BELGIUM
Before the UN Committee against Torture: alleged police ill-treatment

On 6 and 7 May 2003 the United Nations (UN) Committee against Torture (the Committee) examined Belgium's initial report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). In April 2003, prior to that examination, Amnesty International (AI) submitted a briefing to the Committee which focused on the organization's concerns relating to ill-treatment by law enforcement officers in Belgium, illustrated by individual case histories.

In its consideration of the report submitted by Belgium, the Committee expressed a number of concerns which reflected some of AI's own concerns in Belgium.

The current document provides a summary of the Committee's conclusions and recommendations, issued in Geneva on 14 May 2003, together with the full text of AI's briefing to the Committee. It also includes a set of key recommendations which AI is calling on the incoming Belgian government to address as a matter of priority, aimed at remedying present inadequacies in safeguards against police ill-treatment and preventing ill-treatment by police officers, and reflecting the Committee's recommendations in this area. The document also appends a list of key public documents on Belgium published by the International Secretariat of AI over the last four years.

In its briefing to the Committee, AI expressed concern about the numerous allegations it has received in recent years that law enforcement officers in Belgium have subjected people -- a high proportion of them foreign and non-Caucasian Belgian nationals -- to physical and psychological ill-treatment, including racist abuse, and have used excessive force.

The briefing pointed out that the cases of police ill-treatment reported to AI fall into two broad categories:

- those occurring on the streets and in police stations and concerning individuals intercepted or arrested on suspicion of having committed, or being about to commit an offence;

- those concerning unauthorized immigrants and rejected asylum seekers at various stages of the deportation process.

AI focused its attention on:

- the absence of a number of fundamental safeguards against ill-treatment in police custody, namely that people deprived of their liberty have no right of access to a lawyer upon arrest and during questioning, no right to have relatives or a third party notified of the fact and place of their detention and no explicit rights of access to a doctor, including one of their own choice, nor to be informed of their rights;

- improper or abusive use of force in the context of public demonstrations;

- cruel and dangerous methods of restraint during forcible deportation operations by air and the absence of an independent monitoring body to oversee the treatment of foreigners held in airport transit zones and during deportation;

- the detention of unaccompanied minors in centres for unauthorized immigrants and asylum seekers, and inadequate arrangements for their safety and protection on return to their country of origin;

- difficulties faced by people wishing to lodge complaints about police ill-treatment;

- obstacles to prompt and impartial investigations into complaints of police ill-treatment and to the bringing to justice of those responsible for such human rights violations.

Summary of the Committee against Torture's conclusions and recommendations[1]

While welcoming Belgium's initial report and the high quality of the dialogue with the Belgian delegation during the examination of the report, the Committee noted that it did not contain enough information on the practical application of the Convention against Torture and the difficulties in implementing it within Belgium.

The Committee went on to welcome, among other positive aspects of the report, Belgium's recognition of the Committee's competence to receive individual complaints under Articles 21 and 22 of the Convention against Torture and the adoption, in June 2002, of a law introducing the specific crimes of torture and inhuman and degrading treatment into the Belgian Penal Code.

The Committee raised a number of reasons for concern and issued a series of relevant recommendations.

It recommended that Belgium expressly guarantee in national legislation the right of all people, whether subject to judicial or administrative arrest, to have access to a lawyer, to a doctor of their own choice, to be informed of their rights in a language they understand and to inform their relatives promptly of their detention.

AI welcomed as a positive development the Belgian delegation's indication, during the Committee's questioning, that an inter-departmental working group, presided over by the Ministry of Justice, had been established to examine aspects of police arrest, with the aim of remedying problem areas, including those linked to the rights of detainees in police custody. It was anticipated that the working group would be issuing a written text in the near future which, among other things, was expected to advocate the right of access to a lawyer for people held under judicial arrest.

The Committee expressed concern about cases of excessive use of force during demonstrations and during the deportation of foreigners and recommended that Belgium ensure that guidelines on the use of force in such circumstances conform in full with the

[1]The full text of the unedited version of the Committee's conclusions and recommendations (UN Doc. CAT/C/CR/30/6) is currently only available in French but should be available in English at a later date. Please refer to www.unhchr.ch

requirements of the Convention against Torture. It also recommended that Belgium proceed immediately with investigations in cases of alleged use of excessive force by public officials.

The Committee called on Belgium to ensure that all officials committing acts of degrading treatment be liable to criminal charges, even if it were to be established that they were acting on the orders of a superior, and to specify clearly in its legislation that evidence obtained under torture is automatically inadmissible in Belgian courts.

The Committee was also concerned, among other things, about:

- the possibility of prolonging the detention of foreigners "for as long as they refuse to collaborate with their repatriation" and recommended in this context that a maximum limit be placed on the length of time foreigners subject to deportation orders may be held;.

- the possibility that unaccompanied foreign minors may be placed in detention, "sometimes for lengthy periods", and recommended that specific legislation be drawn up concerning unaccompanied minors, taking the best interests of the child into account;

- reports of asylum-seekers being formally released but transferred to the transit zone of the national airport and then left, unable to leave it and without assistance, and recommended that Belgium ensure the follow-up treatment of asylum-seekers when released.

In addition the Committee indicated its concern that foreigners, even those long resident in Belgium, who are deemed to have significantly disturbed public order or national security, may be deported from Belgium, even though the majority of their personal ties are in Belgium. It recommended that so-called 'extreme urgency' appeals for asylum and also appeals for annulment of deportation orders, filed by any foreigner subject to an expulsion decision and claiming that he/she risks being subjected to torture in the destination country, should have a "suspensive character."

The Committee also expressed concern about a legislative reform in April 2003 affecting the exercise of universal jurisdiction by the Belgian courts over grave violations of international humanitarian law, insofar as the reform allows the Belgian government, in certain cases (where the victim is not Belgian and where the accused's own country is deemed to offer a fair and effective avenue to justice), to decide that a Belgian judge does not have jurisdiction over complaints relating to such violations and to refer the complaint to that country for decision on any further action. The Committee urged that Belgium ensure respect for the independence of the Belgian courts from the executive power in the context of the exercise of universal jurisdiction over grave violations of international humanitarian law.

The Committee raised a number of concerns relating to the prison system and issued a series of recommendations, highlighting the urgent need to modernize Belgium's penitentiary legislation and the need, among other things, for increased efforts to combat inter-prisoner violence; for isolation of detained juvenile offenders to be imposed exceptionally and for a strictly limited period of time and for more efficient and effective external supervision of prison establishments, allowing the possibility of regular NGO visits.

BELGIUM
A briefing for the UN Committee against Torture

April 2003

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Preface

In May 2003 the United Nations (UN) Committee against Torture (the Committee) is scheduled to examine Belgium's initial report[1] *on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which entered into force in Belgium in July 1999. In view of this examination, Amnesty International (AI) takes this opportunity to comment on, and bring to the attention of the Committee and the Belgian authorities some of its concerns relating to the alleged ill-treatment of detainees in recent years.*

AI is aware of concerns raised in recent years by inter-governmental bodies and mechanisms and domestic non-governmental organizations (NGOs) relating to the treatment of people held in prison facilities in Belgium (see below - Findings of the Council of Europe's Committee for the Prevention of Torture*), as well as the concerns raised by -- amongst others -- the Human Rights Committee and by AI itself with regard to the treatment of detainees by members of the armed forces in Somalia in the 1990s and related investigations and judicial proceedings*[2]*. However, the focus of this document is the alleged ill-treatment of detainees by law enforcement officials: it summarizes and updates some of AI's main concerns in this area, as described in the AI public documents submitted to the Belgian government, at its invitation, during the drafting of Belgium's report to the Committee. These documents are annexed to Belgium's initial report, sent to the Committee in August 2001.* [3]

[1] *UN Doc. CAT/C/52/Add.2.*
[2] For further details see: *Belgium – A Compilation of AI documents concerning human rights violations by members of the armed forces in Somalia, AI Index: EUR 14/0003/02.*
[3] *See UN Doc. CAT/C/52/Add.2, paragraph 11.*

A list of public documents published by AI between 1998 to February 2003 on its concerns in Belgium -- the bulk of which relate to alleged torture and ill-treatment -- is contained in Appendix 1.

Introduction

In recent years AI has received numerous allegations that law enforcement officers in Belgium[4] have subjected people -- a high proportion of them foreign and non-Caucasian Belgian nationals -- to physical and psychological ill-treatment and have used excessive force. The organization has brought a number of such allegations to the attention of the Belgian authorities and has reported publicly on its concerns.

A number of fundamental safeguards against ill-treatment in police custody are absent in Belgium. People deprived of their liberty have no right of access to a lawyer upon arrest and during questioning, no right to have relatives or a third party notified of the fact and place of their detention, and no explicit rights of access to a doctor and to be informed of their rights. In some cases people face difficulties in making a formal complaint about their treatment by police officers and fear repercussions if they do so. Where formal complaints are lodged, judicial and administrative investigations are invariably launched but sometimes appear to be lacking in thoroughness, are frequently unduly protracted, often inconclusive and rarely result in criminal sanctions against police officers. In a number of instances where officers have been brought to justice and convicted, the punishment has been nominal.

AI recognizes that, like anyone else, police officers are entitled to the protection of their reputations. However, the organization has been concerned to note the number of those lodging or indicating their intention of lodging a formal

[4] Belgium is a federal state with several levels of government, including national, regional (Flanders, Wallonia and Brussels), and community (French, Flemish and German). In a major reorganization introduced from January 2001 onwards, the former *Police judiciaire* (criminal police) and the *Gendarmerie* merged at the federal level to form a federal police force responsible for internal security and nation-wide law and order. Local *Gendarmeries* merged with local police forces to operate as local branches of the federal police in the 196 police districts.

complaint against the police who say that they have been threatened or faced with criminal counter-charges.

AI has also observed that, although Belgium has ratified the principal international treaties prohibiting torture and cruel, inhuman or degrading treatment or punishment, independent experts appointed by the United Nations and the Council of Europe to monitor the implementation of the provisions of these instruments have expressed concern over the use of ill-treatment by law enforcement officers and have recommended that the authorities review present inadequacies in safeguards against ill-treatment by police and take more effective steps to prevent such treatment (see below - *Some significant findings by inter-governmental bodies*).

While it is not possible to confirm the accuracy of all the allegations of ill-treatment reported to AI, the number, consistency and regularity of the allegations, emanating from a variety of sources and many supported by convincing medical evidence, indicate that the problem of police ill-treatment is not one of a few isolated incidents. AI's research, taken together with the conclusions of other, reputable international governmental bodies and mechanisms and domestic NGOs, causes it to believe that there is a substantial cause for concern.

AI recognizes that police officers are at times obliged to face complex and dangerous circumstances, and the difficulties such situations present should not be underestimated. It also recognizes that police officers are permitted, even obliged, to use force in certain situations. However, the authorities have a responsibility to ensure that deliberate and unwarranted ill-treatment and excessive use of force will not be tolerated under any circumstance.

Like the inter-governmental bodies and mechanisms and other NGOs which have expressed concern about allegations of ill-treatment by Belgian police officers, AI is concerned that all possible safeguards against the ill-treatment of detainees should be in place, that prompt, thorough and impartial investigations should be conducted into alleged ill-treatment and that officers reasonably suspected of human rights violations are brought to justice and victims with well-founded complaints are granted fair and adequate compensation.

Summary of AI concerns

Cases of alleged police ill-treatment reported to AI fall into two broad categories:

$ those occurring on the streets and in police stations and concerning individuals intercepted or arrested on suspicion of having committed, or being about to commit an offence;

$ those concerning unauthorized immigrants and rejected asylum-seekers in the context of deportation operations under police escort.

Alleged ill-treatment on the streets and in police stations

As indicated above, these allegations concern individuals intercepted or arrested on suspicion of having committed, or being about to commit an offence but it should be added that police officers have sometimes abused their powers by arbitrarily detaining people -- people of foreign appearance in particular -- apparently either to harass them or in order to physically ill-treat them. There have been a number of allegations that those intercepted or arrested have not been given explanations for their interception or arrest, and that questioning police about the reasons for such action has been interpreted as resistance to police authority and often penalized.

The allegations of physical and psychological ill-treatment, including racist abuse, in this category of cases relate to the moment of arrest and the hours immediately after a person is brought to a police station, before they have been brought before a magistrate.

Certain groups are in particular exposed, by virtue of their race or ethnic origin, to police ill-treatment, as has been indicated by the findings of the (UN) Committee for the Elimination of Racial Discrimination and the European Commission against Racism and Intolerance, a Council of Europe body (see below – *Some significant findings by inter-governmental bodies*). The Centre for Equal Opportunities and Opposition to Racism[5], a body reporting to the Prime Minister and to the federal parliament, was set up by an Act of Parliament of 1993 in order to investigate complaints of discrimination based on race in Belgium.[6] Its successive annual reports have recorded the regular recurrence of complaints against law enforcement officers, a substantial proportion of which concern race-related ill-treatment. In 2002 it

[5] *Centre pour l'égalité des chances et la lutte contre le racisme* (French); *Centrum voor gelijkheid van kansen en voor racismebestrijding* (Dutch); *Zentrum für Chancengleichheit und Rassismusbekämpfung* (German).
[6] In 2000 the government expanded its mandate to fight discrimination on the basis of gender, sexual orientation, birth, civil status, ill-health, age and disability.

reported that over the previous year it had received scores of complaints against the police, and that skin colour was cited most often as the grounds of police discrimination.

Successive annual reports of the Standing Police Monitoring Committee,[7] commonly known as Committee P, defining itself as "first and foremost, an external parliamentary supervisory body dependent upon, and in the service of Parliament", in operation since 1994, have recorded receipt of an ever increasing number of complaints and declarations of physical assault, threats, intimidation and verbal, including racist, abuse by law enforcement officers. An interim evaluation of complaints and declarations received by Committee P during the first nine months of 2002, submitted to the federal parliament in December 2002,[8] indicated that -- overall -- complaints against the police had tripled since 1999. It recorded a significant increase in complaints of what it defined as "violations of fundamental rights and liberties of the citizen", a substantial number of them relating to verbal insults, racism, xenophobia and physical violence. Committee P stated that this constituted a "worrying development in a democracy where the police is supposed to be the first defender of these rights."[9]

The most common forms of physical ill-treatment alleged consist of slaps, kicks, punches, beatings with truncheons and handcuffs secured excessively tightly in order to cause pain rather than to restrain. Psychological ill-treatment -- consisting of verbal abuse with people being shouted and sworn at and subjected to racist abuse and intended to humiliate or intimidate -- appears common.

