must be invaluable attributes when travelling in frequently hostile territory.
41. [REDACTED] was less keen on going on mission. He took the lead in converting the evidence taken by Gaëtan into research reports. This exercise – reading the material, locating the most relevant parts and undertaking the necessary written analysis – was of vital significance.
42. One witness described this partnership as being greater than the sum of its parts, which strikes me as being particularly apt. The net effect was that Gaëtan and [REDACTED] became legendary researchers (“*superstars*”, “*the kings of Amnesty*” and “*the Brahmin of research*” according to two witnesses).

43. If Gaëtan was a legendary researcher, he wore the tag lightly. It is appropriate at this juncture to say something about his personality. He was sociable, yet quiet. He was a humble man (one witness directed me to a YouTube video of the aftermath of the groundbreaking Hissène Habré trial, where Gaëtan, whose work had been so important in the successful prosecution of the dictator, is pushed into the centre of the celebrations having perhaps felt more comfortable on the periphery). He developed a reputation for hospitality and generosity. As to the former, one of the reasons he had the largest room in Paris was in order to receive visitors and offer them tea, which for him was something of a ritual. As to the latter, an example may suffice: before a recent trip to the regional hub in Dakar, he telephoned the RCA there to find out exactly who in the office had children and what were their ages. He then brought gifts for each of the children when he arrived. He was physically conspicuous in that he was dapper, but he was quietly-spoken and sometimes reluctant to make eye contact. One witness who knew him well described him as *“somewhat melancholic”*. His communications reveal a man of letters, always touting a volume of Shakespeare, ready to quote a line from the Bard and a keen follower of the theatre and cinema. His gentlemanly demeanour led one witness to describe him as being cast from the 19<sup>th</sup> century. Almost everyone I spoke to had a “Gaëtan story”. It is obvious that he touched people’s lives in a way that most can only aspire to.
44. These many attributes concealed a steely core. He was plainly a courageous man and this sometimes manifested itself in stubbornness. He was also capable of being over-sensitive, a trait to which he admitted in an email to his manager, [REDACTED], on 25 August 2015.
45. There is another element of importance and that is his attachment to Amnesty. I will return to this below, but a very close colleague described him as loving Amnesty like a woman. (This is not intended to undermine his family relationships – many witnesses described how much Gaëtan doted on his wife and son.) Some more recent recruits could not understand how someone could be so attached to an employer and suggesting that it was practically an affliction. What is important for current purposes is that Gaëtan could not imagine himself working for any other employer.

## II. GLOBAL TRANSITION PROGRAMME / MOVING CLOSER TO THE GROUND

46. When Salil Shetty became the Secretary General of Amnesty in 2010, he swiftly put plans in place for a radical restructuring of the organisation. This plan, variously called the Global Transition Programme (“GTP”) or Moving Closer to the Ground (“MCTTG”) was intended to decentralise Amnesty, to disperse its influence from the global North (especially London) to the global South. The essence of the exercise was to open a number of regional hubs around the world which would become the new, local centres of research. The roots of the GTP pre-dated Salil Shetty’s tenure. Indeed, the plan was born as long ago as 1993 following an International Council decision to *“consider in the context of regional strategies the relocation of researchers to research outposts”*. GTP was a project mandated and supported by the AI movement as a whole.

47. GTP was, however, highly contentious. There were many objections to it but only one key one for the purposes of this report. By requiring London-based staff to move abroad – often far afield – management (i.e. the Senior Leadership Team (“SLT”)) was necessarily bringing about a situation in which large numbers of those staff would refuse to move and thus be made redundant. Decades of institutional knowledge and research expertise would be lost. AI’s status as a world leader in human rights research would be threatened.
48. I have not found out precisely how many experienced staff left Amnesty in the years 2011-2015, but it is apparent that it was very many indeed.<sup>5</sup> The enduring anger felt by many of those affected by that process (whether they were ‘leavers’ or ‘remainers’) is, at the very least, understandable.
49. Almost everybody to whom I spoke said that they supported the idea of GTP in principle, but that they disagreed with how it was done. In particular, it was suggested that it was done too quickly, that it should have been phased in over a longer period of time (10 years was a commonly-cited measure) and that it could have been done in a much less “*brutal*” fashion.
50. An enormous amount of ink has been spilled on the vexed question of GTP. This is not the place for any kind of detailed analysis of its success or otherwise. I have read the 2017 study conducted by Syracuse University, which concludes that the exercise has been broadly successful. I am resisting the temptation to set out my opinion on GTP because, ultimately, whether it was a good thing or not (either in principle or in execution) is not relevant to this investigation. I recognise that an employer has the right to reorganise the manner in which it conducts its business. It can decide what it does and how it does it. It is under no legal obligation to keep its employees happy or to ensure that long-serving and loyal employees remain in employment. And when an employer does choose a radical and relatively swift restructure of this kind, it is practically inevitable that it will sow division among the ranks: that is a natural consequence of wholesale change. Those who have been used to working in a particular way or a particular place may be expected to rail against being required to uproot their home and transform the manner in which they provide their labour. I can understand the anger of affected employees, but I doubt whether GTP could have been effected over ten years, and also doubt whether doing it more slowly than it was done would have made much more difference to the upset.
51. There are a number of consequences of the GTP which do require separate consideration:
- a. In my view, GTP did involve, at least in part, a conscious decision to reduce the influence of researchers. On one level this was achieved by a levelling-up of campaigners. Pre-GTP, campaigners were employed at grade 4 and researchers at

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<sup>5</sup>I was told that there were 156 redundancies from the IS of whom 99 were eventually redeployed. But this does not include those who resigned before they were made redundant, of whom there were apparently many.

grade 5. After GTP the grade potential for both jobs was harmonised at grade 5. But I do not think that GTP was simply about creating improved benefits for campaigners. It involved a conscious decision to accentuate the campaigning side of Amnesty. Of course, Amnesty has always had a prominent campaigning element, but the view of many I spoke to was that its success had been built on the bedrock of its research. Pre-GTP, management of researchers had been somewhat “hands off” i.e. they were trusted to get on with the job themselves and had little performance management. Post-GTP, management procedures were expected to tighten up and researchers were expected to produce material faster. They were expected to engage with social media in a way that had not previously been expected. A number of witnesses spoke dismissively of this aspect of the new Amnesty, but I do not agree. Engaging with social media, however strange and new, is part of being a successful business (and I include NGOs in this broad use of the word ‘business’) in the 21<sup>st</sup> century. But GTP was not merely intended to change the way that researchers work – it was also intended to reduce their autonomy and influence. That was achieved in part by reducing the numbers of long-standing researchers; and in part by relocating many of those who remained. While AI has maintained that it is no part of its plan to reduce the quality of research, losing so many researchers would seem necessarily to lead to that outcome, at least in the short-term, as new researchers will take some time to develop the skills of their predecessors.

- b. The divisions created by the GTP have not greatly diminished. From the perspective of affected employees, this has led to a tendency to view AI through a heavily GTP-dominated prism. There is a tendency to overlook the difficulties that afflicted the organisation pre-GTP (e.g. the erratic nature of performance management and sometimes unstructured systems of work). More importantly, there remains a major level of distrust of the SLT, as illustrated by the results of recent Staff Engagement Surveys. A significant number of witnesses spoke of the SLT in terms that indicate that they distrust almost any SLT initiative. One witness said “*They don’t give a shit about us*”. There was a preparedness to ascribe malign intentions to the SLT on the basis of instinct rather than evidence. For the avoidance of doubt, I do not agree that the SLT is so careless of the workforce (but see below, under “Gaëtan’s Value...”), but it is of concern that that is the perspective of so many.
- c. Yet a mirror image may be seen in the perspective of senior management. (I am here referring to the SLT and some other senior managers in the organisation.) Here I detected a tendency to hyperbolise the difficulties in AI before the change. One senior witness described the organisation as a “*clusterfuck*” pre-GTP, suffering from under-management and a lack of respect for the science of research. As opposition to the GTP was articulated, I think that a bunker mentality developed at a very senior level. One of the ways that this manifested itself was in a readiness to dismiss the concerns of longer-serving staff as the gripes of “*old-timers*”.

52. The views described at (b) and (c) above have become entrenched. Management and staff (especially long-serving staff) have been damaged by the process of GTP and both sides have developed exaggerated views of the other.
53. Gaëtan was a victim of both (b) and (c) above. He was a very vocal critic of GTP (as I shall develop in the next section, he was affected more than most). One witness described him as being politely obsessed by it. He said that GTP had led to AI losing its ‘grey matter’. He believed that the quality of research was not as good as before and spoke about the need for more autonomy to be granted to them. He was not in favour of what he saw as increased budgets given to faster, more aggressive campaigning at the expense of more thorough research. In his case, I am not quite clear that his criticism was limited to the way that the program was carried out. My sense is that he may have been resistant to the principle itself, though the evidence on this is not at all clear. Perhaps, over time, the principle behind GTP and the way it was carried out became indistinguishable. Either way, he was initially fond of individual members of the SLT – most evidently, Salil Shetty himself – but over time this turned to bitterness.
54. In turn, he was identified, whether consciously or otherwise, as being one of the “*old-timers*” i.e. resistant to change and thus less desirable as an employee going forward. There is some truth in his being resistant to organisational change. But the shame is that the organisation has not really found a way to bridge the gap between those who spearheaded GTP and those whose ability to adapt to it was less developed.

### III. THE DECISION TO RETAIN GAËTAN IN THE PARIS OFFICE

#### (i) THE BATTLE TO REMAIN IN PARIS

55. The initial ‘Blueprint’ for the GTP indicated that there would be a wholesale move of the Africa Programme to Africa. In the case of the PRO, that would entail a move to the new West and Central Africa hub in Dakar.
56. From 2011 onwards, the PRO, but especially Gaëtan, lobbied exceptionally hard to carve an exception from the GTP that would allow the PRO to remain in Paris. In doing so, he/they recruited allies from across the organisation to their cause. Senior staff in London and abroad – especially Section Directors who had been on mission or otherwise worked with Gaëtan – joined their cause. None of the PRO wished to move to Dakar: each had powerful personal reasons for wanting to continue living in France.
57. This lobbying was partially successful. When the first wave of GTP consultations occurred, the PRO was expressly excluded. The rest of the Africa Programme was included. The Final Decisions document (12 June 2013) stated as follows:

“Francophone West Africa posts in Paris will report to the Hub Director in Dakar once that person is in post, and will be subject to a subsequent consultation process with the intention to move them towards the end of 2014...we will need a transitional plan to phase our work out of Paris. We have chosen not to bring forward any decision related to Paris-based staff not least for reasons of equity as they were not part of this consultation and will, in due course, be subject to consultation (required under French law) when their roles move.”

58. Behind the scenes, however, the impact of the uncertainty and the lobbying was damaging for the PRO. There was greater bureaucracy and a perhaps unspoken sense that they needed to prove their usefulness, so more work was taken on. Gaëtan pushed to demonstrate the team’s value by going on mission with Salil Shetty to Mali and Senegal in December 2013. It became clear that they did not all share the same unique devotion to AI that Gaëtan did. [REDACTED] resigned in January 2014. [REDACTED] resigned at the same time to take up a new role at another NGO – he let it be known that he was tired of begging for his job. [REDACTED] accepted an offer of redundancy in September 2014. In that period, the team’s solidarity fractured. A new RCA – [REDACTED] – was recruited on a fixed term contract. She quickly struck up an excellent working relationship with Gaëtan.

59. It isn’t clear whether and to what extent there was a second wave of consultation involving the PRO. In any event, the campaign to remain in Paris was partially successful in that Gaëtan himself was retained there. The Decision Document for Wave Two Regional Offices and Other Restructures Proposed to Take Place in 2014 (6 May 2014) states (at p.34):

“The decision for the role changes for the Paris office is as was proposed – the disestablishment of one post, the relocation of two posts that are currently based in the Paris office of [IS], and the retention of one existing post as it is in the Paris office. To enhance research and campaigning capacity and human rights impact in the West and Central Africa Region, these changes aim to create an integrated team in the Dakar Regional Office, while retaining a capacity to support our advocacy and research work with our existing network and sphere of influence in France in line with our theory of change involving levers of influence for human rights impact.

The post to be disestablished is the Paris Office RCA part-time role currently part of the Research Directorate Africa Programme, and the posts to be relocated from the Paris office to the Dakar Regional Office are 1 x Regional Researcher – Francophone West Africa and 1 x Regional Campaigner – Francophone West Africa.”

60. The text quoted above suggests that the decision to retain a researcher in Paris was taken for purely strategic reasons. Gaëtan and his colleagues in the Dakar office subsequently relied strongly on that rationale in pushing for more investment in the Paris office. In my view, this was only part of the reason for retaining Gaëtan’s role in Paris. The other principal reasons were:

- a. The SLT bowed to pressure from Gaëtan and his allies to retain him. There are three elements to this. First, there was a recognition that Gaëtan had valuable knowledge and experience that would otherwise be lost. Second, there was an element of compassion towards him. Third, there was an element of preserving political goodwill as between the SLT and Gaëtan's more senior advocates.
  - b. Retaining him meant that IS would not need to fund what would otherwise have been a hefty redundancy payment.<sup>6</sup> Gaëtan was already in his 60s and the unspoken expectation was that he would retire before very long.
61. Gaëtan initially accepted the explanation in the Decision Document as to why the post was retained. But as time went on, he began to realise that the reasons for his retention were more nuanced. One witness said that realising that he had been kept in Paris for compassionate reasons would have "*crushed*" Gaëtan.
62. There were mixed views about the wisdom of retaining Gaëtan's role in Paris. My conclusions, in summary, are:
- a. Communications around the decision could have been handled better. In particular, while it was understandable that the official documentation should state that the decision was for strategic reasons, a means should have been found to explain to Gaëtan that there were also political and compassionate reasons for the decision.
  - b. Much more thought ought to have gone into the practicalities of him working in Paris in changed work conditions (see below).
  - c. Notwithstanding the above, retaining the role in Paris did make sense for all of the reasons that played a part in the decision. I am not saying that it was the only reasonable decision available to AI, but it was a legitimate one.

