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## France

### The search for justice

The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment



The father of Riad Hamlaoui (centre) surrounded by protesting residents in Lille. His son was shot dead by police in April 2000. © Hervé Robillard

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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6 April 2005

Summary

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*The Search for Justice* refers to about 30 cases of young people who were subjected, or allegedly subjected, to serious human rights violations by police officers between 1991 and 2005. Such violations included unlawful killings, excessive use of force, torture or ill-treatment and racist abuse. Many of their complaints have only relatively recently been concluded or are still going through the judicial process. Eighteen cases are described in detail in this report. All involve persons of foreign origin.

Most of the complaints of police ill-treatment arose out of police identity checks which degenerated into violence and resulted, on the one hand, in charges of ill-treatment against the police, countered on the other hand by charges against the complainants of insulting or resisting a public official. Many of those who brought complaints against the police had been subjected to kicks, punches or baton beatings which resulted in broken noses, damaged eyes or other injuries. Many also claimed that they were racially insulted and made to suffer degrading and undignified treatment at the hands of the police.

After investigating cases of serious human rights violations for many years, Amnesty International has concluded that there is a pattern of effective impunity with regard to police officers in France. Factors which contribute to creating a climate of such impunity include gaps or flaws in legislation, such as the absence of a full definition of torture in the French Penal Code, or provisions denying detainees access to lawyers from the outset of police custody. Other factors include failures in the implementation of the law, such as the failure, or reluctance, of police, prosecutors and courts to thoroughly investigate and prosecute human rights violations involving police officers. Amnesty International is also concerned about delays in judicial proceedings; a “two-speed” justice which prosecutes complaints by police officers far more quickly than complaints against police officers; and a sentencing practice in which many sentences have not been commensurate with the gravity of the crime. Amnesty International’s concerns in these areas are illustrated by individual examples which, in the organization’s opinion, have not been dealt with by internal complaints mechanisms, or by the courts, with the thoroughness, promptness or impartiality which national and international standards require.

As the number of complaints of ill-treatment by police officers continues to rise, with a steep increase reported for 2004, Amnesty International sets out a wide range of recommendations which it believes would, if implemented, eradicate the patterns of effective impunity which plague French institutions. Amnesty International advocates the establishment of a fully resourced independent agency to investigate all allegations of serious

human rights violations by law enforcement officers, which would ultimately replace the investigative functions of existing internal police complaints mechanisms in such cases. It also urges the French authorities to ensure that all detainees are granted access to lawyers from the outset of police custody; that all police interrogations are video-recorded, and that the procedures and guidelines for identity checks are closely reviewed to ensure that they are not carried out in a discriminatory manner.

Racism is a major element in many of the cases described by Amnesty International's report. Almost all the cases which came to the organization's attention involved persons of non-European ethnic origin, who were most commonly of North African or sub-Saharan extraction. Amnesty International has detected a pattern whereby police misconduct, including ill-treatment, occurs predominantly with regard to individuals perceived to be foreign, and points to an official perception that such persons may be a greater security risk, or more liable to commit offences, than white or non-Muslim French nationals or other Europeans. Discrimination can reinforce impunity for police officers, responsible for the ill-treatment of such people, who act in the knowledge that their behaviour will not be investigated thoroughly, if indeed at all. One of the consequences of this climate of impunity is that people whose rights have been violated are silenced, either because they do not feel able to report the abuse or because police and prosecutors choose not to receive or register complaints or do not follow them up. *The Search for Justice* urges the French government, among other things, to enforce and monitor more strictly the implementation of the existing legislation prohibiting racist abuse and to ensure proper implementation of the provisions on racist motivation as an aggravating circumstance in specified offences.

This report summarizes a 80-page document (33,044 words), *France: The Search for Justice* (AI Index: 21/001/2005) issued by Amnesty International in April 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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# FRANCE

## THE SEARCH FOR JUSTICE

### **The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment**

#### **Introduction**

“I really did think justice would be done,” a victim of police violence told Amnesty International, after his judicial complaint was set aside by the public prosecutor.

The victim (whose case is one of those described in this report) claimed that in February 2002, he had intervened in an incident that he witnessed on his way home to celebrate the Eid al-Adha, a Muslim festival. As a result of his intervention, he was physically assaulted and his nose was broken by police officers. He also claimed that he was racially abused and humiliated by them, while up to 15 others stood by, passively watching.