There are also a number of reports that detainees are deprived of food and drink for prolonged periods and that strip-searches are sometimes carried out unnecessarily and appear deliberately aimed at intimidating, humiliating and degrading detainees. These reports are borne out by the findings of Committee P in its Annual Report 2001, submitted to the federal parliament in 2002.

Committee P stated that "too frequently" people detained by the police still did not receive food or drink and that in many police forces there was no relevant procedure established to ensure that they did. Following a study of body searches in the context of administrative arrests and related complaints and declarations,

[7] *Comité permanent de contrôle des services de police/Vast Comité van Toezicht op de politiediensten/ Ständiger Kontrollausschuss der Polizeidienste* - www.comitep.be

[8] *Rapport sur une première évaluation intermediaire des plaintes et dénonciations* (du 1er janvier au 1er août 2002).

[9] "*ceci constitue une évolution préoccupante dans une démocratie où la police est supposée être le premier défenseur de ces droits*."

Committee P stated that "far too often" and "without reason" people were obliged to strip completely before being put into a cell wearing only underclothes. Its report also made it clear that people were being obliged to bend over and undergo intimate body searches, ostensibly to check whether they were hiding any object in body orifices, but when, in fact, the reason for their arrest did not present any justification for such a measure. The Committee said that people were "too often" left in a naked or semi-naked state for the entire length of their detention.[10] Committee P also noted that surveillance cameras were located inside the cells of numerous police stations meaning that people held in such a condition could be seen by police officers on surveillance screens. It said such measures were only very rarely justified and indicated that certain police officials were "clearly humiliating people in certain cases" and using such measures as a form of punishment.[11]

While in a few cases known to AI the aim of ill-treatment in police custody seems to have been to force confessions or other information from detainees, in many cases police officers appear to have indulged in unwarranted violence simply to assert their authority and frighten or punish and intimidate.

BERNARDIN MBUKU-IWANGI-SUNG and ODETTE IBANDA MAVITA

The following account is based on a criminal complaint lodged by the two above individuals and statements made to AI by Bernardin Mbuku.

Bernardin Mbuku-Iwangi-Sung and his wife Odette Ibanda Mavita, are both originally from Congo. Bernardin Mbuku became a naturalized Belgian citizen after completing his sociology studies in Belgium. He runs a Congolese cultural organisation in the Anderlecht district of Brussels, the stated aims of which are to promote understanding between the various local communities, integrate Congolese young people into Belgian culture and undertake preventive action against school truancy and juvenile crime amongst young Congolese.

At around 1am on the night of 2-3 February 2003, two police officers presented themselves at the door of the family's third floor apartment where they and their two-year-old son were asleep. When Bernardin Mbuku answered the door, the officers informed him that they had come to escort him to the police station to make a statement because he had caused a traffic accident in Anderlecht and then fled the scene. Bernardin Mbuku vehemently denied any knowledge of, or involvement in, any such accident but the police told him not to bother denying it and dragged him violently out of the apartment and then down several flights of stairs. His wife followed behind, scantily dressed, alarmed at what was happening.

Once in the street Bernardin Mbuku pointed out his car and protested that it showed no sign of having been involved in a recent accident but was told to be quiet and stop disturbing the peace. Four more police cars then arrived. Bernardin Mbuku and his wife were both arrested in the course of which they were subjected to physical assault and verbal, including racist, abuse. Bernardin Mbuku was thrown to the ground, handcuffed painfully tightly and put in a police vehicle. He was taken to the police station in a state of near nakedness as the scanty clothes he had been wearing when he rose from bed had been ripped by the police in the course of the violent arrest during which his glasses and watch were also broken. At the police station he was put in a police cell where he remained,

[10] administrative arrest may last up to a maximum of 12 hours.
[11] Committee P - *Rapport Annuel 2001, Partie III, Titre I, Chapitre 1*, Section 1 – 2.3 and 2.9.

handcuffed, for several hours. His wife, some five months pregnant at the time of the incidents, had a coat put over her mouth, received a blow to her back and was thrown violently and in a state of near undress -- her nightclothes also having been torn by the police -- into a second police vehicle and taken to the police station. Their two-year-old son was left alone in the apartment.

During questioning, the police were apparently unable to inform Bernardin Mbuku either of the identity of the victim of the car accident in question, nor the make of the car, nor of any statement made by the victim. At around 4am the police drew up what was presented as a written record of the questioning of Bernardin Mbuku and Odette Ibanda. The couple said they believed their respective statements were being misrepresented by the police who asked Bernardin Mbuku to sign the record as accurate, even though he could not read it, his glasses having been broken in the course of arrest. Odette Ibanda refused to sign. By then it was around 4am and the police had picked up their son from the apartment and brought him into the police station. Odette Ibanda was told to leave with her son. When she asked how she could leave at that hour of the morning, in very cold temperatures with no money and a two-year-old child dressed in pyjamas and wrapped in a light blanket, the police told her it was not their problem.

Bernardin Mbuku was released at around 6 or 7 am, still not understanding what he was being accused of. He spent three days in hospital as a result of the injuries suffered during his arrest which included a fractured arm and numerous contusions to his back. Over a month after the incidents his arm was still in plaster and his wrists still bore the marks where he had been handcuffed: he, his wife and child were still suffering from disturbed sleep.

In February Bernardin Mbuku and Odette Ibanda lodged a formal complaint, supported by medical reports, with the Public Prosecutor's office in Brussels accusing the police of assault and battery, acts of public indecency and acts of racism and xenophobia.

The police, when contacted for a statement by the media within days of the incidents, reportedly stated that, in view of relevant judicial proceedings, it could only confirm that a police intervention had taken place following a complaint made after an accident followed by a flight from the scene. The police also indicated that charges were being brought against Bernardin Mbuku for the assault and battery of a police officer in the course of his duties.

There have also been allegations of improper or excessive use of police equipment designed to temporarily disable or incapacitate, such as tear gas, in the course of arrest (see below – *Significant findings by inter-governmental bodies*: *Findings of the Council of Europe's Committee for the Prevention of Torture*) and reports of individuals and groups of individuals subjected to excessive, improper or abusive use of force in the context of public demonstrations. Such allegations were made, for example, in the context of demonstrations which took place on the occasion of the Laeken summit -- a summit of the European Union -- in December 2001 where it was reported, *inter alia*, that water cannon jets were turned on groups of peaceful demonstrators and in the context of a series of anti-war demonstrations taking place outside the US Embassy in Brussels during March 2003 where gratuitous violence against peaceful demonstrators was alleged.

A number of concerns were expressed about the policing of a demonstration involving some 500 or more people which took place in front of detention centre 127-bis for aliens at Steenokkerzeel on 23 February 2003, in protest against the existence of such detention centres in Belgium. Among the concerns voiced publicly by parliamentary deputies, amongst others, were incidents which occurred when the main body of demonstrators was said to be dispersing peacefully and leaving the scene of the demonstration en route to a nearby railway station. Police were following very closely behind the leaving demonstrators, urging them onwards. It is claimed that, when one or two

people in the centre of the marchers threw a few stones in the direction of the police, the police immediately reacted by turning on water cannon jets and aimed the nearest, not towards the centre of the marchers but directly at the demonstration organizers who had formed a 'security' chain behind the demonstrators to try to ensure that the crowd continued to disperse peacefully and that violent clashes did not develop. The police action resulted in two of the female organizers being injured. One of them, Wahoub Fayoumi, received the full force of the water jet directly in her eye, at a distance of less than two metres, resulting in extensive bruising and endangering her sight. She was hospitalized for over a week and is still recovering at the time of writing.

It is significant and a matter of great concern that, as previously indicated, people held in initial police custody in Belgium lack the protection of certain safeguards against ill-treatment which are internationally recognized as fundamental: they have no specific right of access to lawyers or doctors or to have relatives or a third party informed of their detention, or to be given information about their rights (see below – *Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment*).

EMILY APPLE

The following account is an extract from a letter addressed to Belgian diplomatic representatives in December 2001 by Emily Apple, a citizen of the United Kingdom, who was arrested in Brussels on 15 December 2001, after participating in one of the demonstrations which took place on the occasion of the Laeken Summit – a summit of the European Union.

"This was a peaceful demonstration, which went through various streets without incident. However, we eventually reached a square, which looked as though it was about to be blocked by riot police. Given that I didn't want to be in this type of situation, I decided to leave the demonstration. I walked down an unblocked street and onto a main road by a metro station. The time was now 3.30pm. However before I could move further away, I was attacked by a group of undercover police officers. I was hit around the head and put my arms up to protect myself and at this point my arm was grabbed. My legs were kicked out from under me and I was made to lie face down on the pavement. When I tried to sit up to reason with whoever was behind this, I was pushed roughly back down. Given that all I managed to see was a large man standing over me wielding his baton, I decided to co-operate. At no point during this assault was I either informed that they were police officers or that I was under arrest. I had previously been informed that there were fascists in the area and I didn't know whether I was being subject to a random attack.

It was an extremely frightening experience. I was roughly handcuffed with plastic cuffs, which were not removed for nearly two hours, and my hood (which I had only been wearing because of near freezing temperatures) was pulled away and my photo taken. I was then made to run back behind the lines of the riot police where I was made to kneel facing a wall whilst the officers sorted out what they were doing with their detainees (six of us had been arrested in all). I was very scared as the behaviour of the officers had been deliberately violent and intimidating and implied that they were prepared to use extreme violence. I was taken to a police van where my passport was demanded. I tried to ask why I had been arrested, but I kept being told that I would find out in time. The van was taken to a bus where we were searched and processed. I asked again why I had been arrested and was told that it was for disturbing the peace. The officer claimed that an order had been given to disperse which we had failed to obey. No such order had been given and I had been trying to leave the demonstration when I was attacked and arrested.

We were eventually taken to a police station, where I was detained until 2.30am. The conditions were appalling -- ?20 [*sic*] women locked into a freezing cold cell with concrete benches. Whilst blankets were provided, it was not sufficient to lessen the cold. We were not given proper food, denied access to lawyers, phones, and were not given a reasonable explanation for our detention. At no point was I told what was happening to me, how long I was going to be held, whether I was going to be charged with an offence or whether I was going to be deported.

During our time there, one of the women managed to bring tobacco into the cell. As a result, I was made to stand against a wall in bare feet on the concrete floor, whilst a female officer intimately searched me feeling all round my crotch and breasts. This was an unnecessary, humiliating and degrading experience.

Eventually I was released without charge. No explanation was given. The officers who released me were abusive and violent, calling me a 'street whore' and pushing me across the room. I was released into an unknown part of Brussels, having missed my train back to England, with no explanation of what to do or where to go.

Luckily I have a friend in Brussels, so was able to find a taxi to take me back to her house to sort out how I was getting home. However, if I didn't have this contact, I would have been stranded in Brussels in the middle of the night, as a single woman. The treatment I received was a complete disgrace. It was clearly designed to scare, intimidate and punish protesters. The arrests were arbitrary without any correlation to actual behaviour. The tactic seems to be based on trying to scare people from attending future demonstrations: a tactic that should not be allowed in a democratic country."

Alleged ill-treatment in the context of forcible deportation

Since the death of the Nigerian national, Semira Adamu, immediately following an attempt to forcibly deport her from Belgium in September 1998 (*see box below*), and despite a number of positive measures taken by the Belgian authorities in the wake of, and in the light of that death (see below – *Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment*), AI has received numerous allegations that unauthorized immigrants and rejected asylum-seekers have not been treated with dignity or transparency.

The allegations concern people being subjected to physical ill-treatment, including cruel and dangerous methods of restraint, psychological ill-treatment, including racist abuse, at various stages of the deportation process -- from the moment of arrest to the deportation journey and arrival -- a process which, it is alleged, is often made unnecessarily traumatic and frightening.

SEMIRA ADAMU

Semira Adamu, a 20-year-old Nigerian national, died on 22 September 1998 within hours of an attempt to deport her forcibly from Brussels-National airport: she had resisted five previous attempts to deport her following the rejection of her application for asylum.

Nine officers accompanied her onto the plane, including three officers acting as escorts during the flight and one videoing the operation (a common practice at that time). The video-recording subsequently revealed that, after being seated, bound hand and foot, she began to sing loudly to attract the attention of fellow passengers. When officers then pushed her face into a cushion placed on the knees of one of them and pressed down on her back, she began to struggle. The so-called "cushion technique" -- a method of restraint authorized by the Ministry of Interior at

that time but since banned -- allowed gendarmes to press a cushion against the mouth, but not the nose, of a recalcitrant deportee to prevent biting and shouting. Semira Adamu's face was pressed against the cushion for over 10 minutes and she fell into a coma as her brain became starved of oxygen. The emergency services were then called and she was transferred to hospital where she died of a brain haemorrhage later that day.

Within days of Semira Adamu's death the Minister of the Interior stated that she had been handcuffed and shackled during the deportation operation and confirmed that for a "certain", unspecified length of time a method of restraint known as the "cushion technique" was used by escorting gendarmes.

In October 1998 the government's representatives indicated to the (UN) Human Rights Committee that Semira Adamu's death was not the first to occur following use of the cushion during forcible deportations. They referred to the death of a Moroccan national in 1982 and a Zairean in 1987 (it appears, however, that the first case involved use of adhesive tape, rather than a cushion, to cover the mouth).

The Minister of the Interior resigned following the revelation, within days of the death, that one of the escorting gendarmes had been sanctioned in January 1998 for ill-treating a detained asylum-seeker. He acknowledged that the gendarmerie, for which he carried overall responsibility, was at fault in allowing the officer in question to continue to serve in a division responsible for carrying out forcible deportations.

A judicial investigation into the circumstances surrounding Semira Adamu's death was promptly opened by the Brussels Public Prosecutor's office in September 1998 and assigned to an examining magistrate and three gendarmes were subsequently placed under judicial investigation in connection with possible manslaughter charges (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner* – literally translating as deliberately causing grievous bodily harm resulting unintentionally in death).

A disciplinary investigation was also opened in September 1998 but then suspended pending the outcome of the judicial investigation.

In September 1999 the Belgian Human Rights League, which had lodged a criminal complaint against persons unknown and constituted itself a civil party to the judicial proceedings opened after Semira Adamu's death, requested the relevant investigating magistrate also to investigate two former Interior Ministers in connection with possible manslaughter charges. It considered them responsible for the introduction and implementation of the "cushion technique" as an authorized method of restraint during forcible deportations and argued that they thereby also bore responsibility for Semira Adamu's death. The Belgian Human Rights League also requested that the officers be investigated in connection with violation of Belgian anti-racism legislation.

The examining magistrate concluded an investigation into Semira Adamu's death and the dossier, with the magistrate's findings, was then returned to the Public Prosecutor's office for examination and the drawing up of any requests for criminal prosecutions.