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(ii) THE EFFECT OF THE DECISION TO RETAIN THE PARIS ROLE

63. In the space of a few months in 2014, the close-knit team in which Gaëtan had worked for so many years had disappeared. In particular, he lost his alter ego, [REDACTED]. Witnesses agree that Gaëtan felt let down by [REDACTED] decision to change job. That was unfair on [REDACTED], who was free to decide what to do on his own terms. But it gives an insight into Gaëtan's sense of loss.
64. The decision to make an exception of Gaëtan's position was not the only exception permitted by the SLT to the GTP, but the anomalies were few and far between. Having

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<sup>6</sup>The minimum redundancy payment would have been in excess of €173,000.



authorised his retention there, effort ought to have been made to identify the challenges that would arise from him having to work in relative physical isolation but linking remotely with new colleagues all of whom were based in Dakar.

65. I have found no evidence that any serious thought was given to how much support might be needed for Gaëtan in the immediate aftermath of 2014. In an ideal world, this discussion ought to have been held before any final decision was made as to his retention. Instead, it appears that the decision was taken and it was assumed that Gaëtan would be able to make the new arrangement work. A less charitable view is that the SLT, having given way to Gaëtan following intense pressure, felt disinclined to provide him with any further meaningful support. I do not say that this was a conscious decision on the part of the SLT, but it was an element of their subsequent approach towards him.

#### IV. FORMAL ALLOCATION OF RESPONSIBILITY FOR GAËTAN'S WELFARE

66. Gaëtan's employer was IS, based in London. His line manager for almost all of the post-GTP period was [REDACTED], based in Dakar. Gaëtan himself was based in Paris, with no other IS employees. Who was responsible for supervising his welfare?
67. As a matter of law, there is no doubt that IS retained responsibility. His being located in a foreign location does not alter that in any way. It was incumbent upon IS to ensure that he was not disadvantaged in any significant way by virtue of being in Paris, away from both his employer and the rest of his team.
68. Remote working is not unusual, either in Amnesty or more generally. Where an employee is working in the offices of another legal entity it is vital that formal arrangements are put in place to ensure that there are relevant points of contact, that the host organisation understands the expectations placed upon it, that there is a review system and so on. None of this existed as between IS and AI France.
69. Historically, the 4-person PRO team had managed perfectly well. They had been *in situ* for many years and could be trusted to sort matters out for themselves. But when the team was disbanded, Gaëtan became isolated. His ability to navigate the procedures of IS and AI France was enormously diminished without his former colleagues.
70. I have seen examples of Memoranda of Understanding which exist in current cases where IS employees are stationed abroad with a foreign host. These documents make sensible provision for safeguarding the welfare of the posted worker. Such a Memorandum ought to have been put in place as between IS and AI France so as to regulate their obligations towards Gaëtan.

71. In the absence of such a document, the general sentiment towards Gaëtan from management at AI France was that he was a guest, albeit not always a welcome one.<sup>7</sup> Their interactions with him were limited: paying him, providing him with cash to take on mission with him, sometimes helping with the paperwork around the recruitment of interns, and not much else. Critically, they did not consider that they were under any obligation to ensure that his working conditions were suitable. There is a particularly conspicuous example of this that arose in late 2016. Under French law, employees are required to undergo an occupational health check every 5 years. In late 2016, Gaëtan did so. The doctor wrote to Human Resources in AI France (with whom he had an established relationship) to inform them of his findings. These included a warning about Gaëtan's working conditions and their possible effect on his health. The obvious thing to do was to pass this information on to IS. That did not happen because AI France did not know who to contact. Human Resources in IS agreed that it was eminently possible that AI France did not have any contact details. In the end Gaëtan was asked to pass the information on to IS. He did not do so.
72. One view might be that it was a major error for AI France not to have simply picked up the phone to Human Resources in IS and ask to speak to the person responsible for Gaëtan Mootoo. I have sympathy with that – how difficult can it be to find out the relevant contact details? But what this episode demonstrates is that AI France did not consider that they were under any obligation to be proactive in terms of looking after Gaëtan. If there had been a Memorandum of Understanding in place that would not have happened.
73. Witnesses reported that Gaëtan felt abandoned in Paris. His employer's failure to ensure that there was a proper system in place setting out AI France's obligations towards him contributed to that feeling of abandonment.

## V. THE FIRST OFFICE MOVE – DECEMBER 2014

74. With the reduction in numbers of the PRO to two (Gaëtan and [REDACTED]), IS was renting more space from AI France than it needed. Minar Pimple, Senior Director for Global Operations, visited Paris in late 2014 and announced that IS would only rent one office going forward.
75. AI France have occupied their current premises since 1999. Gaëtan had been in the same office for 15 years. It had 3 windows looking out over the gardens and was a space to which he had become attached. It was approximately 30m<sup>2</sup>.
76. The Fundraising team in AI France was growing from 3 to 4 people and was occupying a much smaller office, of 17m<sup>2</sup>. The decision was taken by AI France to move that growing

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<sup>7</sup> I should emphasise that this became more acute after March 2016 when the Director of the French Section, Stephan Oberreit, left. He had enjoyed a good relationship with Gaëtan, had gone on mission with him and was one of those who had lobbied for his retention.

team into Gaëtan's office and for him to move into the adjoining room formerly occupied by Salvatore. Gaëtan's requests to retain his 'haven' were refused. [REDACTED] office was smaller than the one he'd formerly occupied, but was still reasonably sizeable, with ample space for two desks and with views over the gardens.

77. A number of witnesses criticised the decision to require Gaëtan to move office. They pointed out that, coming hot on the heels of the loss of his team, it would have been more compassionate to have allowed him to stay where he was and find a different solution for the Fundraising team. In my view, the timing was unfortunate, but AI France could not be criticised for placing the needs of a 4-person team above the desires of Gaëtan. It must be remembered that employees occupy offices – they do not own them. Anyway, Gaëtan was not being shunted to somewhere unpleasant or unfamiliar – he was moving next door.
78. Another element of the office move was repeatedly cited by Gaëtan in later years as evidence of management's uncompromising attitude towards him. When it was clear that he would have to move, he asked for the walls in [REDACTED] office to be cleaned and for the carpet to be replaced. One witness said that he asked for this in a haughty manner – as if it was the *quid pro quo* for him having to move. If so, Gaëtan's manner was uncharacteristic.
79. Witnesses say that Gaëtan reported that his request for some refurbishment was turned down even while other offices were being redecorated around his. He reported going to the offices with [REDACTED] on New Year's Eve 2014 and painting the walls themselves.
80. I have seen contemporaneous emails which throw a different light on events. Gaëtan's request for repainting and a new carpet was refused. Stephan Oberreit, then Director of AI France, explained that they were in the process of redecorating the rooms on the first floor and it wouldn't be fair to redecorate one of the rooms on the second floor out of sequence. (It is important to note that there had been no redecoration of any of the offices since 1999.) Essentially, Gaëtan was politely told to wait his turn. The carpet was not replaced, but it was shampooed. Gaëtan and [REDACTED] did enter the office on New Year's Eve but they did not paint the walls – they washed them down.
81. If there is any criticism to be attached to management over this episode, it might be said that Gaëtan and [REDACTED] were given insufficient help to move. They had an increased workload anyway at that time (they were completing an astonishing 9 country entries for the Annual Report) and were being placed under pressure to move quickly. But that element of the episode is not what Gaëtan recounted in subsequent years.

## VI. REQUEST FOR ADMINISTRATIVE ASSISTANCE

### (i) INTRODUCTION

82. From the middle of 2014, Gaëtan lobbied incessantly, first for the retention of [REDACTED] as RCA, then for the recruitment of another RCCA<sup>8</sup> in Paris. He was partially successful in relation to the former, in that [REDACTED] contract was repeatedly extended until the end of 2015. He was unsuccessful in obtaining any employed assistance in Paris thereafter. It was the issue about which he complained more than any other.

83. On one level, the RCA is principally an administrative role, filing and making logistical arrangements for researchers/campaigners going on missions. However, it is apparent that incumbents are expected to make more of the role than that and nowadays, the souped-up RCCA role is seen as a stepping stone to researcher or campaigner. Indeed, that is the path taken by one-time Dakar RCCA, [REDACTED].

84. In Paris, [REDCATED] was the RCA from March 2001 until her resignation in early 2014. Her administrative assistance was spread between each of Gaëtan, [REDACTED] and [REDACTED]. She had particular responsibility for organisation of missions and, since Gaëtan travelled on missions much more than the others, that meant that she tended to work closely with him at these times. While he was away, it was her duty to monitor the press situation, reply to telephone calls and keep his databases updated. Her work extended to proof reading and commenting upon draft reports. After her departure, [REDACTED] performed similar tasks. If anything, her involvement in the production of written materials was even greater.

### (ii) RETENTION OF AND ESTABLISHMENT OF NEW RCCA POSITION

85. It will be recalled that the Final Decision document indicated that the RCA role was to be disestablished altogether from approximately mid-2014. In fact, Gaëtan and the rest of the team (now in Dakar) worked hard to extend [REDACTED] tenure and to establish a new RCA position.

86. There is a very significant amount of correspondence showing the efforts made by Gaëtan to retain [REDACTED]. I do not think that it would be useful to set these out. It will suffice to make a number of specific points:

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<sup>8</sup> Pre-2014, they were Research and Campaigns Assistants. Post-2014, they were Research, Communications and Campaigns Assistants. They were intended to have a broader role, partly reflecting the expectation that researchers and campaigners would become more self-sufficient in terms of the administrative side of the job.

- a. Gaëtan's attempts to extend her tenure were sent to key decision-makers at the SLT, especially Minar Pimple. Gaëtan recognised that his own line manager ([REDACTED]) did not have the authority to take the relevant decision.
- b. Other influential individuals also backed up Gaëtan's requests; for example, Philippe Hensmanns (Director of AI Belgium) wrote to Minar Pimple on 1 December 2014 saying that he'd spoken to Gaëtan in Ouagadougou, Burkina Faso, and Gaëtan was worried about how he'd be able to work without a RCA. The involvement of outside advocates ruffled feathers at SLT level.
- c. The SLT did give permission to extend [REDACTED] contract. Furthermore, she became full-time where before she was part-time (as was [REDACTED]).
- d. The reasons adopted by Gaëtan for extending [REDACTED] included strategic reasons and matters relating to his own workload, but he also referred to more personal matters. For example, on 12 February 2015, he wrote to Minar Pimple, Alioune Tine (Regional Director, West Africa), Netsanet Belay (Research and Advocacy Director for Africa) and [REDACTED] and explained that it is *"very difficult to be on your own in a big office"*. Likewise, on 26 August 2015, he wrote to [REDACTED] saying that if he lost [REDACTED], *"I would be like a bird in a cage and maybe AI would need to give me support for psychological injuries (!!!)"*.
- e. By the second half of 2015, the key concern for management appears to have been the legal consequences of continuing to extend her contract. Legal advice was obtained as to whether frequent extensions of that contract would lead to her being deemed an employee or AI breaking French law.
- f. There was a spike in correspondence at the end of 2015, doubtless reflecting the fact that the end was nigh as far as [REDACTED] employment was concerned. Gaëtan took advice from his union and wrote an email to [REDACTED], HR Business Partner, in which he said that he didn't want to find himself on his own (referring to himself as a *"Dodo"*) and alleged that the *"continued uncertainty is starting to take a toll on my well-being. The idea of being left alone in this office, or only with an intern...is deeply worrying"*.
- g. By this time the SLT had made it clear that there would be no going back on the decision. [REDACTED] was worried. He wrote (to [REDACTED]) that he *"can understand his nervousness about working more alone in Paris, as he did rely on [REDACTED] a lot. There is something for us to consider both in terms of his productivity and welfare"*. He speculated that Gaëtan might have been angling for redundancy.
- h. [REDACTED] replied to Gaëtan's union-backed email on 16 December 2015 with a message that had been passed via Alioune Tine, Minar Pimple and others. It focused on the needs of Dakar (rather than Gaëtan) and contained the following advice:

*“...working alone is not conducive to your wellbeing...we can only recommend that you visit the Dakar office to meet any ongoing needs you have and maintain regular contact with your manager”.*

87. Meanwhile, the Dakar hub had been established. At its inception, there was a single RCCA covering the whole of the hub’s operations i.e. West and Central Africa. The team lobbied for another RCCA to be recruited, and this request was conveyed by [REDACTED] and Alioune Tine to the SLT. This recruitment request was successful, but subject to the caveat that the new, 2<sup>nd</sup> RCCA be based in Dakar. This frustrated Gaëtan, who contended that although there were good reasons for having a RCCA in Dakar, [REDACTED] was providing support to both him and Dakar, and the arrangement was working well.

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(iii) THE REQUESTS FOR ADMINISTRATIVE SUPPORT FROM 2016

88. From the beginning of 2016, Gaëtan was working alone in Paris. There were many other people in the Paris office but he conducted his work entirely alone. (One senior management witness took issue with the description of Gaëtan working alone. But mere physical proximity to other human beings does not necessarily militate against loneliness. Indeed, it might even accentuate loneliness if one has very limited interaction with those other humans.) Although he was able to work with the RCCA in Dakar – and did so – he struggled with this remote relationship, which lacked the proximity which he was used to.

89. Gaëtan’s requests for administrative assistance continued unabated. He harboured a wish to re-recruit [REDACTED], who was still living in or around Paris. On 8 June 2016, he wrote to Salil Shetty (after having met him in Dakar) asking for his help with *“the difficulties I am currently facing”*. He complained that he was isolated and undermined, that management needed to consider the future of the Paris office and his position, and that it was essential to have a fully trained and integrated colleague with him in Paris. Salil forwarded this to the SLT noting that they would not be surprised by Gaëtan’s request. The email was delegated to [REDACTED] to draft a response. He thought that the request would be perennial and that it needed a response from Salil to show that *“he can’t get what he wants by going over heads”*. Steve produced a draft that indicated that the decision was final and had been taken at SLT level. However, this draft was altered by Minar Pimple so as to create the impression that the decision actually lay with Africa management. In September 2016, following another request, Minar wrote to him advising him to *“move beyond this issue”*.

90. From the end of 2016, it appears that Gaëtan focused his efforts on soliciting support for a RCA/RCCA to be funded via the sections. He sought assistance from the French Section Director, Sylvie Brigot-Vilain, but this came to naught. In a meeting in about April 2018 with Cécile Coudriou, incoming chairman of AI France, he was given more assurance that she would do what she could to provide assistance and he emerged from that meeting somewhat boosted, but he died before Cécile took office. For the avoidance of doubt, *if* AI France had

been able to find funds to support an assistant, that would have been very helpful for Gaëtan, but it should not be thought that the Section should be subject to any criticism for its earlier failure to do so. The Sections are not responsible for IS staffing.