The attack was witnessed by a number of people whose testimony was given to Amnesty International representatives. It appears, however, that despite the fact that the victim’s account was corroborated by many witnesses and by medical reports attesting to a number of injuries, the complaint was not pursued by the public prosecutor, who concluded there was no case to answer (*classement sans suite*). The complainant was, therefore, obliged to consider either dropping the case or pursuing it privately.

This case is not atypical of the way in which the criminal justice system in France has failed to provide victims of human rights violations with the right to redress and to obtain reparations, including compensation. For many years Amnesty International has been documenting the authorities’ response to allegations of torture, ill-treatment, and excessive use of force, including possible unlawful killings, by law enforcement officials.<sup>1</sup> The length of time which the organization has been monitoring such cases

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<sup>1</sup> In 1994 Amnesty International published a report, *France: Shootings, killings and alleged ill-treatment by law enforcement officers* (AI Index: EUR 21/02/94), which examined various shootings, killings and cases of ill-treatment or alleged ill-treatment of detainees by law enforcement officers. This was followed, in 1998, by a submission to the UN Committee against Torture, subsequently published.

has enabled it to follow many of these throughout the entire, and often lengthy, judicial process and thus to assess the effectiveness of the different stages within the system. The vast majority of cases suffer the same fate: internal police investigations, coupled with the discretionary powers of the prosecution, have resulted in many ineffective prosecutions of perpetrators of human rights violations. Many cases have been filed away before coming to court, even when there was credible evidence that a violation had occurred. Even when such cases have come to court, convictions have been relatively rare, or, when they occurred, sentences have mainly been nominal. As the French newspaper *Le Monde* has pointed out: "Justice is at a special tariff for police officers: they are never seriously punished."<sup>2</sup>

Amnesty International has concluded that the government's continued failure to address these violations has led to a climate of effective impunity for law enforcement officials. The result is a "two-speed justice" -- one for cases brought by the police, another for cases brought by alleged victims of police violence. This contributes to the generation of a sense of impunity and a lack of public confidence that law enforcement officials operate under the rule of law and are held accountable for their actions.

One vivid illustration of Amnesty International's concerns about effective impunity is the case of **Ahmed Selmouni** (5.2.). Ruling on this case in July 1999, the European Court of Human Rights found that France had violated the prohibition against torture as well as the right to fair trial within a reasonable time. The case only reached the French courts several years after the violations had been committed, and under pressure of the European Court investigation. Even then, attempts by a French court to sentence one police officer to an "exemplary" prison term, owing to the gravity of the case, failed, when police unions expressed their anger in the streets. Additionally, the swiftly-held appeal by those convicted, at which the public prosecutor appealed on behalf of the "honour" of the perpetrators, resulted in the reduction of the seriousness of the offences to which they were convicted and enabled the officers to continue in their police careers.

Almost the entirety of cases which have come to Amnesty International's attention have involved persons of non-European ethnic origin and are often of North African or sub-Saharan extraction, or from France's overseas departments or territories (DOM-TOMs). Although this is not in itself *prima facie* evidence of

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This submission, *France: Excessive force: A summary of Amnesty International's concerns about shootings and ill-treatment* (AI Index: EUR 21/05/98), concluded that the concerns remained substantially the same as in 1994. Since then Amnesty International has continued to investigate, report on and campaign on such cases.

<sup>2</sup> *Le Monde*, "La France des 'bavures'", 18 April 2000

institutionalized racism within law enforcement agencies,<sup>3</sup> the organization has detected a pattern, whereby reckless conduct has taken place, or “a series of blunders” – to use a phrase common in the courts to justify light or nominal sentences - have been predominantly made against such persons. This pattern points to an official perception that such persons may be a greater security risk, or more liable to commit offences, than white or non-Muslim French nationals or other Europeans.