In December 2000 the Public Prosecutor's office submitted the dossier to a Brussels court (*chambre du conseil)* deciding on prosecution (indictment chamber) requesting that three of the escorting gendarmes be charged with manslaughter but not with violation of Belgian anti-racism legislation.

In April 2001, the court heard part of the submissions of the various parties to the proceedings and further hearings were scheduled for May. However, by then Semira Adamu's relatives had lodged a new criminal complaint with the Public Prosecutor's office against another four gendarmerie officers, including the colonel in charge of the gendarmerie's airport detachment and the gendarme who videoed the deportation operation without intervening to help Semira Adamu. Further hearings before the court were then postponed.

In March 2002 the court ordered the three escorting officers to stand trial before Brussels *Tribunal Correctionnel* for deliberately causing grievous bodily harm resulting unintentionally in death *(coups et blessures volontaires ayant entraîné la mort sans intention de la donner*), along with two officers who had supervised the operation on board the plane who were charged with committing the bodily harm involuntarily, through failure to take precautionary measures (*par défaut de prévoyance ou de précaution*).

However, following a technical error in the writing up of the court ruling, the proceedings had to be returned to the court for correction. Lawyers representing the accused officers then entered a challenge objecting to the original presiding judge hearing the case and requesting a new judge. The challenge was unsuccessful (although the judge was in the event substituted for unrelated reasons) and related appeals delayed the proceedings further.

In February 2003 the court confirmed its March 2002 ruling.

Pre-deportation arrest

There have been reports that during police raids to search for unauthorized immigrants and rejected asylum-seekers under specific deportation orders, people have been subjected to traumatizing and intimidating treatment, including deliberate deception, physical assault and detention conditions which contravene the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

AI received the following report from individuals detained during a raid on a Saturday night discotheque in Brussels at around 11pm on 13 October 2002, after police had blocked off the surrounding streets.

All the approximately 130 people present were ordered to remain. Those unable to produce a passport were taken away immediately -- some of them handcuffed -- and put on board waiting vehicles but were not told where they were being taken. All were detained without further attempts to verify the legality of their presence in Belgium: one Polish woman, residing legally in Brussels with her two young children, was threatened with immediately being sent back to Poland. Her eventual fate was unknown to AI's informants. One of the male detainees fainted -- apparently because his handcuffs were so tight that they were cutting off his blood circulation -- and dragged brutally out of the vehicle and hit around the head.

The detainees were taken to Anderlecht police station (although they did not find out where they were being held until many hours later). The women were given a summary body search and instructed to hand over all their personal belongings other than their clothes and some were allegedly subjected to verbal abuse of an obscene sexual nature. They were separated from the men. One group of 13 women was taken to a windowless room measuring some 2m x 3m with a concrete floor containing two holes, apparently intended for use as a lavatory. The women, some of them with children at home, apparently remained there for some 20 hours and were not allowed to contact family or friends. They were supplied with no food, water or heating and not permitted to leave the room to attend to bodily needs. One of the women, suffering from panic, defecated involuntarily and, despite repeated appeals to the police, had to remain in the room in this condition for some 19 hours.

The men were held in similar conditions, with a group of some 40 men held in a similarly equipped room measuring some 4m x 3m.

The women only had access to a translator at the end of their detention in the station. The majority were then released, allegedly without explanation and without any document to prove that they had been detained and subjected to a police check.

Claims of traumatizing tricks and ploys being used to gain the trust and cooperation of asylum-seekers but with the actual aim of arresting and subsequently deporting them, as revealed in the case of Conka v. Belgium case (see below), persist. Two parliamentary deputies who visited detention centre 127-bis Steenokkerzeel in

February 2003 and were allowed to speak to a few inmates -- although only in the presence of the centre's administration --- reported that they had received testimony from individuals that such methods were in frequent use. For example, individuals were called to the offices of the local (communal) administration for a seemingly innocuous administrative reason or to the Aliens Bureau to follow up on their asylum applications, only to be arrested on arrival and taken to a detention centre for aliens.

In February 2002 the European Court of Human Rights issued a judgment in the case of Conka v. Belgium[12]. The application lodged in the names of JBn Conka and MBria ConkovB argued violations of a number of rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

The Registry of the European Court of Human Rights, reporting on the judgment, stated that:

"In September 1999 the Ghent police sent notices to a number of Slovakian Romany families, including the applicants, requiring them to attend the police station on 1 October 1999. The notice stated that their attendance was required to enable the files concerning their applications for asylum to be completed. A Slovakian-speaking interpreter was present when they were arrested.

At the police station they were served with a fresh order to leave the territory as well as a decision for their removal to Slovakia and their detention for that purpose … They were then taken with other Romany families to the Steenokkerzeel closed transit centre, near Brussels. On 5 October 1999 they and some 70 other refugees of Romany origin whose requests for asylum had also been turned down were taken to Melsbroek military airport, and put on a plane for Slovakia."

The Registry said that the Court had found that there was "… every reason to consider" that the wording of the notice "had not been the result of inadvertence; on the contrary, it had been deliberately chosen to secure the compliance of the largest number of recipients. It followed that, even as regards aliens who were in breach of the immigration rules, a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of aliens by misleading them about the purpose of a notice, so as to make it easier to deprive them of their liberty was not compatible with Article 5."[13]

There are also allegations that children of asylum-seekers have often been detained in an unnecessarily traumatizing and humiliating manner, being detained by police officers on, or in the near vicinity of their school premises, and then taken to join their parents in pre-deportation detention. There have also been reports of asylum-seekers being detained inside open reception centres for asylum-seekers in the course of police raids carried out in a manner likely to frighten and traumatize.

Around 30 police officers entered an open centre for asylum-seekers in Westende at around 5am on the morning of 24 June 2002 and seized 21 asylum-seekers (18 Roma from Slovakia, and three Kazakhs) in order to place them into pre-deportation detention, apparently following negative decisions on their asylum applications. The Roma were reportedly taken to the airport and deported immediately. A number of domestic NGOs condemned the operation, stating that the asylum-seekers in the centre had lodged their claims in good faith and had a right to be treated with due process and that operations of this kind undermined people's trust in the asylum system.

[12] No 51564/99.

[13] Article 5 of the European Convention, relating to the right to liberty and security.

Detention centres for unauthorized immigrants

Male and female unauthorized immigrants and asylum-seekers, including married couples and children (that is, those aged under 18 -- both those accompanied by relatives and unaccompanied minors) are held in such centres which fall under the responsibility of the Ministry of Interior's Aliens Bureau.

The average length of time spent in such centres, guarded by administrative staff rather than law enforcement officers, is between two and four weeks. The ordinary maximum length of detention is five months but this may be extended to eight months if it is considered justified for reasons of public order or national security. In addition, the detention period may be restarted from the beginning if a forcible deportation attempt fails through the detainee's resistance. Repeated physical resistance to deportation can result in eventual detention in a prison facility.

It has frequently been argued that, in addition to the uncertainty of the inmates' future, various aspects of detention in these centres combine to build and nourish a daily climate of tension and heightened psychological pressure on the inmates: factors such as limits placed on the detainees' communications with the outside world (detainees are free to make outgoing phone-calls, although in some cases have been obliged to register the numbers in advance and obtain clearance, but incoming calls are forbidden them, apart from calls from their lawyers; visits from relatives and NGOs are subject to restrictions and approval by the administration); transfers from one centre to another, sometimes to an area of the country functioning in a different language, are frequent and disorienting; a prison-like regime in some of the centres (notably Bruges Centre at Sint Andries-lez-Bruges, and Merksplas -- male only -- Centre near Turnhout) mean that detainees are obliged to move around in groups accompanied by guards; and the imposition of sanctions -- which may range from verbal warnings to refusal of visits to placement in an isolation cell for several days, sometimes for allegedly petty misdemeanours. It is also reported that individuals are regularly placed in isolation cells for some 24 hours before and after deportation attempts.

Children in detention centres and on deportation [Articles 3 and 16]

Particular concerns have been expressed about the psychological effects, sometimes manifested in the form of physical symptoms, which detention in these centres can have on minors -- both those unaccompanied and those accompanied by relatives (families are held in a section specifically converted for the detention of families

within centre 127-bis Steenokkerzeel), with frequently inadequate access to recreational facilities and education.

The situation of unaccompanied minors in Belgium was the subject of expressions of concern and recommendations by the (UN) Committee on the Rights of the Child following its examination in 2002 of Belgium's second periodic report on its implementation of the UN Convention on the Rights of the Child,[14] to which the government has responded to a certain degree. (See below – *Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment)*.

The Aliens Bureau has indicated that, when minors are deported, it is done in their best interests, that they are accompanied during return flights and that Belgian diplomatic representatives in the country of destination check that they will be taken care of on arrival. However, there have been several reports of unaccompanied minors being returned to their countries of origin, apparently without adequate arrangements made for their safety and protection on return.

TABITA MUBILANZILA

The case which has attracted most public attention is that of five-year-old Tabita Mubilanzila who arrived in Belgium in August 2002 without valid entry documents and in whose name an unsuccessful asylum application was filed. She was held in a detention centre for aliens for two months before being deported to her country of origin, the Democratic Republic of the Congo (DRC), in October 2002. The deportation took place, even though the office of the UN High Commissioner for Refugees had reported that, as no close relatives were apparently available to receive her in the DRC and her mother was living in Canada as a recognized refugee and seeking family reunification, she should be reunited with her mother. The Canadian authorities also indicated willingness to expedite examination of the reunification request. Following a public outcry and the intervention of domestic NGOs and the Belgian Prime Minister, she was subsequently reunited with her mother in Canada.

A Congolese woman claiming to be the mother of a 12-year-old boy who arrived in Belgium as an unauthorized immigrant in September 2001 was unable to prove to the satisfaction of the Belgian authorities that she was the boy's mother and he was deported alone to the Democratic Republic of the Congo and then apparently disappeared. The woman is said so far to have found only a bag belonging to the boy -- containing documents issued by the Aliens Bureau and the office of the Belgian Commissioner General for Refugees and Stateless People -- in a shelter for the homeless in Kinshasa.

Confinement to the airport transit zone

There have been reports of asylum-seekers being 'released' from formal detention but immediately transferred to the transit zone of the national airport by police officers

[14] See UN Doc. CRC/C/15/Add.178.

and subjected to cruel, inhuman and degrading treatment -- unable to leave the transit zone but without the basic means of survival such as money, food, drink, hygiene products, or access to beds and forced to rely on the charity of strangers.

In February 2003 both the lay and Islamic counsellors attached to Zavantem national airport asserted that the abandonment of asylum-seekers in the transit zone without means of survival was a regular occurrence. According to the lay counsellor: "It happens far too often to be mere coincidence. I regularly have asylum-seekers in my office who have been left to fend for themselves in the transit zone."[15] The Islamic counsellor reported that: "A few months ago a Lebanese woman was wandering around the departure hall with her two children. Her uncertainty 'only' lasted two days. A cleaner gave her food and drink. But if you want, I can give you countless other examples: Congolese, Cameroonians, you name them."[16]

ABDELHADI MHAMED IDIAB and RIAD MAHMOUD MOHAMMED

Abdelhadi Mhamed Idiab and Riad Mahmoud Mohammed, Palestinians from Southern Lebanon, arrived at Zavantem national airport at the end of December 2002 and immediately requested asylum. Their asylum applications were rejected and they were held at detention centre 127 Melsbroek, attached to the airport. An order to deport them was issued, for implementation by the Aliens Bureau. However, on 20 January 2003 a court decision ordered their immediate release, a decision which was upheld on appeal on 23 January and the men entered an application to regularize their presence in Belgium. However, the Aliens Bureau, arguing that the deportation order was still valid, released the two men into the airport transit zone where they remained for some two weeks.

They found their way to the airport's moral counsellor who contacted the airport's Islamic counsellor. In an interview with the Belgian daily *De Morgan* on 28 February 2003 the Islamic counsellor was quoted as follows: "They had nothing to eat, no money and no idea where they were supposed to spend the night. I eventually offered them the airport mosque for the night. There are a few carpets in there, which were slightly more comfortable for them to lie on … I occasionally provided them with a meal but otherwise it was the Turkish and Moroccan cleaners for the most part who looked after them. Some of the restaurant people also brought them the occasional hot meal. The two of them were entirely dependent on our good will. The Aliens Bureau and the airport police did nothing to help them. On the contrary: the police called in nearly every day to check their documents and to ask them what they were up to in the mosque. Harassment pure and simple because the officers knew perfectly well how the Palestinians had come to be in the transit zone."

The Aliens Bureau subsequently stated that the Palestinians received food packages from the Inadmissible Aliens detention (INAD) centre located inside the airport but this was contradicted by the airport's moral counsellor who told *De Morgen* (see edition of 3 March 2003) that "The INAD centre only gave out food packages during the deportation attempts. The people from the INAD centre even told us that the Palestinians were only entitled to food packages if they were willing to be repatriated. Otherwise they are not."

While the men were at the airport the Aliens Bureau made several unsuccessful attempts to deport them. The airport's Islamic adviser informed *De Morgen* (see edition of 28 February 2003) that during the first attempt – "One of them suffered a truncheon blow to the side and subsequently received attention from the airport doctor". He said that during the second attempt -- "One of them suffered a head wound and lost a lot of blood." The Aliens

[15] See *De Morgen* edition of 28 February 2003.
[16] Ibid.

Bureau subsequently denied that violence was used during the deportation attempts and a spokesperson for the Federal Police stated that one of the Palestinians had injured himself when he banged his head on a police vehicle.

On 14 February 2003 a court ordered the State to allow the men to leave the transit zone, without restrictions. The next day there was an attempt to deport the two men. Subsequently the Aliens Bureau apparently agreed that they would not be repatriated. The men could then leave the transit zone but in doing so were obliged to go through document control point and, having no valid visas, received new orders to leave the country. Realizing they were about to be deported, they sought refuge in the airport mosque in the transit zone where disproportionate force was allegedly used to subdue them, then detained and transferred to Merksplas detention centre for aliens awaiting deportation. Abdelhadi Mhamed Idiab and Riad Mahmoud Mohammed were both deported in early March 2003, allegedly suffering further ill-treatment during the deportation operation.