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(iv) ANALYSIS OF DECISION-MAKING IN RELATION TO THE RCA

91. I have found the question of the RCA very difficult. Was AI under a duty to provide Gaëtan with a RCA in Paris?

92. Ultimately, I have concluded, with considerable hesitation, that AI was not under any such obligation. There are, indeed, plenty of good reasons why no RCA should have been furnished: budgetary; unwillingness to establish a precedent; fear of creating a sense of inequality in the many employees in Dakar, lots of whom had additional pressures that they had to contend with. I also consider that it was permissible for the SLT to rely on the GTP itself as part of the reason for not recruiting to Paris.

93. However, simply looking at whether there was a freestanding obligation to recruit a Paris role does not give the whole picture. Gaëtan complained that he felt that his requests for a RCA had been “*summarily dismissed*”. There is substance to this complaint:

- a. In all the many written communications on this issue, the prevailing position of management has been to justify not having a RCA. I have not seen a single intra-management communication in which serious consideration was given to Gaëtan’s perspective. The impression received is of a decision already made.
- b. This is reinforced by the failure to consider what might be thought to be a fairly obvious and relatively inexpensive solution, namely recruitment of a part-time RCCA. I don’t think that this is necessarily wisdom via hindsight. [REDACTED] had been part-time.
- c. There was a reluctance by the SLT to take ownership of the decision. It was unclear from the documentation whether authority to recruit vested in management in Africa or higher up, and it was only at the interview stage that it became clear that it was the latter. I received very clear evidence that the authority to increase headcount lies with the SLT. Given that position, I struggle to understand why Gaëtan was told that the decision lay with his managers.

94. The loss of an assistant was profoundly difficult for Gaëtan. I have already referred to his sense of emotional isolation. It also had a significant impact upon his ability to work. He was reliant on [REDACTED], then [REDACTED], to produce written output. His IT skills were poor. His organisational skills were also not great. He relied heavily on a RCA for these. With the loss of a RCA, his ability to perform the core elements of his role was lessened. He felt the loss more than another employee might have done. One can see how, with the repeated refusals, he began to think that there was no true commitment to the Paris office at all (contrary to the

published reasons for his retention there).

95. I think that the SLT failed to appreciate quite how diminished Gaëtan felt without a RCA – this was a combination of isolation and lack of productivity. This was a diminution that could not be cured either by recruitment of temporary interns or by more regular trips to Dakar. But it might be thought strange that the SLT struggled to appreciate Gaëtan's position given that he raised it so often. Some witnesses have suggested that the SLT deliberately denied Gaëtan a RCA on the basis that he had already received special treatment via his retention in Paris. I think a more significant reason is that a collective deafness emerged when it came to him. He was to be fobbed off rather than persuaded, which is why he kept coming back to the same issue.

96. If I am critical of the SLT in relation to this issue, I also think that it is important to bear in mind three other points:

- a. First, Gaëtan could have done more to render himself less isolated and more productive. In particular, he could have made more use of interns (he had regular interns but sometimes said that he would rather not have them e.g. around missions). I also think that he could have been more proactive in terms of relations with his colleagues in AI France (see below). It must not be forgotten that across AI, researchers do not tend to have their own assistant – indeed, I have not come across any other case and there is obviously a great deal of competition for headcount.
- b. Second, although he was physically working in isolation in Paris, he remained in daily telephone contact with Dakar and regularly went on mission for weeks on end.<sup>9</sup> The periods of loneliness in Paris were thus punctuated with periods of professional sociability.
- c. Third, the issue of a RCA became disproportionately significant. While there were undoubtedly practical benefits to him in having a RCA, he was really aching for what he had lost in 2014, namely the rest of his team and their way of working together. He was not unrealistic enough to think that that team could be pieced together

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<sup>9</sup> I have tried to build a picture of the missions that he went on from 2015 onwards: June 2015 (Burkina Faso); July 2015 (Mauritania – 2 weeks); September 2015 (Burkina Faso); April/May 2016 (Burkina Faso); May 2016 (Mauritania, with Salil Shetty, Anna Neistat and others); 2016 (months unknown – 1 mission to Ivory Coast and 2 missions to Niger); 2017 (months unknown – 1 mission to Ivory Coast and 1 to Burkina Faso); December 2017 (Niger); February-March 2018 (Mali). That is twelve missions in three years.



again, but I do think that the issue over the RCA became symbolic at least as much as it was practical.<sup>10</sup>

## VII. RELATIONS WITH HIS LINE MANAGER AND WITH DAKAR

97. Since there were occasions when Gaëtan complained about his managers it is worth briefly commenting on the principal managerial relationship over the relevant period, namely with [REDACTED].

98. [REDACTED] was recruited to Amnesty in April 2014 as W.Africa Deputy Director (Campaigns). The Deputy Director (Research) role was vacant at that time, and he was in a quasi-managerial position vis-à-vis Gaëtan even then. He applied for and was appointed to the Deputy Director (Research) Role (“**DDR**”) in early 2015 and was then Gaëtan’s manager until he took another post in 2018 (see below).

99. [REDACTED] is some 20 years younger than Gaëtan and did not have anything like the background in human rights research that the older man had. When he was appointed, I think that both parties might have found it a bit awkward.

100. Whatever awkwardness existed at the start, it is apparent that [REDACTED] managed Gaëtan extremely well. He treated him with conspicuous sensitivity and went out of his way to provide Gaëtan with additional assistance. He arranged for Gaëtan to have lengthy one-to-one IT training, was very supportive over Gaëtan’s somewhat chaotic and out of date expense claims and struck the right balance between care and invasiveness when trying to get more information about Gaëtan’s health.

101. The views I have expressed in the previous paragraph have been formed via a consideration of the contemporaneous exchanges between Gaëtan and Steve, but also from the evidence of those whom I spoke to from the Dakar office. There was unanimity that [REDACTED] was a caring and careful supervisor. This is also reflected in the annual performance reviews. These demonstrate that, despite well-founded concerns about Gaëtan’s productivity, the reviews were written in a way that preserved his dignity.

102. It is also worth pointing out that in some respects Gaëtan was given special treatment. [REDACTED] arranged for the holiday carry-over rules to be bent in Gaëtan’s favour to allow him to carry over more TOIL from one year to the next than the policy permits. He (with [REDACTED], DDC) allowed Gaëtan to fly Air France to and from Dakar, again contrary to the usual policy in terms of flight costs, on the basis of Gaëtan’s say-so about knee and back problems.

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<sup>10</sup> On the eve of his death, a witness reported that Gaëtan was happy because he believed (following his conversation with Cécile Coudriou) that an administrative assistant would be forthcoming.

103. [REDACTED] ceased being DDR at the beginning of 2018 and, from the beginning of May, [REDACTED] took over on an interim basis. [REDACTED] is based in Hong Kong, and it hardly needs saying that it was not ideal for him to be playing any part in managing the Dakar team given he was so far away. The only reason for mentioning him, given the very short period of time that he played any role at all, is that Gaëtan got upset at [REDACTED] use of language when he was commenting on Gaëtan's draft risk assessment for the forthcoming mission to Mali. [REDACTED] – who never met Gaëtan – received the draft and sent back lots of questions and comments. He signed off the email by reiterating the seriousness of the exercise and saying that the trip will be *"no picnic"*. This turn of phrase upset Gaëtan as being patronising. I see this as an example of over-sensitivity on his part. The phrase is pretty innocuous. It was telling that some other participants in the mission, who also received the email, predicted that the phrase might upset Gaëtan.
104. Finally under this heading, it is worth saying something about Gaëtan's relations with the team in Dakar. The short point is that he got on very well with them and was extremely fond of them. The feeling was mutual, too. If he had doubts about how quickly this new team of researchers and campaigners would hit the ground, he kept those to himself and he ended up forming some very close attachments, not least to the campaigner [REDACTED]. There was also a very healthy respect for [REDACTED] replacement, [REDACTED]. It is important to make these points in order to dispel any sense that Gaëtan was constantly unhappy at work post-GTP.

## VIII. WORK AND WORKLOAD

105. Like anybody else, Gaëtan had strengths and weaknesses. I have detailed above many of his strengths. As one witness put it: *"Gaëtan had exceptional skills around networking, relationships, contacts everywhere with everyone at all levels of government, civil society, village life, a fantastic trove of historical knowledge about Amnesty's work throughout the region, a remarkable ease of interviewing anyone, anywhere about anything. He had a capacity for a schedule and quantity of fieldwork I have rarely seen equalled, tremendous and deeply genuine empathy and support for rights holders, civil society partners and Amnesty colleagues. All of those skills are precious to our work on any issues, using old or new methods"*.
106. However, there were two significant weaknesses. First, Gaëtan was not good at producing reports, especially longer ones. When he worked with [REDACTED], it was [REDACTED] who took charge of converting the data into documents. Second, he was not good at prioritising one piece of work over another. In large part this was a consequence of the care that he had for victims of human rights violations. No issue was too small or too unimportant. Witnesses spoke of [REDACTED] cajoling him to turn down work opportunities, but to no avail. This is also reflected in the appraisals.

107. The net effect of the above is that Gaëtan was not – post-GTP – very productive. He had not produced a substantive report since 2015 and the writing on the reports that he had produced had mostly been done by others. By contrast [REDACTED] produced 3 major reports in the same time period and many other press releases and UN Submissions.
108. I should add that not all witnesses would agree with the points that I have made about Gaëtan’s productivity or ability to prioritise. Some said that he was very good at prioritisation, but they were a minority. One would not necessarily expect homogeneous views about something as subjective as quality of work anyway.
109. There were also concerns that he was slow to adapt to new methods of working. He did not follow social media so did not get up to date information about rights abuses. He was apparently reluctant to embrace new research techniques such as the use of satellite imagery. Some witnesses, when asked whether Gaëtan was slow to adapt, pointed to his willingness to embark on brand new topics of concern, hitherto unknown to Amnesty, such as maternal mortality. That is a fair point: he was not entirely marooned in Amnesty’s past, but there is a difference between taking on new types of human rights concern and learning and applying new methods of research. One witness said of him that he was “*not the complete package as a researcher*”. In my view, that was a fair assessment. Furthermore, I think that Gaëtan himself recognised – albeit privately – that he had difficulty turning raw data into reports. What had come easily to him and [REDACTED] was now a major challenge, and I think it must have been painful to come to appreciate that.
110. It might be said that it would have been a good idea for [REDACTED] to have slotted into [REDACTED] role i.e. to be the researcher charged with taking responsibility for the writing, whilst Gaëtan focused on being in the field, but with the overall territorial coverage being shared. However, that arrangement was one that took account of both men’s preferences. The norm is for researchers to have their own specific countries to look after. This encourages and allows them to both go on mission and write reports – both are core elements of a researcher’s role. The Gaëtan/[REDACTED] relationship was most unusual in having joint ownership and complementary responsibilities. So, when [REDACTED] joined the team, it was reasonable enough for him to want to have some countries of his own. In my view, [REDACTED] dealt with this appropriately: at that stage there were 9 countries being covered by Gaëtan and they needed to be shared; Gaëtan was allowed to choose the 5 that he wanted to retain, a token of his de facto status as the more senior and incumbent researcher. I understand that Gaëtan was not happy to have lost responsibility for countries on which he had worked for many years. This reflects his deep attachment for the work that he had been doing in those countries. However, in retaining responsibility for as many as 5 countries – of his choosing – he still had a large workload.
111. A small but significant number of witnesses had more troubling concerns about his work. They reported that in the field Gaëtan could be long-winded and repetitive. One witness reported that Gaëtan telephoned her to ask her how to prepare a UN Submission even though it was an exercise that he had done many times before. There was perhaps not

enough evidence of this nature to allow me to make any firm findings about it. However, there may well be a basis for agreeing with the assessment of one witness that *“he wasn’t the Gaëtan Mootoo that he once was”*. I would like to emphasise that the evidence referred to in this paragraph all came from those who were close to Gaëtan.

112. Almost without exception, witnesses commented on Gaëtan’s working hours. He was certainly a workaholic. He came to work early most days (by 8.30 a.m.) and was often the last to leave. He would often work at weekends and bank holidays and was known to cancel leave in order to work. Colleagues spoke with some awe about his ability to keep going on gruelling missions, not stopping for lunch and not taking days off.

113. It is almost too obvious to say that working such long hours is unhealthy. This habit was deeply engrained in Gaëtan and existed long before GTP. As an employee working in a EU jurisdiction he should not have been working more than 48 hours per week without having first consented in writing. I have not seen any such written consent in his files and doubt that such consent was ever sought. That said, had it been sought, it would have been forthcoming.

114. This was a situation in which a highly dedicated employee found it increasingly difficult to come up with written output. This was more and more painful, partly because this had not previously been a difficulty (the [REDACTED] ‘effect’) and partly because there had previously been fewer formal expectations on what a researcher ought to produce. Nowadays, there is annual planning of work projects, which makes it easier to understand witnesses who report that Gaëtan felt pressured to meet deadlines.

115. Given [REDACTED] location in Dakar and Al France’s relative indifference to what Gaëtan was doing, it appears that management probably did not know just how much Gaëtan was struggling at work. It would have been difficult to insist upon him leaving the office at a ‘normal’ time, but it might not have been impossible. That said, being more robust with him in terms of reducing his working hours would probably not have alleviated the pressure he was feeling – indeed, it might have exacerbated it. What, then, could have been done? The unpalatable truth is that Gaëtan was struggling to do a significant part of the job; whilst having a RCA might have eased his problems somewhat, I do not think that it would have been a panacea. In such circumstances, performance improvement or capability procedures are an option. No such procedures were suggested in his case, and for good reason. It would have been heart-breaking and humiliating for Gaëtan to have to submit to those. He had earned the right not to have his dignity undermined like that. I will return to this issue below under the heading of “Promotion and Alternative positions”.

## IX. INFORMATION TECHNOLOGY

116. Evidence about Gaëtan’s proficiency with computers ranged from *“not very good”* to *“genuinely clueless”*. He was not averse to learning, but struggled to do so despite the

training that was provided to him. It appears that even after that training had been provided (3 consecutive days in March 2017), he continued to contact the trainer for refreshers on relatively basic computer functions. That said, he did use email, was able to use Skype and other video-conferencing software and managed to communicate on WhatsApp. However, he never mastered the increasing number of in-house electronic procedures such as HRNet (for booking holidays) and Concur (for claiming expenses).