The act of deportation

As already indicated, despite a number of measures taken by the authorities in recent years, aimed at safeguarding deportees from ill-treatment and excessive force (see below - *Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment*), allegations have continued of police officers subjecting a number of foreign nationals resisting deportation to threats (including threats of meeting the same fate as Semira Adamu), racist abuse, depriving them of food and drink for many hours while awaiting deportation, physical assault and dangerous methods of restraint. These methods have included using material and objects to cover the mouth to subdue deportees, thus blocking the airway, and restraining deportees via positions which could restrict breathing and lead to death from positional asphyxia,[17] especially when applied to an individual who is agitated. There have also been reports of medical treatment for injuries incurred during aborted deportation operations being sometimes inadequate and delayed, sometimes attributable to insufficient staffing, and of obstacles being placed in the way of prompt access to a doctor of the detainee's own choice.

[17] Positional asphyxia, also known as postural or restraint asphyxia, has been defined by the (US) National Law Enforcement Technology Centre "as death as a result of body position that interferes with breathing". *(See - Positional Asphyxia - Sudden Death*, National Law Enforcement Technology Centre, a US National Institute of Justice Program, June 1995). According to experts, it arises from use of neck-holds which restrict breathing or when a person is laid on their stomach during restraint and/or transportation: this position compromises a person's ability to breath. Additionally handcuffing a person behind their back also restricts a person's ability to breathe. Any weight applied to the back in this position (such as pressure by a law enforcement officer, including an attempt to keep a person still) increases breathing difficulty further. A "natural reaction" to oxygen deficiency is increased physical struggle. In the face of such a struggle a law enforcement official is likely to apply additional pressure/compression to subdue the restrained person, yet further compromising the restrained person's ability to breathe. Factors which may increase dangers of positional asphyxia include: obesity; enlarged heart; alcohol and drug use or other things that impede the ability to breathe including, for example, the presence of chemical agents. Guidelines to minimize the risk of positional asphyxia include restraining a person other than by laying them on their stomach and monitoring the restrained person's breathing and health.

RAFIK MILOUDI

Rafik Miloudi, an Algerian national, claimed that he was subjected to ill-treatment during several of the nine attempts to deport him forcibly from Belgium between October 2001 and 8 March 2002, including one attempt in November 2001 during which he said the alleged ill-treatment resulted in injuries requiring some 40 stitches to his back and two to the thumb of his right hand. He said that a doctor who examined him at the airport told him he had inflicted the wound himself but referred him for hospital treatment.

In March 2002 it was reported that efforts by a private doctor and several members of parliament to obtain authorization to visit Rafik Miloudi in St Gilles prison, where he had been detained since early November 2001, had been unsuccessful for several weeks. However, at least one member of parliament visited him in prison on 15 March 2002, questioned him about his allegations and subsequently made public statements of concern about his treatment and injuries. An internal investigation into Rafik Miloudi's allegations was ordered by the Minister of the Interior and, following a medical visit by a doctor delegated by the Ministry of Interior in March, a private doctor was allowed to examine him in detention on 28 March 2002. A medical report issued by the private doctor recorded, among other things, three scars to his back - one 16 cms long, one 19 cms long and one 4cms long and the traces of 46 stitches. The doctor also recorded traces of two stitches to his right thumb and reported that the patient had difficulty in walking and sitting normally.

The internal investigation apparently concluded that Rafik Miloudi's allegations were unfounded and his injuries self-inflicted. The Ministry of Interior released Rafik Miloudi on 3 May 2002 with an order to leave the country within five days. Rafik Miloudi subsequently lodged a criminal complaint against the airport police.

For further examples of alleged ill-treatment during forcible deportation – see the cases of Frank Kakulu (Nigerian), Blandine Kaniki (Democratic Republic of Congo), Fatimata Mohamed (Sierra Leone) described in *Belgium: Correspondence with the government concerning the alleged ill-treatment of detained asylum-seeker* (AI Index: EUR 14/01/99) and in successive editions of *Amnesty International Concerns in Europe* (as listed in *Appendix I*), together with the cases of Prince Obi (Nigeria), Kifle Alemayu (Ethiopia), Matthew Selu (Sierra Leone), EKC (Democratic Republic of Congo), Ibrahim Bah (Sierra Leone) and Mohamed Konteh (Sierra Leone)

Some significant findings by inter-governmental bodies

IGO bodies and mechanisms have in recent years voiced concerns about police ill-treatment in Belgium and have explicitly related these practices to discrimination against foreign nationals and members of minorities.

Findings of the (UN) Human Rights Committee

In October 1998 the Human Rights Committee examined Belgium's third periodic report on its implementation of the International Covenant on Civil and Political

Rights. In its official Concluding Observations, issued in November 1998,[18] the Human Rights Committee expressed "grave concern" about "reports of widespread police brutality against suspects in custody" and regret at "the lack of transparency in the conduct of investigations on the part of police authorities and the difficulty in obtaining access to this information".

It also expressed concern that criminal suspects "do not at present have access to counsel and to medical visits from the moment of arrest" and said that suspects should also be informed promptly of their rights, in a language they understood.

The Human Rights Committee stated that "Procedures used in the repatriation of some asylum-seekers, in particular the placing of a cushion on the face of an individual in order to overcome resistance,[19] entails a risk to life". It said that the death of a Nigerian national in September, after the use of such techniques, illustrated "the need to re-examine the whole procedure of forcible deportations". The Human Rights Committee asked for "written information on the results of the investigations as well as of any criminal or disciplinary proceedings" and recommended that "all security forces concerned in effecting deportations should receive special training."

The Committee also noted that "the period of five months' detention, which may be extended to eight months, to which asylum-seekers may be subjected, may amount to arbitrary detention in violation of article 9[20] of the Covenant, unless the detention is subject to judicial review which secures the release of the person if there is no lawful purpose being served by the detention."

It also expressed concern about the behaviour of Belgian soldiers in Somalia in 1993, under the aegis of the United Nations Operation in Somalia (UNOSOM II) and noted that, in response to its questioning, the government's representatives had stated that 270 files had been opened "for purposes of investigation." However, the Committee expressed regret that it had "not received further information on the result of the investigations and adjudication of cases" and requested that Belgium submit this information.[21]

[18] UN Doc: CCPR/C/79/Add.99.
[19] A restraint method since banned.
[20] relating to the liberty and security of the person.
[21] For further information relating to the conduct of members of the Belgian armed forces in Somalia and relevant AI concerns – see *Belgium – A compilation of AI documents concerning human rights violations by members of the armed forces in Somalia* (AI Index: EUR 14/03/02).

Findings of the European Commission against Racism and Intolerance (ECRI)

On 21 March 2000 the European Commission against Racism and Intolerance (ECRI), a Council of Europe body, published its second report on Belgium, covering the country situation as of June 1999.[22]

It stressed "the urgent need to address the problem of manifestations of racism on the part of some law enforcement officials, as well as the need to provide the means for a better response on the part of the authorities (judicial and non-judicial) to complaints of racist behaviour."

It reported recurrent complaints of "discriminatory identity checks", many of which resulted in counter-accusations of resisting arrest or insulting police officers, as well as complaints of "bodily injuries, arbitrary detention and humiliating treatment." It found that a "considerable proportion of complainants are young males of North-African origin."

It indicated that the number of formally registered complaints did not reflect the true extent of the problem "since many members of minority groups are reluctant to resort to a formal complaint, due to lack of confidence in the possibility of redress or fear of further reprisals" and that when complaints were filed there was "evidence to suggest that ... the response of the judicial authorities is unsatisfactory."

ECRI said that "[t]he police service appears reluctant to acknowledge any incidence of racist behaviour on the part of its officers. In addition, a serious lack of transparency is reported, as complainants are very rarely informed by the police authorities of the results of the procedures." It concluded that "[t]his situation contributes to the impression that members of police forces enjoy virtual impunity".

In response, the authorities emphasized the introduction of new training programs for law enforcement officials and judges. They also cited the inclusion of a code of professional conduct in legislation setting out basic principles for a new police service, integrating the existing gendarmerie, judicial and communal police forces, due to become operational in 2001.[23]

Findings of the (UN) Committee on the Elimination of Racial Discrimination (CERD)

[22] CRI (2000) 2.

[23] an integrated two-tier police force (comprising federal police and local police) started to come into operation from January 2001.

In March 2002 the (UN) Committee on the Elimination of Racial Discrimination considered Belgium's 11th, 12th and 13th periodic reports on its implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. In its subsequent Concluding Observations[24] the Committee expressed concern about "racist incidents in police stations … where the victims were immigrants and asylum-seekers" and recommended that Belgium take all necessary measures to prosecute such "racially motivated acts of violence" by law enforcement officials.

Findings of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[25]

The government authorized publication, in October 2002, of the findings of a two-week visit of inspection carried out by the CPT between 25 November and 7 December 2001.[26] Two previous visits had been carried out in 1993 and 1997. The government stated that it was taking the necessary steps to provide the Committee with a report detailing the measures taken following its receipt of the CPT report in August 2002.[27]

The places of detention visited by the CPT during its third periodic visit included various police facilities in Antwerp, Brussels (including the Security Detachment of the Federal Police at Brussels National airport), Liège and Namur.

The CPT reached the same conclusion as on its two previous visits of inspection -- that the risk of someone being ill-treated by law enforcement agencies during detention could not be dismissed and recommended that the Belgian authorities remain particularly vigilant in this area. In view of the information gathered during its visit, it requested that law enforcement officers be reminded that the use of force should be limited to what is strictly necessary and that, as soon as a person has been subdued, nothing could ever justify officers physically abusing him/her.

The CPT also made series of detailed recommendations on safeguards against ill-treatment by law enforcement officers, many of which had been put forward to the

[24] UN Doc. CERD/C/60/CO/2 - adopted 21 March – issued 21 May 2002.
[25] This Committee consists of a body of experts, elected by states parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to strengthen the safeguards against torture and other ill-treatment by making periodic visits to countries which have ratified the convention and making recommendations to the governments in question.
[26] See CPT/Inf (2002) 25.
[27] No such report had been published at the time of writing.

Belgian authorities following its previous two visits but on which little or no progress had been made. (For further details – see below: *Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment*)

Initial police custody

The CPT said it had collected allegations of ill-treatment by law enforcement officials, usually inflicted at the moment of arrest and involving, in particular, kicks, punches, truncheon blows and abusive use of tear-gas spray. In some instances the CPT collected medical evidence consistent with the allegations and cited several individual cases as illustrative examples.[28]

Deportation operations

The CPT stated that it had gathered a number of "very worrying"[29] reports concerning restraint methods and the disproportionate use of force during the forcible deportation of foreigners via Brussels-National airport. It concluded that these operations involved a "manifest risk of inhuman and degrading treatment".[30]

The CPT emphasized that it was entirely unacceptable for a person subject to an expulsion order to be physically assaulted or subjected to threats as a form of persuasion to board a means of transport or as punishment for not having done so.

Prison facilities

The CPT visited the prisons of Andenne and Antwerp, the Psychiatric Annex and Disciplinary Units of Lantin Prison and a juvenile detention centre. It said that it had received very few allegations of ill-treatment committed by prison officers during its

[28] - The delegation met a detainee arrested by Liège police the previous day who alleged that he had been struck in the face, thrown violently to the ground, handcuffed very tightly with his hands behind his back, and said that an officer had crushed his right hand under his boot. A medical examination, carried out by a qualified doctor who was a member of the delegation, found cuts and bruises compatible with his allegations.

- A minor told the delegation that, on his arrest a week previously by Charleroi police, he had been struck in the face and very tightly handcuffed. A medical examination by the delegation's doctor found bruises and abrasions compatible with his allegations.

- A detainee interviewed the day after his arrest by police in Forest claimed that, after police had sprayed tear gas directly into his face, he had to be taken to a hospital emergency room for treatment to his eyes. The delegation's doctor found that his eyes were still showing traces of inflammation compatible with his claims.

The medical records of prisoners recently admitted to Antwerp Prison, examined by the CPT, indicated that on admission some 10 days before its visit, a detainee had displayed and complained of injuries and pain to his eyes and face, apparently after being hit in the face by police officers at the time of arrest; another detainee admitted two weeks before the visit, displayed facial bruising on admission, allegedly caused by police brutality; another detainee admitted some 10 days before the CPT visit had complained of police brutality and abrasions to both elbows were recorded.

[29] « *très préoccupants* ».

[30] « *un risqué manifeste de traitement inhumain et dégradant* ».

visits to Andenne and Antwerp prisons but numerous allegations of inter-prisoner violence. Although it noted vigorous efforts being made to reduce this phenomenon in Antwerp prison, it had collected detailed allegations of passivity on the part of Andenne prison staff during violent incidents between prisoners. It also criticized chronic overcrowding in Antwerp prison which had a 140% occupation rate at the time of its visit, with prisoners sleeping on mattresses on cell floors because of insufficient space for beds.

In addition to recommending measures to address overcrowding in Belgian prisons generally, the CPT also pointed to recurrent problems of under staffing and inadequately trained personnel in the prisons.

At the Public Establishment for Youth Protection, Braine-le-Chateau, the Committee reported allegations of staff subjecting minors to racist abuse: at the time of the CPT's visit over 40 % of the inmates -- all teenagers -- were of North African origin.

The CPT was also concerned to find that, as during its two previous visits to Lantin Prison, the Psychiatric Annex still did not have either the kind of staff or infrastructure suitable for the provision of psychiatric care. It considered the situation unacceptable and during its visit called on the authorities to provide details of remedial action within three months. In March 2002 the authorities informed the CPT that the unit was being closed and the prisoners transferred.

Psychiatric establishment

The Committee also expressed concern about the frequency with which containment measures were used in a psychiatric hospital (Jean Titeca Hospital) which it visited in Brussels, as well as the length of time people were subjected to such measures. It found that in some cases people had been strapped down on couches for periods amounting to a total of 120 to 180 days within a single year and stated that such treatment could not be justified medically and amounted to ill-treatment. It recommended a review of the use of containment methods in the hospital.

Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment: related concerns [Articles 2, 11 and 16]

Articles 2, 11, and 16 of the Convention against Torture require each state party to take effective legislative, administrative, judicial and other measures to prevent torture and ill-treatment and to keep under systematic review interrogation rules, methods, practices and other arrangements for overseeing the custody and treatment of detainees, in order to prevent acts of torture and other, cruel, inhuman or degrading treatment.

As already indicated above, Belgium has ratified the principal international instruments prohibiting torture and cruel, inhuman or degrading treatment and punishment and has regularly submitted periodic reports to the relevant UN bodies and sent official representatives to respond to the questions raised by these bodies. The federal government has also authorized prompt publication of the reports of the CPT on its periodic visits of 1993, 1997 and 2001. These CPT reports, as well as the publication of the responses supplied by the government to the questions and recommendations put forward by the CPT following its 1993 and 1997 visits, shed light on Belgium's implementation of the recommendations made by these various UN and Council of Europe bodies. Frequent reference is made, therefore, to the CPT in the course of this section of the report.

Reference is also made to the domestic, external supervisory body[31] reporting to parliament which has already been mentioned -- the Standing Police Monitoring Committee (Committee P), in operation since 1994. It carries out, among other things, regular analyses of the activities of the police forces, of relevant rules and internal regulations and their application, and of complaints against the police, including complaints of ill-treatment: it also conducts inquiries into specific subjects (such as, for example, practices relating to body searches in police custody – *see page 5*) and makes relevant recommendations. Given its undoubted authority and standing, it is to be regretted that its recommendations appear sometimes to have been ignored or implemented only partially or with delay.

Initial police custody

In its report on its 2001 periodic visit to Belgium, the CPT said that it was seriously concerned that very little actual progress had been made regarding the introduction of certain fundamental safeguards against ill-treatment in police custody which it had recommended following its first visit to Belgium in 1993 and reiterated following its second visit in 1998. These included:

[31] The General Inspectorate of the Federal and Local Police, detached from the police forces but reporting directly to the Ministers of Justice and Interior, also examines the practical application of internal regulations and guidelines.

- the right of access to a lawyer from the very outset of police custody;

- the right to have the fact of one's detention notified to a relative or third party of one's choice;

- the right of access to a doctor, including a doctor of one's own choice;

- the systematic and prompt provision to detainees of a document setting out all their rights.

The CPT pointed out that it had made these same recommendations eight years previously, following its first visit to Belgium.

The CPT said -- with regard to its discussions with the government on safeguards against ill-treatment -- that it warmly welcomed "the first positive signs addressed to the Committee by the Belgian political authorities, at the highest level, in particular concerning the right of access to a lawyer." It indicated that it considered that the moment had now come for the authorities, profiting from the momentum for change generated by the comprehensive reorganization of the police services, to put into practice, without undue delay, certain positions adopted at political level in favour of strengthening the fundamental guarantees offered to people deprived of their liberty by the law enforcement agencies.[32]

- the right of access to a lawyer

The requirement that people be given immediate or prompt access to a lawyer is enshrined in international human rights standards (see Principles 7 and 8 of the Basic Principles on the Role of Lawyers and Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment). The Human Rights Committee has stated that "all persons arrested must have immediate access to counsel."[33]

Under Belgian law there is no right of immediate access to a lawyer for detainees in police custody. As Belgium's initial report on its implementation of the Convention against Torture acknowledges: "In practice, lawyers are often not able to meet with their clients before the clients are admitted to prison." [34]

[32] CPT/Inf (2002) 25, paragraph 58 and relevant CPT press release.
[33] See Concluding Observations of the Human Rights Committee: Georgia, UN doc. CCPR/C/79/Add.74, 9 April 1997, paragraph 28.
[34] Paragraph 127 - UN Doc: CAT/C/52/Add.2.

Individuals may be held in police custody -- under administrative arrest[35] , with no access to lawyers -- for up to a legal maximum of 12 hours and held under judicial arrest for up to a legal maximum of 24 hours, with no right of access to a lawyer until after questioning by the examining magistrate, who informs the accused person of their right to choose a lawyer. Committee P has, however, reported that both the 12- and 24-hour limits are exceeded on occasion.[36]

In AI's experience, detainees are at the greatest risk of physical ill-treatment and intimidation in the period immediately following deprivation of liberty. Access by people who have been deprived of their liberty to a lawyer during this period can serve as an important safeguard against ill-treatment as the presence of a lawyer has a dissuasive effect on those officials who might be inclined to ill-treat detainees. The presence of a lawyer is particularly important in the context of interrogation, during which a detainee may be subjected to excessive verbal and physical pressure by police officers. AI also believes that immediate access to a lawyer allows the detainee access to the practical help they need immediately after detention, including assessing whether their rights have been infringed and seeking remedial action.

The failure of the Belgian authorities to introduce a right of access to a lawyer during police custody has been the subject of repeated expressions of concern and recommendations by the CPT as well as by the Human Rights Committee (see - *Some significant findings by inter-governmental bodies*).

The CPT stated[37] that, in order to protect the legitimate interests of the police inquiry, there might be exceptional situations which would necessitate delaying a detainee's access to the lawyer of his/her choice for a certain period but said this should not result in the total denial of the right of access to a lawyer during that period. In such a case access to another, independent lawyer could be organized.

The CPT expressed the view[38] that right of access to a lawyer should include the right for the person in question to communicate in private with the lawyer and to

[35] The Police Functions Act of 5 August 1992 allows a police officer, in case of absolute necessity, to place under administrative arrest any person who is causing an obstruction, causing an actual breach of the peace or preparing to commit certain offences, or in the act of committing certain offences, in order to stop him/her from continuing. Article 22 of the Act also allows officers to carry out administrative arrests when dispersing crowds in the context of the maintenance and restoration of public order. Article 34 states that a person may be held for up to 12 hours for purposes of verification of identity if there are reasonable grounds to believe that the person is wanted for, has attempted or is preparing to commit an offence or might disturb public order or has already done so.

[36] Committee P - *Rapport annuel 2001 – Partie III, Titre I, Chapitre I, Section 1 – 2.2.*

[37] CPT/Inf (2002) 25 – paragraph 53.

[38] Ibid.

benefit from the lawyer's presence throughout the interrogation carried out by the police. It stated that the fact that a detainee has indicated that he/she wishes the presence of a lawyer should not stop the police from questioning the person on *urgent* questions before the lawyer is able to arrive. The replacement of a lawyer who might impede the proper conduct of an interrogation should also be possible, on condition that such a possibility be strictly limited and subject to appropriate guarantees.

In AI's view, guaranteeing in law and practice the right of people deprived of their liberty to have access to a lawyer of their choice, including the right to talk to the lawyer in private, from the outset of their detention and during questioning, constitutes a major safeguard against ill-treatment in police custody.

- the right to have relatives or a third party informed of arrest

Anyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place where they are being kept in custody and any transfers from that place. In AI's experience, access to the outside world is an essential safeguard against torture and ill-treatment.

Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners states that: "An untried prisoner should be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family or friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."

Principle 16 (1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has a similar requirement. In the case of foreign nationals Article 16 (2) further stipulates that the detained person should also be informed of the right "to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national."

Anyone held under administrative arrest in Belgium (*see footnote 35*) "may request that a person in his or her trust should be so informed"[39] but -- as Belgium's report to the Committee acknowledges -- "This article refers not to an actual right but simply to a possibility of having a trusted individual informed of one's arrest."[40]

[39] Article 31, paragraph 4 of the Police Functions Act.
[40] See UN Doc. CAT/C/52/Add.2, paragraph 170.

Article 35, paragraph 3, of the Police Functions Act instructs police officers that they may not reveal the identity of people held under judicial arrest without the agreement of the competent judicial authority, "except in order to inform their relatives." However, again, the Act does not grant people under judicial arrest an express legal right to have their relatives or third parties informed of their detention.

Following the CPT's report on its second visit to Belgium in 1997, the Belgian government issued an interim reply in March 1999[41] indicating that, although there was no specific legal provision guaranteeing the right of a person under judicial arrest to inform a relative or third party of the detention, the police services enjoyed a fairly large area of discretion in the matter and that: "a legislative initiative should resolve the matter."[42] However, following its third periodic visit to Belgium in 2001, the CPT found no such legislation in place and said that it appeared that the opportunity of having relatives or a third party informed was only rarely offered to people detained by police.[43]

The CPT stated that, in its view, the right for a detainee under judicial arrest to be able to notify friends and family should be expressly guaranteed from the beginning of the period of deprivation of liberty.

The CPT commented that there might be certain exceptions which could justify, in the interests of the investigation, a delay in the exercise of this right but emphasized that every exception should be clearly defined by law and subject to appropriate guarantees (for example, every delay should be recorded in writing, together with the reasons for the delay; the endorsement of a senior police officer without any link to the affair in question or of a prosecutor should be required).

In a number of cases of alleged police ill-treatment known to AI, individuals have reported that requests to have relatives notified of their detention and whereabouts have been denied by police officers and in some cases have resulted in them being subjected to further verbal, psychological and physical abuse by law enforcement officers.

[41] CPT/Inf (99) 6.

[42] "*Une initiative sur le plan législatif devrait apporter une solution en la matière*" - CPT/Inf (99) 6, page 16 – section 3.a.

[43] CPT/Inf (2002) 25 – paragraph 52.

In AI's view, guaranteeing in law and practice the right of people deprived of their liberty to have relatives or a third party notified, from the outset, of their detention constitutes a major safeguard against ill-treatment in police custody.

Mr ILIYASSOU

The following account is based on an account given to Committee P. An investigation was opened by the Committee and a criminal dossier was also apparently opened by the Public Prosecutor's office.

Mr Iliyassou was in his car in Brussels at around 11.15pm on 25 May 2002 when police officers in a passing patrol car accused him of violating a traffic regulation. Mr Iliyassou, a former driving instructor, rolled down his window and explained to them his understanding that in fact he had acted correctly. His car was then stationary and the officers, still in their vehicle, asked him to produce identity papers and relevant vehicle documentation. As his car was now blocking traffic he moved his car a few metres beyond the police vehicle, pulled over and got out of the car. The police accused him of refusing to comply with a police order and said they were going to take him to the police station. When he asked the reason why, two officers pushed him along the pavement and against a wall, put him in handcuffs secured behind his back, while administering light blows. He asked them not to be violent and pointed out that there were people observing the scene from a nearby bus stop, one of whom apparently remonstrated with the police officers and asked them to stop hitting Mr Iliyassou.

He was then put into the officers' vehicle, where he was forced to lie on his back, with his hands secured behind his back, while one of the officers pressed down with all his weight onto his body, hitting him in the face and subjecting him to racist abuses, calling him a "dirty Rwandan" and telling him to "go back to your jungle" ("*Espèce de sale Rwandais" – "retourne dans ta jungle*"). He subsequently provided descriptions of both officers. Several times during the journey he protested that the handcuffs were causing him considerable pain but no notice was taken by the officers. Inside the police station he saw two or three more officers before he was put in a room containing only a table and a cabinet. He was positioned with his face towards the wall, with his head between the corner of the cabinet and the wall.

He said that thereafter the various officers, including those who had escorted him to the police stations, came in turn to push him violently so that each time his head was made to hit the corner formed by the wall and the cabinet. One officer, whom he identified by name, observed the scene but did not participate to intervene or stop it. At a certain point Mr Iliyassou said he was suffering so much pain in his arms, hands and wrists that he said so and added that he did not understand what the police were doing as he had not done anything wrong. He said that in response an officer asked him which hand was causing most pain and when he indicated the right hand, proceeded to secure that handcuff even more tightly so that his pain was increased.

On the evening of these incidents, Mr Iliyassou's father-in-law had died and, when stopped by the police, he had been returning home after making telephone calls to inform relatives. Thus, while being held in the police station, he asked the officers to let his wife know the reason for his absence, in order to save her further distress. This request earned him further blows. After that he fell silent as each utterance on his part provoked renewed violence.

Finally, observing that he had fallen silent and immobile, one of the officer said "I think he has understood, you know" and his handcuffs were removed. Mr Iliyassou was then taken to a cell but, before entering, he asked again for his wife to be informed but an officer told him: "We'll see about that tomorrow morning. I advise you to sleep; it will be a long night. You have appointment in court." ("*On verra cela demain matin. Je te conseille de dormir, la nuit sera longue … Rendez-vous au tribunal")*. Over an hour later he was released from the cell, and the officer who had witnessed the above events without intervening questioned him and drew up the written record. Mr Iliyassou was not informed of what he was being accused of and said that he had nothing to say, apart from the fact that he had been beaten and that each word he uttered earned him new blows. He was subsequently allowed to leave but, on

recovering his personal belongings, noted that his mobile phone was broken and unusable and he was missing about 400 Euros from his wallet.

When he returned to the police station about an hour later, accompanied by several acquaintances, in order to lodge a complaint against the officers who had ill-treated him and to report the missing money, the duty officer refused to register the complaint, indicating that it would be contrary to the rules of ethics, and disputed the loss of his money and said that he himself had found Mr Iliyassou's wallet near the police vehicle and put it with his belongings and, had the money been in the wallet, he would have reported it.

Mr Ilyassou and his companions then proceeded to another police station to lodge the complaint but officers there also refused to receive the complaint on the grounds that there was an ethical problem for them to receive a complaint lodged against other police officers. He was referred to Committee P.

His complaint to Committee P was accompanied by a medical certificate dated 26 May 2002, issued by the casualty department of a local hospital recording, among other things, multiple facial contusions, contusions and cuts to both his wrists and an injury to his jaw.

- the right of access to a doctor, including one of the detainee's own choice

Prompt medical evaluation of detainees can form an effective safeguard against torture and ill-treatment, as underlined in international instruments. The right to be examined by a doctor is also an integral part of the duty of the authorities to ensure respect for the inherent dignity of the human person.

Thus people held in custody by law enforcement officials have the right to be examined by a doctor and, when necessary, to receive medical treatment (see, *inter alia*, Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners; Rule 29 of the European Prison Rules). Law enforcement officials have a duty to ensure that assistance and medical aid are rendered to any injured or affected person, whenever necessary (see Article 6 of the Code of Conduct for Law Enforcement Officials). People in detention who have not been tried may be treated by their own doctor, if there is reasonable ground for such a request (see Rule 91 of the UN Standard Minimum Rules for the Treatment of Prisoners; Rule 98 of the European Prison Rules). If the request is denied, reasons must be given: the expenses of treatment by a detainee's own doctor are not the responsibility of the detaining authority. Detainees also have the right to seek a second medical opinion (see Principle 25 of the UN Body of Principles).

The failure of the Belgian authorities to introduce a specific legal right of access to a doctor during police custody has been the subject of repeated expressions of concern and recommendations by the CPT and the Human Rights Committee (see above – *Significant findings by inter-governmental bodies*).

In the Belgian government's interim reply,[44] issued in March 1999, to the CPT's report on its second visit to Belgium in 1997, the government indicated that there was no objection to such a right, as long as the intervention of the doctor were limited by law to establishing medical facts and that guarantees were in place to prevent any abuse of this right.[45]

The CPT stated that information which it had collected during its third visit to Belgium in 2001 confirmed the findings of its previous visits in 1993 and 1997, namely that a doctor was generally called in if the detainee so requested or if the law enforcement agency considered that the detainee's state of health so required. However, there were still no legal provisions or regulations providing the express right for a detainee to have access to a doctor during detention by the law enforcement agencies. Regarding the possibility for a detainee to call on a doctor of his/her own choice, this was only granted if the police considered that it did not present any risk for the police investigation. In at least one case known to AI -- such a request has not been granted, even though there was no apparent risk to police investigations.[46]

The CPT pointed out to the government that the possibility of being examined by a doctor of one's own choice could be offered, not as the norm but as an additional possibility if the detainee considered that the intervention of a doctor designated by the competent authority ought to be complemented by a second examination.