117. The point may be of historical interest now, but this degree of difficulty does beg the question of why AI left it so long to provide IT training. My impression is that the current availability of IT training within Amnesty is very good. I was pleasantly surprised by the fact that in-house one-to-one training of the kind provided to Gaëtan is an option for employees. The problem for Gaëtan is that it came far too late.

## X. HOLIDAYS

118. Towards the end of his employment, Gaëtan complained that he hadn't been on holiday for 1-2 years. He presented this as being a direct consequence of not having had adequate support (i.e. a RCA).
119. In fact, not taking holidays had been a very long-standing problem for Gaëtan. Witnesses who worked with him before GTP noticed that he failed to take leave. I have seen documents from before GTP in which Gaëtan wrote about having accumulated in excess of 50 days' untaken leave over a period of years. One close colleague reported that Gaëtan asked, rhetorically, how he could go on holiday when people are being tortured and killed. I accept the evidence of management that they urged Gaëtan to take a break but that this plea fell on deaf ears.
120. It has not been possible to build up any kind of reliable picture of just how much, or how little, holiday he took. There are two reasons for this. First, AI uses a digital leave booking system on HRNet. The system is only as good as the data entered into it and Gaëtan barely used it. The lack of holiday records on there cannot be regarded as a reliable record of the leave actually taken. Second, the absence of ground rules for AI France's role meant that management there did not pay regard to when Gaëtan was in or out of the office.
121. Under European law, employers are required to enable employees to take annual leave. They are not required to force employees to do so (though under English law an employer does have the ability to require an employee to take holiday at a specified time). It is a common quandary for employers faced with employees who persistently put work above their own need for a break. In this case, I think that Gaëtan must bear the brunt of the responsibility for not taking annual leave, but had there been better systems in place in terms of the allocation of responsibility as between IS and AI France, it's possible that more could have been done to protect him from himself in this respect.

122. I have gained the impression from witnesses that it is not that unusual for AI employees not to take their full holiday entitlement. If so, that is worrying. The work carried out by research, campaigns and associated staff is highly demanding. In my view, Amnesty should review its leave procedures and develop a greater preparedness to force employees to take leave. While it might be said that this is overly paternalistic, I believe that it is a proportionate step to take to protect health and safety.

## XI. GAËTAN'S HEALTH

123. For a man in his 60s, Gaëtan appeared to many to be healthy. He sometimes complained of headaches, backache or knee problems but these were minor niggles. He was particularly industrious when on mission, although he abandoned his former habit of going jogging. From 2016, he took a cane on mission with him, though witnesses report that he did not use it and appeared to walk without difficulty. Witnesses who went on mission with him to Niger in late 2017 – who did not know him well – report that he was in very good health.

124. Those who knew him better had a different perspective. They report that he was visibly tired and stressed from 2016 onwards. January 2016 marked a watershed: it was his first month on his own and he was deeply affected by the murders of an Amnesty photographer and her driver (whom Gaëtan knew) in Ouagadougou that month. He told colleagues in Dakar that he felt particularly alone in Paris at that point. He told close colleagues – but not [REDACTED] – that he'd fainted twice in 2016, once while on mission in the Ivory Coast. By 2018, he spoke to a colleague in connection with his requests for administrative assistance and complained that those requests had been "*summarily dismissed*". That colleague told me that Gaëtan appeared close to tears and struggled to maintain his composure.

125. Colleagues raised concerns about his wellbeing with management:
- a. On 25 July 2016, [REDACTED] wrote to [REDACTED], [REDACTED] and Alioune Tine raising concerns about Gaëtan's working conditions following a visit to Paris. The focus of the email was on finding a way to stop Gaëtan feeling so alone.
  - b. In late 2017, [REDACTED] and [REDACTED], both of whom knew about Gaëtan fainting, approached [REDACTED] in confidence to raise concerns about Gaëtan's ability to go on mission to Mali and Niger.

It reflects very well on these colleagues that, even from a distance, they were sufficiently concerned for Gaëtan's welfare that they thought it appropriate to raise his health with management.

126. I have already touched on the letter from the Parisian occupational health physician sent to AI France on 18 October 2016. This letter was somewhat vague, but reported Gaëtan telling him that *“sa situation professionnelle se serait dégradée”*. He advised a workplace assessment without delay. This doctor, Dr Gay, visited AI France on 10 November 2016 and produced a fuller report, again sent to HR in France. He reported that the principal risks were with foreign travel (risk of infection, heat-related and cardiovascular problems). He also raised concerns about exposure to “psycho-social risks” which might lead to absenteeism, reduced motivation, depression, insomnia and so on. The doctor underlined that this needed to be explored further before considering what measures ought to be taken. The document is pretty high-level but does at least raise a concern. As discussed before, neither report found its way to IS.

127. During this period, steps were taken by management to better understand the medical position:

- a. On 12 October 2016, following a short period of absence from the office for illness, Gaëtan wrote to [REDACTED] referring to advice given by his doctor. [REDACTED] asked him to send the doctor’s advice in written form. Gaëtan didn’t do so. The email exchange is indistinct as to the underlying health problem, but it appears to be a physical rather than psychological issue, perhaps relating to Gaëtan’s back.
- b. On the same day, [REDACTED] wrote to HR to obtain legal advice in relation to Gaëtan’s medical issues. He raised the point that Gaëtan was saying that he needed extra support in the office. [REDACTED] wanted to ensure that Gaëtan was treated correctly and that any adjustments that needed to be made could be made. [REDACTED] approached the law firm, Hogan Lovells, for legal advice on reasonable adjustments and, also, on how to go about requiring an employee to retire. The law firm, on the mistaken understanding that there was evidence that Gaëtan was suffering from a significant physical issue, advised that AI stop making him travel for work. In the absence of any medical evidence, this advice was misplaced. They also advised that Gaëtan could not be forced to retire before he was 70 and that there was no law in France banning “lone working”.
- c. Most of the communications between Gaëtan and [REDACTED] were by telephone and I infer that over this period, Gaëtan told [REDACTED] that he was having an occupational health assessment. I accept that [REDACTED] was expecting to receive a medical report which provided a basis for reopening the RCA decision. As we have seen, the reports never came through to IS. In large part that was because AI France failed to send them on. But Gaëtan also had copies of the reports. Why did he not send them on? On 12 January 2017, [REDACTED] wrote to [REDACTED] about reasonable adjustments and speculated that *“the médecin du travail did not provide him with what he may have been looking for”*. I think that there was a lot of truth in this. On one hand, the médecin du travail had provided the opportunity to challenge the blanket refusal to engage administrative assistance in Paris. But he had also raised the possibility that

it was dangerous for Gaëtan to go on mission. Going on mission was Gaëtan's lifeblood. The only reasonable conclusion is that Gaëtan elected not to pass on the occupational health reports.

- d. [REDACTED] raised Gaëtan's health with him again in late 2017, after the [REDACTED]/[REDACTED] approach referred to above. [REDACTED] indicated that he wanted to obtain independent medical advice before he would authorise Gaëtan to go on mission. Gaëtan reacted very badly to this, even going so far as to suggest that [REDACTED] may have been discriminating against him. I have read the relevant email exchanges and this was an unwarranted accusation. [REDACTED] requests were very carefully worded and made it clear that Gaëtan's welfare was the sole consideration. Gaëtan sought support from friends, some of whom advised him that the request for medical advice was reasonable enough.<sup>11</sup> The communications returned to a cordial footing and Gaëtan undertook to supply the medical evidence. He never did. But the issue fell away and [REDACTED] either forgot about it or turned a blind eye to it.

128. There was also a telephone meeting on 31 January 2018 between Gaëtan and HR in IS. During this call, Gaëtan mentioned that his GP had expressed some concerns and that he couldn't tolerate his working conditions anymore. I will revisit this discussion below. For current purposes, it suffices to say that no steps were taken by HR following that call.

129. I summarise my findings on Gaëtan's health as follows:

- a. The failure to take steps to (a) pass on the occupational health reports in 2016, and (b) follow up on Gaëtan's reference to having seen his GP in January 2018 were serious failures which are ultimately the responsibility of IS.
- b. Aside from those failures, Gaëtan's peers and line manager took all the steps required on the information that they had to investigate Gaëtan's health and provide him with suitable support.
- c. Although there was plenty of evidence that Gaëtan was unhappy, stressed and occasionally distressed, there was no evidence that he ever suffered from a clinical psychological or psychiatric condition.
- d. Gaëtan decided not to pass on relevant medical information to his managers because he decided that the benefits of obtaining medical advice to support the recruitment of an administrative assistant were outweighed by the disadvantages of risking losing the ability to go on mission.

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<sup>11</sup> One friend reported to whom Gaëtan turned for advice reported that Gaëtan was very distressed and flustered. He said that he felt that his health was being doubted and his capacity to carry on his job was being questioned. He was also very hurt that it was colleagues who had expressed concern about going on mission with him because of the possible toll on his health.



## XII. THE AVAILABILITY OF PSYCHOLOGICAL SUPPORT

130. I did not obtain an entirely consistent picture of the psychological support available to AI employees. As a preliminary observation, it seems to me that there is force in the contention that, owing to the nature of the work undertaken (particularly, but not exclusively, by researchers and campaigners)<sup>12</sup>, there is a greater risk of developing psychiatric conditions than may be the case in most other fields of work. When one also takes account of the generally challenging workloads, this risk is amplified.
131. Amnesty offers all employees access to a confidential counselling advice line. It is theoretically available globally and offers up to 5 sessions of up to 45 minutes' length. It is unclear, however, whether it is either advertised or available from all locations. It is also doubtful whether this service is sufficiently multi-lingual to cover all affected employees. Many employees voiced their concerns that this service is inadequate given the particular nature of Amnesty work. A witness from Human Resources in IS told me that the service does get used by employees, so I infer that it is not useless.
132. Where there was much greater uncertainty was in the availability of face to face meetings with trained professionals. It appears that private medical insurance available to some employees permits access to psychotherapy sessions available up to a cap of £2,000 with the employee contributing 50% of the cost. But I was told that even this insurance was only available to employees employed in the hubs. This would have excluded Gaëtan. I received compelling evidence from the same Human Resources witness referred to in the previous paragraph to the effect that HR has, in some cases, gone out to find suitably qualified mental health professionals in relatively remote locations where the need has arisen. Another witness who went on mission with Gaëtan reported that they were both offered psychological assistance after the mission and he thinks that Gaëtan might even have had a session.
133. In general, I am satisfied that the availability or otherwise of better psychological support would not have made a significant difference in Gaëtan's case. One close colleague said that counselling was irrelevant – what Gaëtan sought was friendship and company, and that they were the emotional support that he required. When [REDACTED] suggested that Gaëtan use the counselling advice line to discuss his GTP frustrations in the aftermath of the Ouagadougou murders, Gaëtan refused and indicated that he felt mildly patronised by the suggestion.
134. Although this issue is fairly peripheral to the facts of this case, I am clear that availability of psychological support is an important live issue for Amnesty. I received some

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<sup>12</sup> It is important not to be too prescriptive about this. Across Amnesty, there are staff who do not go on mission who are exposed to harrowing accounts – often including media footage – of appalling rights violations.

frankly shocking accounts of a lack of appropriately qualified support in circumstances where Amnesty employees had suffered or witnessed appalling trauma. While I defer to the expertise of KonTerra in this regard, I have tentatively included some suggestions in the Recommendations at Appendix III.

### XIII. RELATIONS WITH AI FRANCE

135. Before GTP, it appears that the PRO was well integrated into the French Section. There was some work crossover; the Section Director was reasonably close to Gaëtan and even went on mission with him; after the PRO went on missions, they would debrief their work to the staff at general meetings. Although the PRO were employed by IS, they seem to have been quite at home within AI France.

136. That state of affairs changed post-GTP. There was a significant turnover of staff within the French Section so that the building was increasingly populated by workers who had not known the PRO in its heyday. There was a reduction – almost to nil – of the crossover work. The former Section Director, with his close ties to Gaëtan, left in early 2016.

137. The building in which AI France is housed is architecturally unfriendly. It has a maze-like quality with intersecting corridors. It does not encourage sociability. One can imagine going to one's office and seeing few other people during the course of the day.

138. The post-mission debriefs stopped, though the reason for this is unclear. In particular, I do not know whether it was Gaëtan who stopped them or whether interest in them simply dwindled. It was striking that, although he had been in the building since AI France had moved in, Gaëtan was not on the AI France internal email list. Sometimes his name was added to internal emails, but sometimes he was left off.

139. I am sorry to say that Gaëtan had to contend with a certain amount of unfriendliness while at work. In particular, he did not have a good relationship with the Deputy Section Director. I received a number of accounts of her not saying hello to him, placing pressure on her colleagues not to allow him to speak to them at their desks during the working day, and referring to him in scornful terms (describing him, for example, as "*homeless*"). Gaëtan also found the current Section Director unsympathetic to his plight – he organised a meeting with her in around April 2018 but subsequently reported that the meeting was brief, quite frosty and that he was effectively given the brush-off. I am not prepared to make a finding of fact in relation to this single encounter – there is a real possibility that Gaëtan's acknowledged oversensitivity predisposed him to react poorly to anything other than an immediate show of support. It is also fair to say that the two individuals concerned provided accounts that suggested that their attitude towards Gaëtan was appropriate and cordial, though distant.

140. Gaëtan was not everyone's cup of tea. Some people in AI France actively avoided him because they feared getting trapped in a conversation with him. They found his manner quirky and old-fashioned. This attitude was not restricted to AI France, by the way: some colleagues in Dakar, although they were fond of Gaëtan, also found him too talkative and idiosyncratic.
141. No employer can insist that all of its staff are friendly to all others. Anyone who reads this report will be able to identify colleagues with whom, for whatever reason, they don't get on. If there is a lesson that may be learned from this tragedy it is to recognise that we should all give our colleagues the time of day and that someone who wants to talk may be lonely and may have something interesting to say. I was struck by one Dakar colleague who said "*We all let Gaëtan down*".
142. There is a danger of over-emphasising this aspect of the case. It is striking that when he went on mission and spoke to his closest colleagues outside AI France, Gaëtan complained about many things but rarely complained about his personal relationships within AI France. The unfriendliness to which I have referred did not amount to bullying, but it did have an undermining effect. I think that this inherently sociable man lost confidence in Paris. He never ate much anyway, but he eschewed the opportunity to take his lunch (or a coffee or an apple) in the communal dining area on the ground floor. He didn't tend to come to the monthly general meeting. He stopped introducing himself to new employees. To them, he would have seemed a remote figure because he was.

#### XIV. THE SECOND OFFICE MOVE

143. Although Gaëtan's employer was the IS, he was paid through AI France and was on AI France's payroll. It appears that this created difficulties with French Social Security. In or around late 2017, a proposal emerged to transfer his employment to Amnesty's Language Resource Centre ("**LRC**") in Paris. The LRC is part of IS. It was suggested that transferring formal employment to the LRC would ease the difficulties which existed in communications between AI France and IS, and would make more sense from an administrative perspective. I was told that, had this switch occurred, it would have made little or no difference to Gaëtan's day to day working conditions. Discussions occurred involving, at the very least, HR in IS and representatives of the LRC. There is nothing particularly noteworthy about those exchanges save that Gaëtan himself was not included in any of them. I have not been able to find any evidence showing that he was aware of this mooted administrative change. This is strange, if, as I have been assured, the alteration was merely formal in nature. In the event there were legal complications involved in the proposed transfer and it had not happened by 25 May 2018.
144. At about the same time, discussions started at AI France about refurbishing their offices. Construction plans were drawn up for a wholesale refurbishment of the 2<sup>nd</sup> floor.

The Fundraising team was growing to 6 people and a decision was taken to house them together in an enlarged space comprising Gaëtan's office.

145. A consultation was launched within AI France to discuss the refurbishment and various office moves. Employees were asked to provide details of their needs in terms of furniture, lighting etc. Gaëtan was not invited to any meeting or consultation. He learned via a friend that there was a plan afoot to move him out of his office. Later – the date is not clear, but it was sometime in 2018 – he was told by the Section Director that the decision had been taken to give his office to the growing Fundraising team and that he would have to move elsewhere. This was not a negotiation or consultation – it was but a notification.
146. AI France explored the possibility of Gaëtan moving to the LRC. This was not discussed with him, though he got wind of it.<sup>13</sup> In the event, AI France was told that the LRC had no space to accommodate him. An alternative solution needed to be found: AI France had purchased an adjoining flat which, following building works, has now been incorporated into the existing office via the extension of a corridor, the removal of a wall and the construction of a staircase. The new space comprises three offices. One of these is broadly the same dimensions as Gaëtan's old office, with a similar view over the gardens as that which he had previously enjoyed. He was told that he would be moving to this new office.
147. For the reasons set out above under "The First Office Move", I have no doubt that AI France was entitled to move people around its building, even if that involved moving them out of locations which they had occupied for years. Also, AI France did demonstrate some consideration towards Gaëtan in that he was to be moved to an office which was similar in many important respects to the one that he was occupying. However, to present this to Gaëtan as a *fait accompli*, especially in circumstances where all AI France employees were consulted, was unnecessary and demeaning. Gaëtan was, understandably, considerably upset by this treatment, especially since he was being asked to vacate an area in which he had worked with [REDACTED] in bygone times.
148. At the risk of repetition, this sort of treatment could have been avoided had there been a framework in place setting out expectations of AI France's conduct towards him. Instead, he was treated as an outsider.
149. It has not been possible to discern when Gaëtan was formally told that he would have to move offices, but it was within a few weeks of his death. Perhaps more significantly, he was told that the arrangements for his move would be put in place immediately after his return from Mali, a mission on which he was due to depart on 28 May 2018.

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<sup>13</sup> One witness told me that Gaëtan telephoned the Head of the LRC and pleaded with her to tell AI France that there was no space to accommodate him. I did not investigate this further.

## XV. PROMOTION AND ALTERNATIVE ROLES

150. A recurring complaint for Gaëtan was that he had been unfairly treated in applications that he made for alternative roles. In this section, I shall examine that complaint. I will also consider whether AI ought to have done more to find him a more suitable role for his remaining years.

### (I) PROMOTION

151. It has not been easy to establish what roles Gaëtan actually applied for. In the last few years, he spoke to friends and colleagues about having considered applying for various roles, but it has not been easy to distinguish between the jobs which he thought about, and those for which he actually applied. HR records show that he applied for 4 vacant posts between 2016 and 2018.

152. Deputy Director (Research) – 2014. This is the job to which [REDACTED] was appointed. It is not clear whether Gaëtan applied for it, and on the balance of probabilities I think that he did not. Its significance, if any, is that he disapproved of the manner in which [REDACTED] was appointed to it. It will be remembered that [REDACTED] was first appointed to the DDC position but then moved across. I have not seen any evidence that there was an open recruitment process, and Gaëtan did not think that the post was advertised (at least at the stage at which [REDACTED] was appointed).

153. Gender Sexuality & Identity Programme Director – 2016. HR records show that Gaëtan was rejected after shortlisting. There are no records showing why his application did not progress.<sup>14</sup> More importantly, there are no records showing that Gaëtan was informed of the outcome of his application. He later complained to friends about this.

154. Senior Research Policy Advisor – 2016. According to the records, Gaëtan was longlisted but not shortlisted, for the stated reason of having insufficient experience as a research manager. This recruitment exercise was later discontinued. If Gaëtan was written to, there is no record of it.

155. Deputy Programme Director – Head of Special Thematic Projects – 2017. This is the role which [REDACTED] took on after he finished as DDR. Gaëtan was invited to an interview on 8 December 2017. He informed the administrator that he was on mission in Niger and wouldn't be returning until 14 December. He asked for the interview to be moved to 15 December. Despite the fact that there is no HR record of whether that occurred, it appears that the interview was moved. Gaëtan reported that he was told that the interview

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<sup>14</sup> Having read his application form, it would have been surprising if he had been appointed to this role.

would not require any particular preparation and was encouraged to go through with it; he attended but was taken by surprise by how demanding it was and later said that it did require special preparation.

156. Gaëtan also complained to friends that [REDACTED] had been appointed to the role before he'd even had his interview. This complaint was first raised in late February/early March 2018. However, this complaint was incorrect and was based on Gaëtan wrongly thinking that he had been interviewed in January. It appears that there was no written notification or feedback in relation to this application.
157. DDR – 2018. This was [REDACTED] former role, which was lying vacant. Gaëtan applied for it on 14 February 2018. However, he did not make the first shortlist. The shortlisting exercise was unsuccessful and, after AI had gone to external agencies, Gaëtan was invited to take the written test. He did indeed take the written test on 21 May 2018 – a French bank holiday. He died before his application could be marked. [REDACTED] and [REDACTED] were involved in the longlisting for this post and both agreed that Gaëtan should be considered while expressing doubts about his lack of management experience and his preparedness to move to Dakar should he be successful. [REDACTED] later wrote that if Gaëtan insisted that he would move to Dakar then *“diplomatically we have to interview him. But in reality, I don't believe that he could do the job”*.
158. It is impossible to say that Gaëtan was unfairly treated in the substance of his applications for other roles. Leaving the DDR application to one side, there is nothing to suggest that he was not given a fair crack of the whip for the first three posts. Record-keeping leaves something to be desired, though, and failing to inform him of the outcome of any application, or to offer him feedback, is poor practice.
159. It is understandable that lack of managerial experience might be seen as an impediment to promotion, but that is something that ought to have been raised as an issue long before. This is an area where pre-GTP and post-GTP management could have been much improved. It looks as though nobody ever had any discussion with Gaëtan to ask him where he saw his career going or to offer him the opportunity of obtaining management experience or training. It may be that he was ill-suited to management, but it was not a skill he was ever given an opportunity to develop. By the time that he started applying for managerial jobs post-2016, it was too late.
160. As for the DDR position and [REDACTED] rather damning assessment of Gaëtan's suitability, one can see the difficulty that he was in. He recognised that tact demanded that Gaëtan be offered the chance to apply for the role, but he had worked with him long enough to know that the bureaucratic demands made on a manager would likely be too much for him. Since Gaëtan's application was never marked, it is impossible to say whether this was effectively a sham process.

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(II) CREATING A ROLE

161. Many witnesses were perplexed that AI failed to find some kind of role for Gaëtan in the organisation. In particular, that no room was found for him to perform some kind of mentoring or researcher training role in which his undoubted gifts and experience could be put to good use.
162. The possibility of such a role was discussed, and it is important in the light of what comes below that I record that Minar Pimple asked Anna Neistat (Senior Director for Research) on several occasions whether a role could be found for Gaëtan within the Research Directorate. It appears that no serious consideration was given to this, and one reason for this was a prevailing narrative that Gaëtan struggled to process and present information.
163. Gaëtan was no stranger to educating others on research techniques. Together with [REDACTED], he delivered a 12-session course at the renowned Sciences Po (Institut d'Études Politiques de Paris). He may not have been the "*complete package*" but he was still capable of inspiring the young and enthusiastic researchers and campaigners who went on mission with him in the years up to 2018.
164. It is worth pointing out that AI could have been under no freestanding legal obligation to create a role for Gaëtan. But in an organisation which is built on the quality of its research it is scarcely credible that no opportunity could be found to harness Gaëtan's skill in a way that would allow a subsequent generation of researchers to reap the benefits. In my view, had there been the will to create such a position, it could have been done. It could have been tailored for him. That it was not done involved a failure of imagination and an absence of political will.

## XVI. RETIREMENT/REDUNDANCY

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(I) RETIREMENT

165. It was of course obvious that Gaëtan was approaching retirement age. Some years before his death he had remarked that he would need to work longer than most in order to make up a shortfall in his pension that arose from having started his pensionable career relatively late. But in the last year of his life, he began to think quite carefully about retirement. He took advice from the relevant officer in HR as to his pension entitlement. He discussed with colleagues when he would go. No certainty was achieved. At times he suggested that he would retire in June 2018, then September 2018, then once the new Secretary-General had arrived and bedded in.

166. Gaëtan was 65 and could have retired immediately. Although from time to time he spoke wistfully about looking forward to retirement, travelling with his wife and indulging his many other interests, I consider that he was afraid of leaving his work. When a colleague at AI France announced his impending retirement, Gaëtan asked him how he could be happy and said that he was filled with dread at the prospect.
167. Whatever Gaëtan's personal feelings about retirement, he came to believe that AI wanted him to go. There was some truth in this. He had become less productive. He was identified as an "*old-timer*". I have referred above to discreet enquiries being made behind the scenes as to whether it might be possible to retire him compulsorily. However, one reason why Gaëtan thought that AI wanted him to retire was because he was occasionally asked by managers when he would retire.
168. Conversations with staff approaching an age when retirement becomes an evident possibility are often difficult. If handled incorrectly or insensitively, the affected employee might readily read into the discussion an unspoken desire on the part of management to usher him or her out of the door. Yet it is vital for employers to be able to have such conversations. It is important in order to plan for the present and the future, to think about succession planning, training, workforce demographics, financing and so on.
169. It does not appear that Gaëtan ever had a formal conversation with any manager about his retirement plans. In large part this was due to a concern on the part of management that he would respond adversely to any such discussion. This highlights the need for Amnesty to introduce a guide for managers and employees in which it is explained that from a given age, the line manager will speak to the employee about his plans for (a) retirement, and (b) the remainder of his career. If there is a framework under which such conversations are expected, nobody can complain of being offended when they happen. It does nobody any favours when managers carefully avoid the "retirement question", simply waiting for the employee to bring it up. It stops management from being able to engage in necessary planning. It also increases the probability that the employer ceases to be proactive in terms of managing the employee's career, assuming (perhaps wrongly) that the employee will retire someday soon.

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(II) REDUNDANCY

170. I have referred above to a conversation between Gaëtan and HR on 31 January 2018 when he set out – to a member of HR with whom he had had no previous contact – that his working conditions were intolerable. He asked if there was an option of making him redundant. The employee to whom he spoke could not have known whether there was such a possibility (the employee concerned was unaware of any plan to remove his role). The



employee wrote a note of the conversation which included a redundancy calculation.<sup>15</sup> The note remained in the employee's notebook.

171. As already discussed, there was no follow up to this conversation. In my view, there should have been, partly to explore what Gaëtan meant when he said that he "*cannot work in these conditions*", partly to explore what he was referring to when he said that his GP had expressed concerns, and partly to investigate whether redundancy was an option. I am alive to the very particular pressures placed on HR in all organisations; I know that there is often an unfair tendency to treat HR professionals as the messenger, and to shoot them for it. But in this case, the failure to take a discussion instigated by an obviously very unhappy colleague any further was a dereliction of duty.
172. As a matter of law, there was no obligation to make Gaëtan's role redundant. But it is an irony of this case that, if Gaëtan had not mounted a rearguard action in 2011-2014, he would have been made redundant then. In 2018, a case could have been made for making his role redundant. The statutory definition of redundancy, at least in the UK, would have been satisfied by moving his role to Dakar.
173. It is impossible to say whether the SLT would have been open to the possibility of making Gaëtan redundant in 2018. On the one hand, it would have provided the opportunity to bring Gaëtan's employment to a mutually satisfactory end. On the other hand, there might have been an objection to paying him such a large sum of money in circumstances where he still might have been expected to retire shortly.

## XVII. GAËTAN'S VALUE ACCORDING TO THE SLT

174. I have already referred to Gaëtan's changing view of the SLT. He felt that he did not share the same vision for Amnesty that they did. He also felt that he, whether as an individual or as part of a cohort of long-serving employees, was not valued by them. In this final subsection I examine that aspect of this case.
175. As to Gaëtan feeling under-valued, there can be no doubt. He increasingly referred to himself as a "*dodo*" or a "*dinosaur*". While such communications came wrapped in a self-deprecating humour, they reflected a growing sense of being jettisoned, or of not being fit for purpose.
176. Gaëtan met with members of the SLT only infrequently. He complained to friends of having been snubbed by each of Salil Shetty, Minar Pimple and Anna Neistat. That is to say

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<sup>15</sup> The calculation was €142,645. This is a lower sum than would have been payable in 2014, presumably because of Gaëtan's increased age. I do not know how it was calculated, though it must be on the basis of some form of contractual or union-agreed redundancy scheme.

that he recounted separate incidents when he considered that each ignored him. I have not put these allegations to any of the above – I consider that it is pointless to do so since one is hardly likely to remember precisely who one said hello to in a chance meeting some years before. Given Gaëtan’s admitted sensitivity and the premium that he placed on old-fashioned courtesy, I do not think it would be correct to conclude that he was snubbed.