In the CPT's opinion, there was no reason why such a second examination should not be paid for by the detainee or why it could not be carried out by a doctor of the detainee's own choice, in the presence of a doctor designated by the authorities.

In AI's view, guaranteeing in law and practice the right of people deprived of their liberty to have access to a doctor, including one of their own choice, from the outset of their detention, constitutes a major safeguard against ill-treatment in police custody.

- the right to notification of one's rights

Anyone arrested or detained has the right to be informed of their rights (see Principles 13 and 14 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment) and of the reasons for their arrest or detention (a fundamental principle recognized in international human rights instruments, such as

[44] CPT/Inf (99) 6.
[45] See CPT/Inf (99) 6 - page 17, section 3 a.
[46] For details, see *Belgium - The alleged ill-treatment of Charles Otu by law enforcement officers*, AI Index: EUR 14/06/00.

the ICCPR -- Article 9 (2), and the European Convention on Human Rights -- Article 5.2). Both the European Convention and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 14) stress that the detainee must be informed of the reasons for his arrest "promptly, in a language which he understands."

In AI's experience, information about their rights is currently *rarely* provided to detainees held in initial police custody in Belgium.

A number of victims of alleged ill-treatment have reported that, instead of having their rights explained to them, they have been kept in a state of ignorance, unsure how long they will be detained and, in some cases, instructed to or coerced into signing pieces of paper, the significance or content of which was not clear to them or which they considered to contain an inaccurate record of events and the police interview. They have left the police station after hours of detention, physical and psychological ill-treatment, still unaware of the reason for their detention or its legal justification and sometimes without the fact of their detention apparently being recorded. (See, for example, the cases of Bernardin Mbuku and Odette Ibanda – *page 7*, Emily Apple – *page 9* and Mr Iliyassou – *page 28*).

The failure of the Belgian authorities to introduce a right for detainees to be informed of their rights in police custody has been the subject of repeated expressions of concern and recommendations by the CPT and the Human Rights Committee (see above – *Some significant findings by inter-governmental bodies*).

In its report on its second visit to Belgium in 1997,[47] following up on its 1993 visit, the CPT said that people were still not systematically informed of their rights. It acknowledged that in rare law enforcement establishments an information sheet existed but the CPT questioned whether detainees could actually take due note of it, as it was stuck to the wall in the corridor of the cell block. In its 1999 interim response[48] to that report, the Belgian authorities also pointed out that some police forces had taken the initiative of displaying a document indicating detainees' rights in the detention zone and said that:

"Expanding this measure and adopting the legislation to make it compulsory would be a concrete and effective means of completing the set of preventive measures for combating unlawful police violence in the framework of detention." [49]

[47] CPT/Inf (98) 11.
[48] CPT/Inf (99) 6.
[49] CPT/Inf (99) 6 - Page 17, section 3 a) « *Généraliser cette mesure et la rendre obligatoire par l'adoption d'une disposition législative complèterait concrètement et efficacement le dispositif préventif de la violence policière illégitime en cours de détention.* »

Belgium's report to the UN Committee against Torture, submitted in August 2001, indicates that a few police bodies have taken the initiative of posting a document setting out the rights of detainees in the detention area and also states that:

"Expanding this measure and adopting the legislation to make it compulsory would be a concrete and effective means of completing the set of preventive measures

for combating unlawful police violence in the framework of detention." [50]

However, the CPT found that by the time of its third visit to Belgium in November-December 2001 this statement of apparent intent had still not been followed up by concrete measures and said that a good many people detained by the police whom it met during its visit indicated that they had not been informed of their rights.

The CPT recommended, as it had following its previous visits, that the authorities take steps to systematically provide people, at the beginning of their detention in police custody, with a printed form setting out all their rights. The form should be available in an appropriate variety of languages and detainees should be invited to certify that they have been informed of their rights.

AI believes that it is essential for all detainees to be provided immediately after their arrest with clear information regarding their rights, including the right to lodge complaints of ill-treatment, if they are to exercise those rights effectively. To be effective, such information must be communicated in a language the person understands.

The ability or confidence of foreign nationals in the official languages of the country[51] may be low and they may be less familiar with the legal system than native citizens. In addition, in AI's experience, any person who has suddenly been arrested, taken into a police station, perhaps for the first time in his or her life, is already likely to feel disoriented, helpless and confused.

- electronic (ie audio and/or video) surveillance

In AI's experience, placing exclusive emphasis on administrative and legislative safeguards against ill-treatment can prove inadequate in preventing ill-treatment and it is useful to look at additional practical measures to prevent ill-treatment, including the use of audio-visual tape recording of questioning and closed circuit television monitoring of the questioning of detainees.

The CPT has stated that –

"The electronic recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the

[50] UN Doc. CAT/C/52/Add. 2, paragraph 188.
[51] In the case of Belgium there are three official languages: French, Dutch and German.

interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions."[52]

In its interim response[53] to the CPT's report on its second periodic visit the Belgian government indicated that such electronic recording was being considered in the case of minors and certain vulnerable categories of adults such as the mentally disabled.

The CPT's report on its 2001 visit recalled that Committee P had underlined the useful role which the presence of video-surveillance systems in access corridors to police cells -- currently to be found apparently only in a very small percentage of police facilities -- could play in safeguarding detainees against ill-treatment.

The CPT's report on its 2001 visit noted the above and sought the government's comments on the possibility of introducing such video-surveillance as a general practice.

Consideration of the introduction as a general practice of audio-visual recording of police interrogations and video-surveillance of access corridors to police cells would appear to be timely.

- body searches

As previously indicated (see above - *Summary of AI Concerns – Alleged ill-treatment on the streets and in police stations*), people appear to be often subjected to body searches, including strip searches and intimate body searches for no apparent reason other than to intimidate, humiliate and degrade.

Committee P, when reporting on this problem in its Annual Report 2001 stated that there was undoubtedly a need for clear guidelines to be provided in this area and expressed regret that there was no provision for a specific penalty to sanction such conduct by law enforcement officers and observed that it thus remained up to the

[52] 12th General Report - CPT/Inf (2002) 15.
[53] CPT/Inf (99) 6.

relevant authorities not to tolerate such practices and to bring administrative or disciplinary proceedings against police officers indulging such conduct.

The introduction of strict guidelines on body searches carried out by police officers on people deprived of their liberty, and ensuring that violations of the guidelines are sanctioned, would be major steps towards eradicating abusive body searches.

- police equipment designed to disable or incapacitate temporarily

There have been reports of the improper and excessive use of such equipment both in the course of public demonstrations and during individual arrests.

The CPT during its third visit to Belgium in 2001 found cases of apparently abusive use of tear gas spray in the course of arrests and requested detailed information on the sprays supplied to law enforcement officers, as well as a copy of the regulations governing its use.

In February 2003 a parliamentary question sought information on the use of pepper spray during demonstrations which had recently taken place, on its possible health risks and regulations on its use. Pepper spray is the term normally applied to Oleoresin Capsicum (OC) spray -- an inflammatory agent derived from cayenne peppers. OC spray inflames the mucous membranes, causing closing of the eyes, coughing, gagging, shortness of breath and an acute burning sensation on the skin and inside the nose and mouth. The Minister of Interior indicated that case studies, medical advice and the knowledge gained from experiences abroad had been studied before the introduction of the pepper spray for police use and that special training was given to users of the spray. He stated that no case of permanent bodily damage caused by pepper spray had yet been registered in Belgium. The minister also indicated that Committee P was studying the use of pepper spray aerosols.[54] AI understands that this may form part of a wider study by Committee P into the use of chemical sprays by Belgian police.

There are a number of ongoing studies in various countries on the effects of chemical -- or irritant -- gases and possible associated long-term health risks, and particular risks for people with respiratory problems such as asthma and heart disease. In countries where the use of such gases has revealed a risk of abuse or unwarranted injury AI believes that a safeguard against such occurrences is the institution of an independent review of the use of chemical agents, including thorough analysis of their

[54] Chamber of Deputies – Document Index: CRABV 50 COM 1006.

precise composition, allowing -- where appropriate -- the introduction of strict limitations and guidelines on their use, including a clear ban on use against non-violent suspects or demonstrators, along with adequate monitoring mechanisms to keep the guidelines under review and ensure that they are adhered to.

In view of the recent reported improper use of water cannon (see above - *Summary of AI Concerns – Alleged ill-treatment on the streets and in police stations*), a review of the guidelines and instructions given to police officers on the use of water cannon would also appear timely and useful.

With regard to the use of such equipment in the policing of public demonstrations, it is also useful to recall the European Parliament's December 2001 recommendation to the Council on an area of Freedom, Security and Justice: security at meetings of the European Council and other comparable events.[55] Among other things, this calls on states to

"5.6 Avoid a disproportionate use of force and instruct national police forces to control violence and preserve individual rights even in confused crowd scenarios where violent lawbreakers are mixed with peaceful law-abiding citizens …."

In AI's view, a review of existing guidelines and regulations governing the use of police equipment designed to disable or incapacitate temporarily and, where absent, the introduction of strict guidelines and limitations on their use, together with clear monitoring procedures, would be timely.

Deportation operations

- Methods of arrest with view to expulsion

AI understands that since July 2002 the Ministry of Interior has issued circulars addressed to the police, the Aliens Bureau, and the open reception centres for asylum-seekers, among others, giving instructions and guidance on the manner in which arrests with a view to expulsion, including those taking place inside open reception centres, should take place and indicating that they should be carried out with a maximum of humanity and discretion.

[55] European Parliament Reference No: A5-0396/2001 - 2001/2167(INI).

Statements made to a parliamentary committee by the Minister of Interior in March 2003 indicated that the Aliens Bureau had specifically requested local police and mayors (*bourgmestres*) not to detain the children of unauthorized immigrants on school premises or in their immediate vicinity or during school hours. [56] The Minister indicated that a circular was in preparation addressing issues relating to the deportation of families with children of school-age, including the formalization of measures relating to the interception of children attending school.

It appears that the message that traumatizing treatment in the course of pre-deportation arrests is unacceptable and will not be tolerated needs to be reinforced and made more explicit. Directives contained in the recommendation issued by the Council of Europe's Commissioner for Human Rights in September 2001 'concerning the rights of aliens wishing to enter a Council of Europe member state and for the enforcement of expulsion orders' are pertinent:

"12. Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights have been respected at all stages.

13. The best way to avoid using methods which might traumatize both those being expelled and those responsible for enforcing expulsion orders is to have the person concerned agree to return voluntarily.

14. When expulsion orders are enforced, it is crucial at every stage of the procedure to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for their return…."[57]

- Protecting unaccompanied minors

Following its examination of Belgium's record, the (UN) Committee on the Rights of the Child in June 2002 recommended,[58] among other things, that Belgium should: ensure that unaccompanied minors are informed of their rights and have access to legal representation in the asylum process; expedite efforts to establish special reception centres for unaccompanied minors and ensure that their stay there is for the shortest possible time and that access to education and health is guaranteed; approve as soon as possible an existing draft law on the creation of a fully independent guardianship service; and expand and improve follow-up of returned unaccompanied minors.

Legislation promulgated in December 2002 provided for a guardianship service in principle, but it has yet to come into being in practice as the necessary enabling legislation is still lacking.

[56] Parliamentary Doc. CRABV 50 COM 10127 of 12 March 2003.
[57] Recommendation CommDH/Rec (2001)1, Section III -- Implementation of expulsion measures.
[58] See UN Doc: CRC/C/15/Add.178.

Unaccompanied children arriving in Belgium should enjoy all the rights guaranteed under the UN Convention on the Rights of the Child and other international standards on the care and protection of unaccompanied children. In AI's view, major progress towards achieving this end could be made through full implementation of the recommendations made to Belgium by the (UN) Committee on the Rights of the Child in 2002, including the urgent introduction, in practice, of an independent guardianship service, and of improved and adequate arrangements for the safety and protection of unaccompanied children on return to the receiving country.

- Treatment during forcible deportation and in transit zones

As previously indicated, AI continues to receive reports of physical and psychological ill-treatment and the use of dangerous methods of restraint during the act of forcible deportation.

In October 1998 the use of the "cushion technique," abusively employed during the deportation of Semira Adamu (*see page 10*), was suspended pending the outcome of an evaluation of the instructions and techniques relating to forcible deportations which the government entrusted to an independent commission, led by Professor Vermeersch, a moral philosopher. The Vermeersch Commission published its findings in January 1999.[59] It recommended, among other things, that certain restraint methods be definitively banned during forcible deportations, including "in particular, anything obstructing normal respiration (for example, adhesive tape, cushion on the mouth), and all forced administration of pharmacological products (except by doctors in urgent situations which would naturally mean the termination of the attempted deportation)".

New internal guidelines issued in July 1999 to gendarmes (the force acting as escorts at that time: the state officers now engaged in forcible deportations are members of the federal police) escorting deportees largely reflected the commission's key recommendations relating to restraint methods.

Provisions contained in a decree issued by the Minister for Transport in April 2000, explicitly banned the use of methods of restraint involving the full or partial obstruction of the airways of an individual being deported under escort, as well as the use of sedative or other drugs to subdue such a person against their wishes. The decree also directed that a doctor or an independent observer should accompany any group of more than four individuals (excluding any children under 12 accompanying them) being forcibly deported under gendarmerie escort. AI understands that this

[59] *Rapport Final – Commission chargée de l'évaluation des instructions en matière d'éloignement – 21 janvier 1999.*

decree followed discussions between the Ministry of Transport and the Belgian Cockpit Association whose members had, for a three-month period in 1999, refused to carry passengers being forcibly deported under gendarme escort because of incidents, including incidents of alleged ill-treatment, and security problems arising on board such flights.

AI is not aware of fully independent observers on board such subsequent flights; doctors who have participated in such flights have reportedly been employed by the Ministry of Interior – Aliens Bureau.

In October 2001, after it emerged that police officers were being paid a special allowance or bonus for acting as escorts during deportation operations but received only half the allowance if the operation had to be abandoned before the deportee left the country, fears were expressed that the practice could encourage use of excessive force by police. The Minister of Interior indicated that the payment was considered a form of compensation for an unpleasant task and stated that he favoured the same allowance being paid to all escorting officers, whatever the outcome of the operation.

The CPT in its report on its third periodic visit to Belgium in 2001 also noted "numerous measures" taken by the authorities to reduce the risks linked to forcible deportation operations, including the prohibition of any restraint techniques which could obstruct the respiratory tract.

The Security Detachment of the Federal Police at the airport informed the CPT that the measures included, amongst other things:

- special training for officers engaged in repatriations in methods of restraint, stress management and conflict resolution;

- the establishment of a psycho-social service -- within the Security Detachment -- composed of psychologists and social assistants in order to: a) prepare the foreigner for deportation (maintaining continuous dialogue with the individual and establishing contact with the family in country of destination); b) if necessary, act as "independent witnesses during difficult operations" and c) on request, provide psychological support to the personnel of the repatriation service;

- unannounced spot-checks during the preparation phase and on embarkation, by members of the General Inspectorate of the Federal and Local Police -- in certain cases a member of the Inspectorate would board flights carrying deportees under escort incognito;

- video-recording of certain sensitive deportation operations;

- in the case of specifically organized 'secured' flights (*vols sécurisés*) -- the systematic presence of a doctor and nurse (apparently reporting to the Ministry of Interior/Aliens Bureau), of members of the psycho-social service of the Security Detachment, an interpreter and members of the office of the Minister of Interior and the General Inspectorate of the Federal and Local Police.

However, the CPT underlined dangers associated with the restraint methods still in use, in particular those relating to positional asphyxia[60] and economy class syndrome.

It said that during its November-December 2001 visit it was informed of a new draft set of internal guidelines, drawn up by the Security Detachment of the Federal Police at Brussels-National Airport [DSAN] in June 2001 and awaiting approval. The CPT had only brief access to the directives and to a photographic annex illustrating restraint techniques but expressed, on the spot, its concern about the use of certain methods of immobilization which could, according to the medical experts in the delegation, present a risk of positional asphyxia. Therefore, at the end of its visit the CPT asked to receive a copy of the draft guidelines.

In its report on the visit, submitted to the government in August 2002, the CPT described in detail the methods of restraint used at the time of its 2001 visit, both on regular airline flights and on the specially organized flights known as 'secured' flights.

In the report the CPT recommended that, in order to reduce to a minimum the associated health risks:

- the use of restraint methods which might involve a risk of positional asphyxia or economy class syndrome should be the exception and subject to strict guidelines;

- any person facing forcible deportation -- whether under police escort or not -- should be offered the possibility of a medical examination before departure;

- in cases where a deportation operation has to be interrupted, the deportee should receive a comprehensive medical examination immediately upon return to the place of detention;

[60] See Footnote 17.

- there should be further exploration of the use of audio-visual monitoring for forcible deportations, including installation of surveillance cameras in access corridors to cells, and along the route taken by the deportee and police escort prior to boarding the aircraft.

The CPT also stressed that guidelines on deportation should also observe the principle that it is entirely unacceptable for a person subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so.

In recent years similar recommendations with regard to forcible deportation operations from Europe have been put forward by the Council of Europe's Commissioner for Human Rights[61] and by AI.

Monitoring

AI notes that no fully independent external monitoring body is authorized to make unannounced visits of inspection to, or has regular access to the holding cells at Zavantem national airport -- where individuals are held before deportation and sometimes held briefly following aborted deportations -- or to the relevant corridors in the transit zone and the deportation cells. Neither is there such access to the INAD Centre within the airport which holds people stopped at the border and refused access to Belgian territory because they are unable to present the necessary entry documents and are thus considered 'inadmissible' and detained, usually for some 48 hours, awaiting deportation by the relevant air carrier and staff.

AI also notes that the Vermeersch Commission report in 1999 recommended that there should be "regular evaluation" of coercive measures during forcible deportations to ensure that they were carried out in line with the various criteria indicated in its report. It also stated that -- in addition to such evaluations by services directly engaged in the deportations and the Minister of Interior -- "regular checks carried out by an external body would also appear to be useful."

Given the continuing allegations of ill-treatment and the use of dangerous methods of restraint, despite the remedial measures announced, AI has advocated, not only the establishment of a fully independent inspection body (mandated to make regular, unannounced and unrestricted visits to airport detention cells, transit zones and the INADs Centre), but also a thorough re-examination of legislation and practice in the area of deportation to ensure that it is brought in line with recent recommendations in this area by

[61] Recommendation CommDH/Rec (2001) 1.

Council of Europe bodies, including CommDH/Rec (2001) 1, issued by the Council of Europe's Commissioner for Human Rights in September 2001, 'concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders'.

The right of complaint and to prompt and impartial investigations into alleged ill-treatment: related concerns [Articles 12, 13 and 16]

Articles 12, 13 and 16 of the UN Convention against Torture require that each state party to the Convention shall ensure that every individual who alleges that they have been subjected to torture or other cruel, inhuman or degrading treatment has the right of complaint; that there is a prompt and impartial investigation of such complaints; and, in addition, in the absence of a specific complaint, wherever there is reasonable ground to believe an act of torture or other, cruel, inhuman or degrading treatment has been committed. Article 13 also directs that "Steps shall be taken to ensure that the complainant and witnesses are protected against any ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Prompt, thorough and impartial investigations, with the scope, methods and findings made public, serve to protect the reputations of police officers who may be the subject of unfounded accusations of ill-treatment, as well as to safeguard the interests of genuine victims of ill-treatment.

Complaints in connection with ill-treatment on the streets and in police stations

Some victims of ill-treatment in Belgium do not make formal complaints, sometimes because police officers have threatened retaliation if they try to do so, or because of a common practice whereby police officers lodge criminal counter-complaints (such as resisting arrest or insulting a police officer), or because they fear adverse repercussions on their continued residence in the country (see below).

Details of internal police investigations, including those by the General Inspectorate of the Federal and Local Police, are seldom made public, with the lack of transparency undermining public confidence in the complaints and disciplinary process.

According to information available to AI, with increasing frequency police officers are refusing to register complaints of ill-treatment by members of the public,

whether or not the alleged ill-treatment is said to have occurred in the police station where the attempt to lodge the complaint is being made. Complainants are referred instead to Committee P (see, for example, the case of Mr Iliyassou – *page 28*).

The Standing Police Monitoring Committee, known as Committee P, can receive individual complaints and declarations against the police, including complaints of ill-treatment, and can carry out inquiries into policing issues raised in such complaints, make relevant recommendations, advise, and monitor the outcomes of cases referred to the relevant internal and judicial bodies and monitor the outcomes. However, Committee P does not itself have the power to impose disciplinary sanctions -- this function lies with the internal police bodies, or to judge criminal activity -- this function falls under the competence of the courts. Committee P's Annual Report 2001 underlined the lacunae in the data passed to it by the relevant internal police and judicial bodies concerning complaints against police and their outcomes, rendering it impossible for the Committee to compile a full and accurate reflection of the current situation.

The members of the Investigation Service of Committee P, which aids the committee in its investigations, are appointed by the Committee. Many staff members of the Investigation Service are seconded from the police force and in the Investigation Service they take on the function of criminal police (*police judiciaire*) and, as such, may carry out investigations into criminal complaints against police officers at the request of the relevant examining magistrate, or of the attorney general and chief military prosecutor's offices.

AI notes that, in its report on its 1997 visit to Belgium[62], the CPT stated that, in its opinion, "it would be desirable to increase the proportion of appropriately trained and qualified people from truly outside the law enforcement services within the investigation Service. Such a situation would help, among others things, to strengthen the perception of its independence, both by public opinion and by the services under its supervision."

There have been reports that some foreign victims of police ill-treatment -- with insecure or unauthorized status in the country -- are reluctant to lodge complaints with Committee P because of a fear of their complaint leading to their detention and possible deportation. The role of the Committee P's Investigation Service in the case below appears to have led to this situation.

[62] CPT/Inf (98) 11 paragraph 43.

OMAR DAOUD

On 15 July 2000 Omar Daoud, an unauthorized immigrant, was stopped by police officers at a Brussels railway station. He fled, apparently because of his lack of identity documents, but was recaptured, accused of theft because he had been stopped by gendarmes while in the act of asking another person for their (used) telephone card. He was taken to the gendarmes' offices where he alleged that, while handcuffed, he was stripped and beaten. His right knee was fractured in the course of the beating. He was taken to a local hospital for treatment at around 8.30pm then taken by the gendarmes back to their offices and again beaten until he lost consciousness. He was then taken -- unconscious -- back to the hospital in the middle of the night of 15-16 July. Two medical certificates issued by the hospital confirmed his injuries. He remained hospitalized until 30 July, apparently handcuffed for the first two days. He required at least three surgical operations to injuries to his leg.

Supported by a domestic NGO (the Belgian Human Rights League), Omar Daoud lodged a criminal complaint against the officers with an investigating magistrate, constituting himself a civil party to the proceedings. The complaint was also referred to Committee P for investigation.

Omar Daoud received a letter from Committee P, asking him to contact the office in order to plan his interview and that of relevant witnesses in connection with his complaint.

Omar Daoud presented himself on the day agreed for his interview but at the end of the interview he found police officers waiting for him. It transpired that Committee P had contacted the Aliens Bureau/Ministry of Interior, alerting it to the date and time when Omar Daoud was expected for his interview and the Aliens Bureau had asked for his arrest. The Committee informed Omar Daoud that, while further information about his residence status was awaited, he was being placed in the custody of the police for the time necessary to carry out this check. Omar Daoud was subsequently placed in pre-expulsion detention in Vottem detention centre for unauthorized immigrants.

Committee P has itself acknowledged that, because members of its Investigation Service are in effect 'special police' and are also attached to the office of the Attorney General, they are bound to respect article 29 of the Code of Criminal Investigation which obliges them to communicate any offences which come to their knowledge in the exercise of their duties. It has also itself advocated changes in the status of Committee P investigators, in order to eliminate situations such as those arising in the case of Omar Daoud.

Complaints in connection with deportation operations

Individuals wishing to lodge official complaints about ill-treatment in the context of a deportation operation face several practical difficulties.

If the deportation attempt during which the individual is ill-treated is aborted, and he or she is returned to a detention centre, the person faces communication problems, both in terms of language difficulties and the restrictions placed on their contact with the outside world (see above - *Alleged ill-treatment in the context of forcible deportation – Detention centres for unauthorized immigrants*) -- which in some cases may be further restricted for some 24 hours in an isolation cell within the detention centre following their return from the airport. Some are returned to a

different detention centre to the one they left: it may be located in another part of the country functioning in a different language, which, among other things, exacerbates the difficulties in obtaining independent advice and may entail a new lawyer working on their asylum dossier.

Most pre-deportation detainees have limited access to independent advice and many, if not most allegations come to light and complaints are lodged through the work and concern of members of domestic NGOs in contact with detention centres for unauthorized immigrants.

A much delayed new Royal Decree Law establishing the regime and working rules applicable to detention facilities for aliens managed by the Aliens Bureau,[63] approved in August 2002, was promulgated in September 2002. The previous applicable royal decree of June 1999 had been annulled by the Council of State (*Conseil d'Etat* - an advisory body to the government) in June 2001. The new decree law has not been in action for a sufficient length of time to assess its full functioning in practice. However, AI notes that, although the decree law allows the Minister of Interior to grant NGOs access to the centres, it stipulates that their activities must not be in contradiction with legislation concerning detention centres and legislation concerning foreigners.[64] Concern has already been expressed by some domestic NGOs that this may be interpreted to set limits on their ability to assist individuals appealing against their detention and deportation and lodging complaints about their treatment.

It is to be hoped that, in interpreting and applying the new law, the authorities will pay close attention to Point 10 of the recommendation, issued by the Council of Europe's Commissioner for Human Rights in September 2001 'concerning the rights of aliens wishing to enter a Council of Europe member state and for the enforcement of expulsion orders.' CommDH/Rec (2001)1, Section II point 10 states, *inter alia*, that:

"Governments must guarantee maximum transparency in respect of how holding centres operate, by ensuring at least that independent national commissions, ombudsmen and NGOs, lawyers and close relatives of detainees have access to them…. "

[63] It excluded the INADs centre within Zavantem national airport which holds people, including unaccompanied minor, stopped at the border and refused access to Belgian territory because they are unable to present the necessary entry documents and are thus considered 'inadmissible' and detained – usually for some 48 hours awaiting deportation by the relevant air carrier and staff.
[64] Royal Decree law of 2 August 2002 - Article 73 – 2.

Significantly, those who have alleged ill-treatment after aborted deportation attempts regularly report that officers have threatened them with greater violence and, on occasion, death on the next attempt to deport them, resulting in intimidation and a real fear of reprisal.

Such individuals also often have a very limited amount of time in which to make a complaint to an outside body, as the next deportation attempt may follow very swiftly.

In other cases, people who have alleged ill-treatment have been released from the detention centre very shortly thereafter on the grounds that the usual maximum limit on the length of detention in such centres has been reached. However, on release they have usually also been served with an order to leave the country within days – or face renewed detention and deportation. This makes pursuit of a criminal complaint extremely difficult.

Once an individual has actually been deported from the country then -- although pursuing a complaint through the criminal justice system in Belgium is still technically open, in reality he or she has little or no means of effectively pursuing this option. In a number of cases where domestic NGOs have made inquiries on behalf of the deportee, they have been informed by the police that the individuals face criminal counter-charges, effectively halting any attempts to obtain justice.

AI notes that Article 130 of the new Royal Decree Law establishing the regime and working rules applicable to detention facilities for aliens managed by the Aliens Bureau, approved in August 2002, provides for a three-person Commission, with a permanent secretariat, mandated to enter the detention centres to receive complaints concerning the application of the Royal Decree. The Decree Law envisages that the Commission – presided over by a magistrate or former magistrate - would also include a lawyer or law professor and a member of the Ministry of Interior (excluding members of the Aliens Bureau). However, the Commission's remit appears to exclude the possibility of it receiving complaints concerning treatment during deportation operations. The enabling legislation to allow the Commission to come into operation was promulgated in September 2002 but the Minister of Interior stated in March 2003 that the appeal for candidates to serve on the Commission had so far been unsuccessful.

AI recommends that the present procedures for complaints concerning ill-treatment during deportation operations be reviewed, with the aim of ensuring that complainants have recourse to at least one accessible, effective and impartial channel of complaint, in order to ensure full application of Article 13 of the UN Convention against Torture.

PARMANANDA SAPKOTA

Parmananda Sapkota, from Nepal, arrived in Belgium on 19 December 2001 and applied for asylum. His application was rejected on 27 June 2002 and he entered an appeal. However, while awaiting the outcome of appeal proceedings, he was arrested during a routine police control and placed in Merksplas detention centre for unauthorized immigrants.

He reported that, on a first attempt to deport him from Belgium on 3 January 2003 he was taken to the airport, asked by police officers if he was willing to return to Nepal and, when he replied negatively, was returned to the detention centre without incident.