177. I do, however, think that the SLT did not value Gaëtan in a manner befitting an employee of his length of service. In brief, my reasons are as follows:

- a. I took account of the very substantial amount of evidence from employees old and new who spoke of some members of the SLT referring to long-standing staff as “*old-timers*” or to critics of GTP as “*standing on the wrong side of history*”. These accounts were very numerous indeed. They reflect, if not hostility towards the likes of Gaëtan, a certain disdain.
- b. I have already referred above, under the analysis of the decision-making in relation to the RCA, to the failure to take account of Gaëtan’s own circumstances. It is important to remember that my criticism of the SLT is not about the substance of the decision not to authorise an assistant but the manner in which it was taken. There was apparently no discussion of his particular difficulties. It was, instead a dogmatic refusal. As [REDACTED] recorded in an email to [REDACTED], relaying SLT thinking on the issue, “*the model won’t allow it*”. I found that telling: it was the SLT not seeing the trees for the wood. If he had been truly valued as an employee, his personal circumstances would have been balanced against the needs of the GTP. I do not think that this happened.
- c. Finally, I have also already referred to Gaëtan, in his quest for an assistant, writing to Salil Shetty for help on 8 June 2016. On the following day, Salil wrote to Minar Pimple, saying “*I suspect you will not be surprised by the letter from Gaëtan...*”. That response conveys a degree of boredom with Gaëtan’s persistence. Minar replied to Salil whilst copying in [REDACTED], Alioune Tine and Richard Eastmond.<sup>16</sup> Having asked [REDACTED] to draft the response, he said this: “*...Salil at some stage we will have to take a decision and disestablish this position, I am aware of the challenges but have to do clear analysis of number of years on low productivity or one time pay out*”. I cannot read this in any other way than a proposal to dismiss Gaëtan – probably in a redundancy exercise – because he was viewed, perhaps with some justification, as being insufficiently productive. But what Minar hasn’t acknowledged there are all the many positive elements to Gaëtan’s work. If a senior manager speaks about a researcher in that way so openly, there is a risk that the view will permeate down through the organisation. It is difficult to be precise about this for fear of compromising anonymity, but I received compelling evidence from researchers

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<sup>16</sup> It is not clear from my documents whether they were already copied in to Salil’s original email.

outside the West African team that their manager had spoken about Gaëtan in disparaging terms relating to his productivity. The net effect was that while those who worked closest and most regularly with Gaëtan placed great value on his very many attributes, his reputation elsewhere in the organisation was being undermined, and I think that the SLT contributed to that.<sup>17</sup>

178. Gaëtan himself complained that he was being pushed out of Amnesty i.e. that there was a deliberate decision to deprive him of assistance so that he would go. I received evidence from a number of witnesses who supported that view. After careful thought, I reject it. I do not think that Gaëtan was valued as he ought to have been, but I do not think that he was being deliberately forced out. If anything, he was left to wither on the vine. The expectation was that he would retire sooner or later, but there was no deliberate action to accelerate that process.

## F. CONCLUSION

### I. ENGLISH LAW

179. In the findings of fact above, I have been very critical of various aspects of AI's treatment of Gaëtan. However, I have no hesitation in finding that there was no breach by Amnesty of the duty to provide a safe system of work.
180. The work of a researcher is not intrinsically dangerous to health. I accept that going on mission poses potential dangers to both physical and mental health, but it has not been suggested that there was any breach of duty specific to missions.
181. The question is whether there was any relevant breach of the duty to provide a safe system of work arising out of the key failures that I have identified above, namely: the failure to consider what support would be needed for Gaëtan working alone in Paris; the lack of a written framework agreement setting out AI France's responsibilities; the failure to give due consideration to his request for an administrative assistant; the failures to pass on to management indications of ill-health; the poor handling of the second office move; and the general devaluation of Gaëtan at SLT level.
182. The short answer is that these failures – whilst reflecting badly on AI – do not involve a breach of the relevant duty to provide a safe system of work. In order for it to be

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<sup>17</sup> For the avoidance of doubt, I make no finding to the effect that Minar Pimple himself, whether by that comment or otherwise, was personally responsible for the permeation of this unfavourable view of Gaëtan. I think that the circulation of this view was contributed to by the SLT as a whole – Minar's comment as to low productivity suggests that it was a view that was taken for granted by the SLT.

otherwise, I would have to find that Amnesty had subjected Gaëtan to working conditions which were reasonably likely to cause him psychiatric injury or illness. Unhappiness, stress and even distress were probable consequences of Gaëtan's treatment. These are not, however, recognisable psychiatric conditions, and this is a pre-condition to a breach of duty.

183. The authorities demonstrate that there are two central questions when determining whether there has been a breach of the duty to provide a safe system of work. The first of these is whether the employer knew or ought reasonably to have known of the risk of injury.

184. The first point to make is that I am not at all clear that Gaëtan *did* suffer from any injury i.e. any psychiatric condition. It may well be that he was suffering from depression, but I am not prepared to presume that that was the case in the absence of medical evidence. English law does not assume that a victim of a suicide is suffering from a mental disability and I do not do so in this case. However, in case I am wrong, the remainder of my analysis proceeds on the basis that Gaëtan's suicide was the act of a man suffering from a relevant psychiatric illness. The threshold question is whether that was reasonably foreseeable i.e. whether it was reasonably foreseeable that stress at work would cause him to suffer an injury to his health.

185. It would be disproportionate for me to go through the entirety of the guidance laid down by the Court of Appeal in *Hatton v. Sutherland* [2002] 2 All ER 1 (as endorsed by the House of Lords in *Barber v. Somerset County Council* [2004] 2 All ER 385). I shall instead focus on the summary guidance at paragraph 43(5) of that judgment:

Nature and extent of the work done by the employee

- a. Is the workload much more than is normal for the particular job? No, it was not. Indeed, Gaëtan had undertaken a more or less similar workload for most of his career.
- b. Is the work particularly intellectually or emotionally demanding for this employee? I accept that the work was emotionally demanding and that part of the reason for this was that Gaëtan struggled to accomplish it (a) in the absence of his former team, and (b) without an administrative assistant.
- c. Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? No.
- d. Are there signs that others doing this job are suffering harmful levels of stress? While I accept that being a researcher is a stressful job, I have not seen significant evidence that other researchers were suffering harmful levels of stress.
- e. Is there an abnormal level of sickness or absenteeism in the same job? No.

### Signs from the employee of impending harm to health

- f. Does the individual employee have a particular problem or vulnerability? The answer to this question is a guarded “yes”. Gaëtan did have a particular problem/vulnerability arising out of his unique personal circumstances and the difficulty he had in dealing with his relative isolation at work (by “relative” I am referring to the comparison with his pre-GTP working environment).
- g. Has he already suffered from illness attributable to stress at work? No. It is important to note that even the occupational health report from Dr Gay does not suggest that Gaëtan had suffered from an illness.
- h. Have there recently been frequent or prolonged absences which are uncharacteristic of him? No.

186. As the *Hatton* guidance makes plain, to trigger a duty to take steps the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.<sup>18</sup> Here, I think it is helpful to remind oneself of the near-universal shock caused by Gaëtan’s death. Whatever concerns were expressed by Gaëtan and others on his behalf, nobody saw this coming.<sup>19</sup> That is an excellent indication that the threshold question is not satisfied in this case: I do not consider that it was reasonably foreseeable that Gaëtan would suffer impending psychiatric injury, still less such serious psychiatric injury that he would take his own life.

187. That is not quite the end of the matter. As set out in Appendix I, an employer is also subject to the duty of mutual trust and confidence. Here, I have reached a different conclusion, again without hesitation. I find that the key failures referred to above at para.181 constitute, collectively, a breach of the duty of trust and confidence. In other words it was conduct that was likely to seriously damage or destroy the relationship of trust and confidence between employer and employee. In UK employment law terms, it would have entitled Gaëtan to resign and claim constructive dismissal.

188. It is not necessary for me to elaborate on the conclusion reached in the previous paragraph save to make it clear that this finding of breach does not incorporate a finding that it caused Gaëtan particular damage or that such damage was foreseeable. These additional points require additional proof, and the proof of foreseeability of damage suffers from similar difficulties as would afflict a claim that Amnesty breached its duty to provide a safe system of work.

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<sup>18</sup> See para.43(7).

<sup>19</sup> When [REDACTED] and [REDACTED] approached [REDACTED] in late 2017, their concerns about Gaëtan’s ability to go on mission centred around his physical fitness, not his mental fitness.

## II. FRENCH LAW

189. I am going to deal much more cursorily with the position under French law, whose approach to an employer's duty of care is weighted much more heavily in favour of the employee. This section should be read in conjunction with the note at Appendix II.

190. I find that Amnesty was in breach of at least some of the applicable French legal principles:

- a. Amnesty failed to carry out a risk assessment complying with R.4121-1 of the French Labour Code.
- b. Amnesty is unable to demonstrate that it has taken all the necessary measures to protect Gaëtan's health or that it adopted protective measures without delay. Article L.4121-1 and L.4121-2 of the French Labour Code.
- c. I note that there is an enhanced obligation on employers to be alive to the risks arising out of restructuring exercises.
- d. I also note that French law deems suicides at the workplace to be work-related accidents unless the employer can demonstrate that the act is totally unrelated to work. That would be an impossible task in this case.

191. I am not proposing to provide an answer to the issue of whether AI would be liable for *faute inexcusable*. Such an argument would require proof, first, of whether the employer should have been aware of the risks to which the employee was exposed. I do not feel sufficiently qualified to answer this question. Under English law, as seen, this test would not be met, but it may well be that under French law there is a different and more benign test of foreseeability.

## III. SUMMARY

192. This is a very sad and complicated case. Amnesty has lost a much-loved employee in circumstances which have cast a long shadow. At Appendix III I have set out a number of recommendations which I hope may go some way towards diminishing the risk of this extraordinary organisation having to face a similar situation again. It is my hope that the tragic circumstances of Gaëtan Mootoo's death do not overshadow the remarkable contribution that he made to Amnesty International and human rights protection during his life.

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**31 October 2018**

# REVIEW INTO THE DEATH OF GAËTAN MOOTOO

BY JAMES LADDIE QC

## APPENDIX I – APPLICABLE PRINCIPLES OF ENGLISH LAW

1. The following are the principles of English law applied for the purposes of the independent investigation into the circumstances surrounding the death of Gaëtan Mootoo. They are drawn in large part from the account of the law contained in Munkman on Employer's Liability, 16<sup>th</sup> ed., and chapters 4 and 16 in particular.

### A. General Duties

2. At common law, liability of an employer to employees may arise in both contract and tort.
3. An employer has a duty in both contract and in tort to take reasonable care for the health and safety of employees. That duty is automatically implied into all contracts of employment: *Wilsons and Clyde Coal v. English* [1938] AC 57; *Lister v. Romford Ice & Cold Storage Co Ltd* [1957] AC 555.
4. Another automatically implied duty is the contractual term not to act, without good reason, in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Mahmud v. Bank of Credit and Commerce International* [1998] AC 20.
5. Breach of the implied term of trust and confidence may found a claim for personal injury in certain circumstances: *Gogay v. Hertfordshire County Council* [2000] IRLR 704 CA.
6. The implied duty to take reasonable care for the health and safety of employees evolved out of the need to minimise risk to the physical health of employees. Traditionally, it encompassed the following elements (per Scott LJ in *Vaughan v. Ropner & Co* (1947) 80 Ll L Rep 119):

“The three main duties [of the employer] are (1) to provide proper premises in which, and proper plant and appliances by means of which, the workman's

duty is to be performed; (2) to maintain premises, plant and apparatus in a proper condition; (3) to establish and enforce a proper system of working.”

7. The modern tendency is not to regard these as separate duties, but elements of the employer’s overall duty to take reasonable care for the safety of its workers: *Cook v. Square D Ltd* [1992] ICR 262, CA.
8. The primary duty arises simply by virtue of the employment relationship and exists even if the employer delegates performance of the duty to another, since the duty itself is non-delegable: *Wilsons* (supra), at paragraphs 64 and 78. Hence the courts may find employers primarily liable for the negligence of those who are not their employees, if that negligence caused a breach of the duty which the employer owes to the employee.
9. An employer’s duty is not that of an insurer. It does not undertake that there will be no risk, merely that such risks as there are will be reduced so far as reasonable.
10. There is precedent for the proposition that an employer may be liable for a deliberate, voluntary act of an employee (such as suicide) where that act was itself a consequence of the employer’s earlier breach of duty. So, in *Corr v. IBC Vehicles Ltd* [2008] 1 AC 884, an employer whose negligence had caused its employee to suffer post-traumatic stress disorder was held liable to the employee’s dependants for his subsequent death by suicide.

#### B. Psychiatric Injury and Stress

11. The duty of care extends to taking reasonable care not to subject the employee to working conditions which are reasonably likely to cause him psychiatric injury: *Cross v. Highlands and Islands Enterprise* [2001] IRLR 336, OH.
12. To recover damages for psychiatric injury (or the consequences of psychiatric injury, such as in *Corr*), the mental condition must amount to a recognisable psychiatric injury: sensations of fear or distress alone are insufficient: *McLoughlin v. O’Brian* [1983] 1 AC 410.
13. In cases of workplace psychiatric injury (often known as “occupational stress” cases), foreseeability of injury is woven into the characterisation of the employer’s duty, as per *Colman J in Walker v. Northumberland County Council* [1995] ICR 702:

“Where it was reasonably foreseeable to an employer that an employee might suffer a nervous breakdown because of stress and pressures of his workload,



the employer was under a duty of care as part of that duty to provide a safe system of work, not to cause the employee psychiatric damage by reason of the volume or character of the work which the employee was required to perform.”<sup>1</sup>

14. Breach of the duty involves answering two central questions favourably to the employee: first, that the employer knew or ought to have known of the risk (i.e. the foreseeability question); and second, that, in the light of the magnitude of the risk which he should have or did appreciate, he failed to take reasonable steps to avert it.
15. Seminal practical guidance on these issues was given by the Court of Appeal in *Hatton v. Sutherland* [2002] 2 All ER 1. This decision contains a valuable summary at paragraph 43:

“(1) There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do (para 22). The ordinary principles of employer's liability apply (para 20).