He alleged that on a second attempt to deport him on 26 January 2003 he was taken from Merksplas detention centre to the airport and again asked by police if he was willing to depart for Nepal and again replied negatively. He said he was put in a locked room which contained other people. He asked the police if he could have access to a lavatory but was told he would have to wait until he reached Bangkok. The police then informed him that they would be taking him by force to Bangkok, with Nepal as the final destination, and asked him to accompany them into the next room. In a signed statement received by AI Parmananda Sapkota described what ensued as follows:

The police asked me: "Do you want to go back?" "No," I said. "Then we will force you." "They will kill me there. I prefer to stay in the camp." At the airport they took me to a room where I opened up my clothes. They started to hit me while I was naked. As I refused to put on my clothes, they did it by force and they put handcuffs on the back, and they tied also my legs. "If you want to go, you can go freely." "I don't want to go." Then they hit me in the face. Then I started to cry, for the first time in my life: "I don't want to go, I don't want to go." I was put in a van, with four or five policemen. I continued to cry and to weep but they didn't listen. They brought me to an entrance near the cockpit. I continued to cry: I don't want to go like this. A lady in the plane, I think an air hostess, called the policemen and said that they couldn't take me on the plane. So the police brought me back to the van, three of them threw me inside and continued to hit me. "Why do you make this comedy?" "Why do you hit me?" "Don't cry. Next time we send you like a salami back to Nepal." From the police van they took me to a closed room. Again I was hit in the face. After 15 minutes a doctor came and gave me medicine. Then they took me back to the camp. I arrived at seven o'clock in the evening. They put me into the cachot until next afternoon at three o'clock, I think in order not to show my wounds to the others. Next day I saw my social assistant. I asked her: "Why do the police torture me like a criminal, like a terrorist?" She replied: "If you start to fight with the police, they hit you back." "How could I fight with them? I was tied up." "I don't believe what you are saying." "You can see my wounds." "I don't want to see them."

Parmananda Sapkota said that a month later he had difficulty in bending both his thumbs and that his hands were still swollen as a result of officers securing his handcuffs tightly behind his back, then throwing him onto the floor on his back and pressing down on his body. He had haematoma on the left side of his ribcage, on his right thigh and under his left eye -- the last incurred when the police hit him in the face when he was still handcuffed and manacled, after taking him off the plane. He said he also suffered an injury to the back of his head, incurred when he was thrown "like a stone" into the police van.

He said that, following the deportation attempt on 26 January 2003 he was visited by a doctor at the airport who gave him some medicine -- apparently painkilling medication -- and told him his injuries were not too serious. He claimed that, following his return to the detention centre he was, as indicated above, put in an isolation cell (*cachot*) until around 3pm on 27 January, and asked to see the doctor attached to the centre. He stated that the doctor did not visit him until 28 January 2003 and repeated what the doctor at the airport had stated.

An individual who saw and spoke to Parmananda Sapkota in February 2003, a few weeks after the deportation attempt observed that his face was swollen near the left eye where he claimed to have been struck by the police; his hands were still swollen; his wrists still bore faint traces of where the handcuffs had been secured and that during the conversation he was visibly trembling.

Parmananda Sapkota was deported to Nepal on 13 March 2003, without having lodged any formal complaint with the Belgian authorities about his treatment.

Investigations

In AI's experience, where formal complaints are made, whether relating to alleged ill-treatment in initial police custody or in the context of deportation operations, judicial and internal -- administrative -- police inquiries are invariably launched.

However, obstacles to successful investigations can begin with the failure of many police officers to identify themselves to people in their custody.

Investigators also face a tendency by police officers to close ranks and shield other officers. Corporate solidarity exists in many professions and has many positive aspects. However, a misguided sense of solidarity sometimes leads members of a profession to close ranks when a colleague is exposed to what may be justified public criticism. In situations where there are often no independent witnesses it can be difficult to obtain sufficient evidence to convict unless police witnesses themselves come forward to identify the perpetrators of ill-treatment.

Thoroughness and impartiality are also undermined when investigators fail to ensure that the alleged victim and witnesses are questioned and available for questioning. In a number of cases known to AI individuals making complaints of ill-treatment relating to failed deportation operations, as well as potential witnesses, have been deported or ordered to leave the country, while the judicial investigation is still barely under way, and before either the victim or witnesses have been questioned about the allegations. (See also – the case of Rafik Miloudi – *page 17*, the case of Blandine Kaniki, described in *Belgium: Correspondence with the government concerning the alleged ill-treatment of detained asylum-seekers* (AI Index: EUR 14/01/99), and see successive editions of *Amnesty International Concerns in Europe* [as listed in *Appendix I*], for the cases of Matthew Selu, Ibrahim Bah and Mohamed Konteh, amongst others).

AI has also noted a general tendency to give greater credibility to the police version of events in administrative and judicial investigations.

Criminal investigations into alleged ill-treatment by police officers appear rarely carried out and concluded promptly. Unduly protracted proceedings can call into question the impartiality of some investigations. In a number of instances a lack of resources in the justice system and resulting backlogs in the courts appears to have been a contributory factor.

AI is aware that some law enforcement officers have indeed been convicted by the Belgian courts for acts of ill-treatment but convictions, where reached, result frequently, although not always, in nominal punishments and rarely result in custodial sentences. AI believes that impunity or effective impunity is a problem.

AI believes that increasing the resources available to the criminal justice system could help to shorten unreasonably protracted judicial proceedings

An effective measure in helping to prevent ill-treatment is for senior officers to deliver the clear message to their subordinates that torture or ill-treatment of people deprived of their liberty is unacceptable and will be the subject of severe sanctions.

AI calls on all governments to ensure that those reasonably suspected of being responsible for torture and ill-treatment of detainees are brought to justice in the course of fair proceedings.

RACHID N[65]

Domestic NGOS – namely the Movement against racism, anti-Semitism and xenophobia (MRAX - *Mouvement contre le racisme, l'anti-sémitisme et la xénophobie*) and the Belgian Human Rights League *(Ligue belge des droits de l'homme*) have made regular interventions in the following case and constituted themselves civil parties to the proceedings in the hope of obtaining justice and redress for the victim.

Rachid N, a Tunisian national, lodged a criminal complaint following his release from the custody of gendarmes in Brussels in July 1993. He said he had been ordered to strip naked in the presence of 10 gendarmes and assaulted and insulted when he tried to refuse. A medical certificate issued within hours of his release from custody the next day recorded multiple bruises.

The proceedings suffered repeated setbacks and delays – it appears, for example, that Rachid N was not given an opportunity to identify his alleged assailants until a face to face meeting (*confrontation*) took place in February 1996.

It was not until October 2002, over *nine* years after the incidents in question that the trial of one gendarme charged with assaulting and racially insulting Rachid N opened before a Brussels court. In December the court acquitted the officer. While it was not disputed that Rachid N had suffered injuries in detention, the court concluded that there was insufficient evidence that the accused officer was the actual perpetrator.

In its decision the court commented that – although it appeared "incontestable" that Rashid N was searched and assaulted in an area of the gendarmerie office through which numerous gendarmes passed for various reasons, "not one of these made a coherent statement about the facts which caused the injuries which have been established". The court stated such behaviour "by representatives of public order charged with maintaining respect for the law" was "unacceptable in a state of law."

There appears to have been no attempt by the authorities to bring to justice any senior officer in overall charge of the conduct of the gendarmes in their offices on the night in question.

[65] Full name known to AI.

AI is not alone in reaching the conclusions indicated above about the complaints and investigation process. In recent years both IGOs and relevant domestic institutions have expressed serious concern in such areas.

As previously indicated (see - *Some significant findings by inter-governmental bodies*), in October 1998 the Human Rights Committee expressed regret at "the lack of transparency in the conduct of investigations on the part of police authorities and the difficulty in obtaining access to this information."

ECRI in its second report on Belgium issued in March 2000 stressed "the need to provide the means for a better response on the part of the authorities (judicial and non-judicial) to complaints of racist behaviour" by law enforcement officials.

It indicated that the number of formally registered complaints did not reflect the true extent of the problem "since many members of minority groups are reluctant to resort to a formal complaint, due to lack of confidence in the possibility of redress or fear of further reprisals" and that when complaints were filed there was "evidence to suggest that ... the response of the judicial authorities is unsatisfactory."

ECRI said that "[t]he police service appears reluctant to acknowledge any incidence of racist behaviour on the part of its officers. In addition, a serious lack of transparency is reported, as complainants are very rarely informed by the police authorities of the results of the procedures." It concluded that "[t]his situation contributes to the impression that members of police forces enjoy virtual impunity".

The Vermeersch Commission in its January 1999[66] report recommended that infringements of directives on coercive measures should be dealt with speedily and appropriately sanctioned. The commission expressed concern about a lack of transparency and vigour hitherto displayed by the relevant law enforcement agencies in their investigation of, and reaction to complaints of alleged ill-treatment by law enforcement officers, not only in the specific context of allegations arising out of forcible deportations, but also in the general context of their work. The commission indicated concern also about a frequent failure to pursue guilty officers via disciplinary or judicial action and to impose adequate sanctions.

Committee P over the years of its existence has often expressed concern at a failure to investigate and sanction law enforcement officers indulging in unprovoked physical assault and use of excessive force. In its fourth annual report, submitted to

[66] *Rapport Final – Commission chargée de l'évaluation des instructions en matière d'éloignement – 21 janvier 1999.*

parliament in 1998, the committee stated that such behaviour was "very rarely" punished by either the administrative or judicial authorities, that officers commonly justified use of violence by accusing alleged victims of resisting arrest and that the internal hierarchy was seemingly satisfied with such explanations. In its annual report covering 2000, submitted to parliament in March 2001, the Committee said complaints relating to physical assault, threats and verbal abuse still rarely resulted in criminal sanctions.

As the CPT commented in its report on its third visit to Belgium in 2001, one of the most effective ways of preventing ill-treatment lies in the diligent examination of all the complaints lodged against law enforcement officers and when necessary, the imposition of appropriate sanctions.

"The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity."[67]

AI calls on all governments to ensure prompt, thorough, effective and impartial investigations, in line with best practice for such investigations, when there is reasonable ground to believe that torture or ill-treatment has occurred, even in no complaint has been made. It also advocates examination of appropriate means to prevent people from being dissuaded from making complaints and ensuring that complainants and witnesses receive protection against any form of intimidation or harassment.

[67] Extract from 6th General Report [CPT/Inf (96) 21].

AI key recommendations

AI recommends that the authorities as a matter of priority:

- ensure that the right of people deprived of their liberty to have access to a lawyer of their choice, including the right to talk to the lawyer in private, from the outset of their detention and during questioning, is guaranteed in law and practice;

- ensure that the right of people deprived of their liberty to have access to a doctor, including one of their own choice, from the outset of their detention is guaranteed in law and practice;

- ensure that the right of people deprived of their liberty to have relatives and third party notified from the outset of their detention is guaranteed in law and practice;

- ensure that all people deprived of their liberty are informed, in a language they understand, of their rights, including the right to lodge complaints about ill-treatment;

- ensure that information about complaints procedures is displayed prominently in all police stations, in a variety of languages;

- ensure progressive implementation of the principles contained in the European Code of Police Ethics, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and ensure that detention procedures and practices, including those relating to the provision of food and drink and access to toilets, conform to international standards for the treatment of persons deprived of their liberty, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

- consider the introduction of audio-visual recording of police interrogations and video-surveillance of access corridors to police cells;

- introduce strict guidelines on body searches carried out by police officers on people deprived of their liberty and ensure that violations of the guidelines are sanctioned;

- review existing guidelines and regulations governing the use of police equipment designed to disable or incapacitate temporarily and, where absent, introduce strict guidelines and limitations on their use, together with clear monitoring procedures;

- take further and vigorous measures to address racist and discriminatory attitudes and behaviour among police officers;

- ensure that senior police officers deliver the clear message to their subordinates that torture or ill-treatment of people deprived of their liberty is unacceptable and will be the subject of severe sanctions and that the use of force should be limited to what is proportionate and strictly necessary;

- ensure the initiation of prompt, thorough, effective and impartial investigations, in line with best practice for such investigations, when there is reasonable ground to believe that torture or ill-treatment has occurred, even if no complaint has been made. Examine appropriate means to prevent people from being dissuaded from making complaints and ensure that complainants and witnesses receive protection against any form of intimidation or harassment;

- review the present procedures for complaints concerning ill-treatment during deportation operations with a view to ensuring complainants have recourse to at least one accessible, effective and impartial channel of complaint;

- ensure that those reasonably suspected of being responsible for torture and ill-treatment of detainees are brought to justice in the course of fair proceedings;

- make increased resources available to the criminal justice system to shorten unreasonably protracted judicial proceedings;

- implement fully the recommendations made by the Council of Europe's Committee for the Prevention of Torture and the Commissioner for Human Rights regarding detention conditions for unauthorized immigrants and asylum-seekers and their treatment during forcible deportation operations, including recommendations on methods of restraint;.

- ensure that an independent inspection body is mandated to make regular, unannounced and unrestricted visits to airport detention cells and airport transit zones, and the INADS centre at the national airport;

- ensure that unaccompanied children arriving in Belgium enjoy all the rights guaranteed under the UN Convention on the Rights of the Child and other international standards on the care and protection of unaccompanied children. Implement fully the recommendations made by the (UN) Committee on the Rights of the Child in 2002, including the urgent introduction, in practice, of an independent guardianship service, and of improved and adequate arrangements for the safety and protection of unaccompanied children on return to the receiving country.

APPENDIX 1

List of key public documents on Belgium published by Amnesty International between September 1998 and February 2003

- Media Advisory – *Death of Nigerian asylum-seeker, Semira Adamu: AI expresses concern to Belgium authorities*, AI Index: EUR 14/01/98, 25 September 1998;
- Public Document – *AI Concerns in Europe: July –December 1998: Belgium*, AI Index: EUR 01/01/99 [Dangerous restraint techniques and excessive force during forcible deportations; annual report of the Permanent Police Monitoring Committee; alleged human rights violations by members of the armed forces in Somalia; UN Human Rights Committee examines Belgium's record; ratification of international treaties on the death penalty];
- Public Document – *Amnesty International Report 1998*: Chapter on Belgium, AI Index: POL 10/01/98;
- Public Document – *Belgium: Correspondence with the government concerning the alleged ill-treatment of detained asylum-seekers*, AI Index: EUR 14/01/99, June 1999;
- Public Document – *AI Concerns in Europe: January – June 1999: Belgium*, AI Index: EUR 01/02/99 [Alleged ill-treatment of detained asylum-seekers];
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