(2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable (para 23): this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors) (para 25).

(3) Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large (para 23). An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability (para 29).

(4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health (para 24).

(5) Factors likely to be relevant in answering the threshold question include:

(a) The nature and extent of the work done by the employee (para 26). Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or

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<sup>1</sup> This test has been endorsed in many subsequent cases, including by the House of Lords in *Barber v. Somerset County Council* [2004] 2 All ER 385.

comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department?

(b) Signs from the employee of impending harm to health (paras 27 and 28). Has he a particular problem or vulnerability? Has he already suffered from illness attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?

(6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers (para 29).

(7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it (para 31).

(8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk (para 32).

(9) The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties (para 33).

(10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this (para 34).

(11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty (paras 17 and 33).

(12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job (para 34).

(13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care (para 33).

(14) The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm (para 35).

(15) Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment (paras 36 and 39).

(16) The assessment of damages will take account of any pre-existing disorder or vulnerability and of the chance that the claimant would have succumbed to a stress related disorder in any event (para 42).

16. The Hatton analysis above applies to the vast majority of occupational stress claims, which are brought in either tort or contract, for breach of the employer's duty of care. In cases involving breach of the implied duty of trust and confidence, foreseeability arises as a discrete issue. So, the claimant must demonstrate that it was foreseeable that the breach of the duty would cause damage of the kind from which he suffered. The Hatton guidance would be of equivalent force here, too.

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31 October 2018

## REVIEW INTO THE DEATH OF GAËTAN MOOTOO

### BY JAMES LADDIE QC

#### APPENDIX II – APPLICABLE PRINCIPLES OF FRENCH LAW

27 September 2018

#### SUMMARY OF AN EMPLOYER'S DUTY OF CARE TOWARDS ITS EMPLOYEES UNDER FRENCH LAW

##### 1. NATURE AND SCOPE OF THE EMPLOYER'S DUTY OF CARE TO EMPLOYEES UNDER FRENCH LAW

##### 1.1 Legal framework of the employer's duty of care under French law

Pursuant to Article L.4121-1 of the French Labour Code, the employer must take all necessary measures to ensure protection of the mental and physical health of its employees and their safety in the workplace. These measures include:

- putting in place actions to prevent health and safety risks at the workplace;
- putting in place a training and an information plan to protect employees' health and safety;
- taking the necessary measures to adapt the means and organisation of work to ensure the health and safety of employees.

The measures taken by the employer must be continuously adapted to take into account any changes in circumstances and to seek to improve the current health and safety situation in the workplace.

Article L.4121-1 must also be read in light of Article L.4121-2 of the French Labour Code, which provides that when implementing measures to protect employees' health and safety, the employer must take into account several general principles of risk prevention, such as:

- taking all possible measures to avoid risks;
- evaluating the risks which cannot be avoided;
- addressing the source of risks;
- adapting the employees' role and equipment to these risks; and
- giving appropriate instructions to the employees to minimize risks.

Once the risks have been evaluated by the employer, the employer must set out these risks in a unique risk assessment document ("document unique d'évaluation des risques"), (R. 4121-1 of the French Labour Code). This document aims at listing and identifying the existing risks within the workplace in order to put in place appropriate measures to limit them. For instance, potential psychosocial risks must be assessed and included in the document.

There are three principal actors in the field of employee health and safety:

- the employer – which is the main actor legally responsible for protecting employees' health and safety;

- the Health & Safety Committee (an entity put into place within companies with more than 50 employees which has the role of representing employees' interests with respect to health and safety); and
- the Company doctor (an independent State-appointed doctor who is invited to the meetings of the Health & Safety Committee). The employer must work intelligently with all these actors when trying to prevent and anticipate/avoid risks to the health and safety of employees.

## 1.2 Case-law interpretation of the employer's duty of care

As French codified law is relatively succinct with respect to the employer's duty of care, case-law has contributed to shaping the interpretation of the extent and scope of such duty of care towards employees.

For several years, French courts have widely construed the scope of the employer's duty of care and considered that the employer has a strict liability obligation ("obligation de résultat") to protect employees' health and safety. Under this line of case-law, the employer is deemed to be automatically in breach of its duty of care whenever the employees are exposed to a risk to their physical or mental health, regardless of whether the employer had actually adopted reasonable measures to protect the employees' health and safety.

The French courts have however recently adopted a less strict interpretation with regard to the interpretation of the scope of the employer's duty of care. In the light of more recent case-law, the employer will arguably not be considered in breach of its duty of care, provided it demonstrates that:

- it has taken all the necessary measures to protect the health of employees, as provided under Article L. 4121-1 and L. 4121-2 of the French Labour Code;<sup>1</sup> and
- it has adopted without delay measures to address the risks posed to employees' health or safety when informed of their occurrence in the workplace.<sup>2</sup>

The French labour authorities require and French courts have held that the employer must be all the more alive to risks and focused on protecting the health and safety of employees in the context of restructuring exercises/reorganisations.<sup>3</sup> For instance, in the Snecma case of 2008,<sup>4</sup> the Cour de cassation (French Supreme Court) held that the employer was prohibited from adopting restructuring plans which have the purpose and/or effect of degrading or compromising the health and safety of employees – in this case, a restructuring of the Company was found to have greatly increased the levels of stress for employees and the isolation of employees.

In addition, the French courts have gone further, in suspending restructuring or reorganisation projects which were deemed not to include measures sufficiently protective of the employees' health and safety. For example, in a 2012 case,<sup>5</sup> the Court of Appeal of Paris suspended a restructuring project on the grounds that the employer failed to implement any measures to properly evaluate and monitor the mental health of the employees throughout the restructuring process.

<sup>1</sup> See for e.g. Supreme Court, social chamber, 25 November 2015, n°14-42.444, Air France (holding that the employer which took measures to address the stress related to the 9/11 events by offering psychiatric assistance to its employees did not breach its duty of care).

<sup>2</sup> See for e.g. Supreme Court, social chamber, 1 June 2016, n°14-19702; Supreme Court, social chamber, 5 October 2016, n°15-20140 (the employer took measures to prevent moral harassment in the workplace by putting in place an alert mechanism and when informed of a case of moral harassment reacted without delay to end the alleged moral harassment by conducting an internal investigation).

<sup>3</sup> For e.g., the connection between the degradation of employees' health and restructuring plans has been underlined by the French Ministry of Labour in its "Plan Santé au Travail for 2010-2014" (available at [https://travail-emploi.gouv.fr/IMG/pdf/6-Plan\\_sante\\_au\\_travail\\_2010-2014.pdf](https://travail-emploi.gouv.fr/IMG/pdf/6-Plan_sante_au_travail_2010-2014.pdf)).

<sup>4</sup> Supreme Court, social chamber, 2 March 2008, n°06-45888, Snecma.

<sup>5</sup> Court of Appeal of Paris, 13 December 2012, n°12/00303.

Conversely, in a 2015 case,<sup>6</sup> the Cour de cassation refused to suspend an outsourcing and restructuring project on the grounds that it found that the employer had put in place sufficient measures to protect the health of employees by implementing a "global plan to prevent psychosocial risks", which included an emergency hotline available to all employees and a device for monitoring the working conditions and training of the employees affected by the restructuring.

## 2. SANCTIONS IN THE EVENT OF A VIOLATION OF THE DUTY OF CARE

### 2.1 Risk of characterization of an accident in the workplace as a work-related accident

Under French law, an accident or an injury is automatically presumed to be a work-related accident if it occurs during working hours and/or at the place of work (Article L. 411-1 of the Social Security Code). In this regard, whenever an accident occurs in the workplace, the employer must complete a form for the notification of a work-related accident and send this to the French social security authorities (CPAM).

The characterization of a work-related accident allows the employee (or his or her beneficiaries) to benefit from an increased financial compensation from the social security authorities, i.e. medical costs for the employee's injury, daily indemnities in case of inability to work, and a fixed pension for the employee or his or her beneficiaries in case of permanent incapacity or death of the employee (L. 431-1 of the Social Security Code).

With respect to suicides at the workplace, these are deemed to be work-related accidents, unless the employer can demonstrate that the employee's act is totally unrelated to work, for example if it is caused by his or her personal difficulties.<sup>7</sup> Clearly, this test is applied very restrictively and generally interpreted in favour of the employees.

### 2.2 Civil liability of the employer

The breach of its duty of care by the employer can give rise to a civil action for damages for strict liability (faute inexcusable) if the employee – or his or her estate – demonstrates that:

- the employer should have been aware of the risks to which the employee was exposed; and
- the employer failed to take all necessary measures to protect the employee from such risks.

Pursuant to French case law, the employer can discharge its strict liability obligations if it demonstrates that the accident was caused by an act of God, that the fault or act of the employer did not intervene in causing the accident, or upon showing that it took all the appropriate measures to prevent such accident.

A claim for faute inexcusable allows the claimant (the employee or his or her beneficiaries) to obtain additional compensation from the employer, such as damages for pain and suffering, or a higher fixed pension for invalidity or for the employee's estate in case of deathly accident. Furthermore, if the employer is found liable for faute inexcusable, it must pay an additional contribution for occupational accidents to the social security authorities.

The French courts have rendered several decisions involving claims for faute inexcusable concerning restructuring and cases of suicides by employees at the workplace (See Annex). For example:

- in the Renault case of 2011 – the Court of Appeal of Versailles held that the employer was liable for faute inexcusable, given that it failed to put in place sufficient measures or

<sup>6</sup> Supreme Court. Social chamber, 22 October 2015, n°14-20.173, Areva; see also Supreme Court, social chamber, 5 March 2015, n°13-26321, FNAC (where the Court held that the employer sufficiently evaluated the risks posed by the transfer of an important workload on certain employees by identifying the professional category concerned and therefore did not breach its duty of care).

<sup>7</sup> Supreme Court, social chamber, 4 February 1987, n°85-14594; see also Supreme Court, 2<sup>nd</sup> civil chamber, 18 October 2005, n°04-30205 (holding that the suicide of the employee was entirely due to the private and personal difficulties of the employee).

tools to evaluate the employees' workload, which eventually lead to the suicide of an employee in the workplace;

- in a decision rendered in 2012 by the Court of Appeal of Rennes, the employer was found liable for faute inexcusable, on the grounds that it was aware that the employee – who committed suicide in the workplace – was encountering great difficulties at work and was weakened psychologically.

### 2.3 Criminal liability of the employer

In addition to civil liability, the head of the employer's business may also be held criminally liable for failing to adequately protect the employees' health and safety if he or she was negligent or reckless, and if such negligence or recklessness contributed to the damage caused to the employees (Article L. 4741-1 of the French Labour Code and Article L.121-2 of the French Criminal Code).

## 3. GENERAL RECOMMENDATIONS

In order to protect employees' health and safety, the employer should put in place reasonable measures to identify and seek to prevent psychosocial risks in the workplace. These include for instance:

- checking the management capacity to detect and analyse the prevention of stress;
- evaluating psychosocial risks and monitoring stress at work;
- working in liaison with the entities in charge of protecting employees' health and safety (such as the Health & Safety Committee, the Company doctor, etc.) to ensure best working conditions.

More specifically, with respect to the issue of suicides at the workplace, the French INRS (Institut National de Recherche et de Sécurité) recommends that companies or organisations react rapidly to this kind of emergency situation by mainly focusing on:

- circulating internal communications to underline the gravity of the situation and consider the possible implication of work in the suicide;
- providing psychological assistance and support to the colleagues of the victim and the victim's family;
- suggesting psychological support to employees in order to reduce the risk of post-traumatic stress disorder (PTSD);
- setting up an emergency contact number easily accessible and available to all employees so that they can talk to professionals if they are impacted by the situation.

Aside from measures which aim at providing assistance to employees and addressing the trauma in the workplace, the INRS also recommends that the employer conduct a thorough investigation – e.g. by having recourse to an expert designated by employee representatives.

Herbert Smith Freehills LLP

**ANNEX – INDICATIVE TABLE OF RECENT RELEVANT CASE LAW**

Jurisdiction	Rationale
Supreme Court, social chamber, 5 October 2016, n°15-20140	The Supreme Court held that the employer took sufficient measures to prevent moral harassment in the workplace by putting in place an alert mechanism and by reacting without delay when informed of a case of moral harassment in the workplace, by conducting an internal investigation in order to end the alleged moral harassment.
Supreme Court, social chamber, 1 June 2016, n°14-19702	The Supreme Court held that the employer took sufficient measures to prevent and address moral harassment in the workplace by modifying its internal policies once informed of an allegation of moral harassment in the workplace, conducting without delay an internal investigation on the alleged facts, and by organising a mediation meeting with the Company doctor and the Human Resources Director and 3 members of the Health and Safety Committee in order to implement a mediation mission for 3 months between the employees involved.
Supreme Court, social chamber, 22 October 2015, n°14-20.173 (Areva)	Restructuring and outsourcing project adopted in the Company – the employee representatives requested the suspension of the outsourcing project. The Court upheld the decision of the Court of Appeal, stating that it was justified in rejecting the request for suspension of the project on the grounds that the employer implemented a "global plan to prevent psychosocial risks", which included an emergency hotline accessible to all employees and a device monitoring the working conditions and training of the employees affected by the restructuring.
Supreme Court, social chamber, 5 March 2015, n°13-26321 (FNAC)	Restructuring project decided by the FNAC group in 2012. The Health and Safety Committee (CHSCT) decided to appoint an expert to conduct an investigation into the consequences of the project on employees' health and working conditions. The CHSCT deemed that the employer did not sufficiently evaluate the risks posed by the transfer of additional workload on certain HR and manager positions. The Supreme Court held that the employer had sufficiently evaluated the risks of the restructuring project by identifying the professional category concerned by the increase in workload and therefore did not breach its duty of care.
Supreme Court, 2 <sup>nd</sup> civil chamber, 19 September 2013, n°12-22.156 (Renault)	<p>An employee of the Company committed suicide in the workplace. The investigation led by the social security authorities indicated that the employee was encountering great difficulties in performing his role, for which he did not have the appropriate competences; he also never benefitted from additional training to perform his work despite the requests to his supervisor and the Company doctor's recommendations. This climate of intense stress for the employee eventually led to his hospitalization for serious depression. Although the employee was transferred to a new position, he again did not benefit from any training and the employer never tried to improve his working conditions (the employee was working from 10 to 12 hours a day).</p> <p>The Supreme Court found the employer liable to the employee's estate for faute inexcusable for not taking sufficient measures</p>



	to address the critical situation in which the employee found himself.
Supreme Court, 2 <sup>nd</sup> civil chamber, 8 November 2012, n°11-23.855	The Supreme Court held the employer liable for the heart attack of the employee, caused by the excessive workload and stress he was subjected to because of a decision to decrease costs within the Company. No measures had been adopted by the employer to prevent risks to the health and safety of employees.
Supreme Court, social chamber, 2 March 2008, n°06-45888, SNECMA	Restructuring of the Company which greatly increased stress at work and the isolation of the employees. The Supreme Court held that the new organisation put in place by the employer decreased the number of employees performing daylight shifts and lead to the isolation of an employee in charge of the maintenance by himself during the entire day and during the summer. The Supreme Court held that the assistance tool implemented by the employer for the employees was insufficient to protect their health and safety and that the restructuring must be suspended for this reason.
Supreme Court, 2 <sup>nd</sup> civil chamber, 18 October 2005, n°04-30205	An employee committed suicide in the workplace. The employee's estate sued the employer for faute inexcusable. The Court held that the suicide of the employee was unrelated to the workplace and was entirely due to private and personal difficulties. Therefore, the Court held that the employer was not liable for faute inexcusable.
Court of Appeal of Rennes, 12 September 2018, n°16/09250	<p>Suicide of an employee at his home. The employee's doctor testified that the employee was depressed and worried about his professional future. The employee was encountering difficulties at work, and the Company was also undergoing restructuring.</p> <p>The Court of Appeal held that the employer was liable for faute inexcusable as the suicide was related to work, and the employer failed to take sufficient measures to prevent the accident. The Court of Appeal held that the Works Council had highlighted a climate of stress for the employees in the Company, especially among commercial staff, who had excessive workload. The employee's supervisor was also aware that the employee was psychologically unwell. Overall, the employer was therefore aware of the danger and failed to address it, <u>even if</u> the employee never expressly mentioned his difficulties at work to the employee representatives or the company doctor.</p> <p>The Court of Appeal ordered the following damages to the employee's estate:</p> <ul style="list-style-type: none"> <li>- A fixed pension to the employee's wife;</li> <li>- damages for pain and suffering to the employee's estate.</li> </ul>
Court of Appeal of Versailles, 18 January 2018, n°17/06280	The employer must not underestimate the potential impact of a reorganisation on the health and safety of the employees. If the employer fails to analyse and take into consideration such risks, the restructuring can be suspended and the employer can be held liable for breach of its duty of care. The reorganisation envisaged in this case was a simplification and harmonization of management techniques involving several redundancies.



<p>Court of Appeal of Paris, 25 November 2013, n°13/07779 (La Poste)</p>	<p>An employee committed suicide in the workplace, in the context of a reorganisation in the Company which created additional anxiety and increased job strain for the employees. The Court held that the CHSCT (Health and Safety Committee) was justified in having recourse to an expertise in order to evaluate the psychosocial risks posed by the reorganisation.</p>
<p>Court of Appeal of Paris, 13 December 2012, n°12/00303</p>	<p>A reorganisation in the Company involved collective redundancies. The CHSCT asked for the suspension of the project because it considered that it did not have sufficient information on the prevention of psychosocial risks entailed by the project. The Court of Appeal suspended the ongoing reorganisation on the grounds that the employer had failed to specify the measures it intended to implement to evaluate and monitor the mental state of the employees during the reorganisation.</p>
<p>Court of Appeal of Versailles, 19 May 2011, n°10/00954 (Renault)</p>	<p>The Court of Appeal held that the employer was liable for faute inexcusable. The Court stated that the employer must put in place sufficient measures to evaluate the employees' workload, and is responsible for any excessive workload detrimental to the employees' health.</p> <p>In this case, an employee had committed suicide in the workplace. Prior to his suicide, the employee did not manifest any psychological trouble in his personal and private life. The investigation showed that the employee's stress was entirely related to work.</p> <p>In addition, the prevention plan implemented by the Company before the employee's suicide, which included setting up a Medical Observatory for Anxiety, Stress and Depression (OMSAD), was not sufficient to detect the difficulties met by the employees at work. The investigation further revealed that there was no device or tools in the Company to evaluate the employees' workload, especially with respect to senior-level executives.</p> <p><u>Damages:</u> fixed pension to the wife and son of the deceased employee.</p>
<p>Court of Appeal of Besançon, social chamber, 1 July 2011, n°10/00277</p>	<p>The suicide of an employee in the workplace was considered as a work-related accident. The employer, the foundation "Arc en Ciel" required an important personal and professional investment from the employee and he was also suffering from stress related to an ongoing restructuring project.</p> <p>However, the employer was not held liable for faute inexcusable as it was not informed of the employee's depressive state and could not witness any sign of depression in the employee. In addition, the report of the CHSCT which invoked difficulties and claims from the employees with respect to the Company's reorganisation did not mention the employee. Therefore the employer could not reasonably have been aware of the risks posed by the restructuring to the employee's mental health.</p>

# REVIEW INTO THE DEATH OF GAËTAN MOOTOO

BY JAMES LADDIE QC

## APPENDIX III - RECOMMENDATIONS

These recommendations arise from my investigation into the circumstances of the death of Gaëtan Mootoo. Paragraph references are to paragraphs in the report, enabling swift identification of the context for each recommendation.

1. The Senior Leadership Team should convene a session at which they discuss the importance to Amnesty of employees who enjoyed long service prior to the GTP. The Senior Leadership Team may wish to consider issuing a statement following this session [paragraphs 51(c), 54].
2. In any future reorganisation or recruitment scenarios which leave employees working either alone or in significantly reduced teams in their given location, Amnesty should demonstrate that careful thought has been given to how professional, administrative and welfare needs of the affected employee(s) will be met [paragraph 65].
3. Where Amnesty employees are hosted by another legal entity (whether another Amnesty entity or another organisation) either permanently or for a significant period of time, Amnesty should agree a Memorandum of Understanding with the host organisation [paragraph 70].
4. Such Memorandum of Understanding should:
  - a. be the product of consultation between Amnesty, the host organisation and the employee;
  - b. contain relevant contact information, including line manager(s) and responsible human resources professionals in both the employer and the host organisation;
  - c. make provision for agreement as to the host organisation's obligations vis-à-vis:

- i. integration of the employee into the host organisation's workforce (e.g. the extent to which the employee should be included on the host organisation's internal emails, involvement in the host organisation's events);
    - ii. the employee's accommodation;
    - iii. monitoring of the employee's working hours and annual leave;
    - iv. identification of an employee at managerial level of the host organisation to act as a liaison point for the employee and to undertake basic supervision of the employee's welfare;
  - d. be signed by responsible officers of Amnesty and the host organisation, and by the employee; and
  - e. be subject to periodic monitoring and review at intervals of not less than one year.
5. Where employees working in relatively isolated circumstances request administrative support or other additional recruitment, such requests should be taken seriously, and any communications rejecting such requests should set out fully the reason(s) for the refusal and identify the relevant decision-maker(s) [paragraphs 93-95].
  6. Amnesty should review employees' working hours and the extent to which employees working longer than an average 48 hours per week have agreed in writing to opt out of the protection conferred by the Working Time Directive [paragraph 113].
  7. Amnesty should consider introducing a system whereby it requires employees to take annual leave on specified dates where those employees are believed not to be taking their full quota of annual leave [paragraphs 121-2].
  8. Where information comes into the possession of human resources professionals, whether from an employee or a physician or another source, suggesting that the employee has relevant health concerns, the human resources professional must take responsibility for following up on that information [paragraph 129].
  9. As to provision for employees' emotional welfare [paragraphs 130-134]:

- a. Employees should receive compulsory training in recognising the signs of stress, anxiety and other mental health conditions in themselves and colleagues, and in taking steps to alleviate such conditions.
  - b. Amnesty should review provision of independent counselling services so as to ensure that counselling is readily available to all employees wherever in the world they are based.
  - c. Amnesty should review the extent to which face to face psychological services are available for employees (including but not limited to those who are exposed to traumatic evidence of human rights violations)
10. Amnesty should ensure that, whenever an internal vacancy arises [paragraphs 151-157]:
- a. the vacancy is widely advertised via internal communications (e.g. a weekly “Situations Vacant” workforce-wide email);
  - b. applicants for such vacancies are given clear instructions as to what preparation will be needed for interviews and time granted to them to allow them to undertake those preparations, if requested;
  - c. a relevant decision-maker takes responsibility for formally communicating the outcome of the exercise to applicants, including the option of receiving feedback in the case of unsuccessful applicants.
11. Long-term career development aspirations should be the subject of considered discussion in annual appraisals [paragraph 159].
12. Amnesty should identify a point in time (perhaps 5 years) ahead of the normal retirement age for the country in which the employee is employed from which point the employee’s retirement plans should be discussed in annual appraisals [paragraph 169].

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31 October 2018

# REVIEW INTO THE DEATH OF GAËTAN MOOTOO

BY JAMES LADDIE QC

## EXECUTIVE SUMMARY

This is an executive summary of a report into the circumstances surrounding the death of Gaëtan Mootoo, an employee of the International Secretariat (“IS”) of Amnesty International (“Amnesty”). Mr Mootoo, who had been employed by Amnesty for 32 years, died by his own hand in his office in Amnesty International France, in Paris, during the night of 25/26 May 2018.

This independent investigation was committed to consider whether Amnesty breached any relevant English or French legal duty towards Mr Mootoo.

### Summary of Relevant Factual Findings

Mr Mootoo was employed as a researcher specialising in Francophone West Africa. He had always been based in Paris although his employer was based at IS headquarters in London. For a majority of his career he had worked in a team of 4 including another researcher, [REDACTED]. Mr Mootoo was an exceptionally gifted field researcher, particularly adept at gathering evidence of human rights abuses from relevant witnesses on the ground. [REDACTED] took the lead in converting that evidence into written reports. The professional relationship between the two was very close and successful. This West African specialist team worked fairly autonomously in Paris.

From around 2013, Amnesty started to implement a long-standing plan, known as the Global Transition Plan (“GTP”), to move resources, including researchers, from the global North to the global South. This included the creation of regional hubs from which regional research would be based. Members of the Paris office, including Mr Mootoo and [REDACTED], did not want to move to their proposed regional hub in Dakar, Senegal, for personal reasons and lobbied hard to retain their employment in Paris.

[REDACTED] resigned in 2014. Another of the four employees took redundancy in the same year. It was decided by the IS Senior Leadership Team that Mr Mootoo’s post should be retained in Paris. It was further decided that the fourth position, that of an assistant (“RCA”) should be retained on a temporary basis. In the end, partly due to the lobbying of Mr Mootoo and the new team in Dakar, that position was extended until the end of 2015.

Little thought was given to the practicalities of how Mr Mootoo would be able to work in Paris without his team in close proximity, even though Mr Mootoo himself warned that he would feel isolated.

Over the following years, and in particular from 2016 onwards, when the RCA in Paris was no more, Mr Mootoo struggled to an increasing extent at work. Although he continued to go on challenging missions to West Africa, he became markedly less productive in terms of written output. He was also lonely in Paris, missing the companionship of his former colleagues. The remote working arrangement with Dakar, from where he was line-managed with sensitivity and where all his new colleagues were based, did not fill that gap.

Mr Mootoo made strenuous efforts to persuade the SLT to authorise the recruitment of a RCA in Paris to support his work and to mitigate his loneliness. While there were legitimate reasons not to authorise a Paris-based RCA, he was left feeling – with justification – that his requests were not given serious consideration.

The last years of Mr Mootoo's valued employment were marked by increased fatigue and disillusionment. In part, this was because he was conscious of his decreased productivity, was fearful of his approaching retirement, was loath to take annual leave and was embittered by what he saw as the damage caused to Amnesty by the GTP. However, he was also made very unhappy by a justified sense of having been abandoned and neglected. As an IS employee he was not integrated into the Amnesty France even though he had been working on their premises for 19 years. His long and valuable contribution to Amnesty's work was disregarded to a significant extent as it was implicitly assumed that he – an "old-timer" – would retire before long. More efforts could and should have been made to enable him to serve out his final years with dignity.

Whilst it is impossible to know the precise reasons behind his decision to take his own life, it is clearly the case that his unhappiness at work was a significant contributing factor.

### Summary of Conclusions

1. A number of key failures occurred in the treatment of Mr Mootoo in the years 2013-2018. The most important of these were:
  - a. A failure by IS to give appropriate thought to what support Mr Mootoo would require to enable him to work in Paris post-GTP.
  - b. A failure by IS to put in place a written framework identifying the legal and pastoral obligations of Amnesty France towards Mr Mootoo while they hosted him in their office.

- c. A failure by IS to give proper consideration to his request for administrative assistance.
  - d. A failure by Amnesty France and IS to take appropriate action following receipt of information indicating that Mr Mootoo had health concerns in 2016 and 2018. In particular, there was a failure to pass that information to relevant management within IS.
  - e. A failure by Amnesty France to treat Mr Mootoo with sufficient sensitivity in relation to a proposed office move in 2018.
  - f. A failure by IS (specifically, the SLT) to value Mr Mootoo's continued employment.
- 2. Insofar as the failures above are failures by Amnesty France, they are the legal responsibility of IS, as Mr Mootoo's employer.
  - 3. The failures referred to above, taken together, constituted a serious failure of management.
  - 4. IS did not breach its duty to provide a safe system of work for Mr Mootoo. The principal reasons for this are:
    - a. It is not clear that Mr Mootoo suffered any injury i.e. that he was suffering from any clinical illness caused by his working conditions.
    - b. Even if he was suffering such an illness, IS did not know and could not reasonably be expected to have known of the risk of such illness.
  - 5. By contrast, the failures referred to above constitute, collectively, a breach of the duty of trust and confidence owed by IS to Mr Mootoo.
  - 6. It was not foreseeable that the breach of the duty of trust and confidence might lead to illness or death in the circumstances of this case.
  - 7. To the extent that IS was under any duties under the French Labour Code, it was in breach of some of those duties:
    - a. It failed to carry out a risk assessment complying with R.4121-1 of the Code.



- b. IS is unable to demonstrate that it took all necessary measures to protect Mr Mootoo's health or that it adopted protective measures without delay, contrary to Articles L.4121-1 and L.4121-2 of the Code.

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31 October 2018