Moreover, Amnesty International has noted a number of cases in which racial abuse has reportedly accompanied police violence. Racist police attitudes mean that certain people are particularly vulnerable to discrimination and ill-treatment at the hands of the police. Discrimination can also reinforce impunity for police officers responsible for ill-treatment of people who belong, or are perceived to belong, to a marginalized social group. Officers are often able to act, secure in the knowledge that their behaviour will not be investigated thoroughly, or indeed at all. One of the consequences of this climate of impunity is that people whose rights have been violated are silenced, either because they do not feel able to report the abuse or because police and prosecutors choose not to receive or register complaints or do not follow them up.

The lack of public confidence in even-handed policing is seen particularly in the "sensitive areas" ("*quartiers sensibles*") from which many of the victims of police ill-treatment and excessive use of force originate. Such tensions between the police and these communities have also been exacerbated when cases brought by alleged victims of police violence, or their families, eventually came to court, and resulted in highly controversial acquittals of, or token sentences, for police officers. The courtrooms, on these occasions, have been packed with friends and relatives on one side, and with police officers on the other, and scenes of violence within the court precinct have not been unknown, reinforcing the sense of "us against them" on both sides.

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<sup>3</sup> There is no centralized national statistical data on the number of complaints lodged, with a breakdown of how many were lodged by people of non-French origin or ethnic minorities.



When using the term “effective impunity” Amnesty International is not necessarily referring to a situation of total impunity, whereby perpetrators of human rights violations are totally exempt from punishment, but rather to a number of different factors which contribute to a widespread failure of the judicial system to effectively investigate, prosecute and punish human rights violations in matters of law enforcement.

The factors which contribute to effective impunity and which the cases in this report are intended to illustrate, include the following:

- lack of prompt legal access in police stations for an increasing number of persons detained for a wide range of alleged offences or crimes under the heading of “organized crime” or for those suspected of “terrorism”, and continuing ban on video-recording of the questioning of adult prisoners;
- failure to fully respect the rights of detainees held in police custody, such as failure to provide medical help or allow a detainee to make contact with a close relative, friend or employer;
- difficulty of registering a complaint against a police officer at police stations and frequent use of counter-complaints by police officers to intimidate those who wish to make a complaint against an officer;
- a distorted *esprit de corps* or *effet de corps* (spirit of police solidarity) that encourages officers to cover up for colleagues or subordinates and makes the identification of officers impossible;
- failure by the internal police complaints mechanisms to investigate allegations of ill-treatment, disputed shootings or deaths in custody promptly, thoroughly and impartially;
- failure of the government to establish an effective independent mechanism to investigate serious human rights violations by law enforcement officials;
- failure of the criminal justice system to address adequately allegations of racist abuse or discriminatory conduct by law enforcement officials;
- failure of the prosecution to ensure effective prosecutions of law enforcement officers who are accused of serious human rights violations;

- questionable interpretations of the notions of “legitimate defence” (“*défense légitime*”) or “state of necessity” (“*état de nécessité*”);
- sentences which do not appear to reflect the gravity of the crime committed;
- a lack of experience or training, not infrequently used by judges as a reason to mete out lenient penalties or refrain from any sanctions;
- structural issues, such as the lack of adequate appeal mechanisms – a situation which is being gradually remedied in respect of the court of assizes, but remains inadequate;
- failure of courts, in some cases, to publish reasons for their decisions. It should be noted that the assize courts are not obliged to do this, either as regards convictions or acquittals, on the grounds that it is the lay jury that makes the decision.

This report gives detailed descriptions of some of the more serious cases of effective impunity, which the organization has been able to follow through every stage of the judicial odyssey from beginning to end. Although concluded, such cases illustrate concerns which have not been addressed. The report also refers to a number of others which remain of concern to Amnesty International. Many of these cases, particularly those relating to ill-treatment, are recent in occurrence. Other cases, while dating back over several years, are still current. The report concludes with a series of recommendations to the authorities, which, if implemented, would eradicate the patterns of effective impunity which continue to plague French institutions.

## 1. The French legal system

The section below gives a brief summary of the French legal system in order to set the background against which Amnesty International's concerns arise.

Under France's "monist" legal system international treaties or agreements that have been ratified or approved automatically take precedence over national law (see Article 55 of the French Constitution). Thus, for example, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), or the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture), must be given priority by the French government and legislature and by the judges, and have equal and unrestrictive effect in all the overseas territories and *départements* of France.

France has a double level of jurisdiction and a supreme jurisdiction. This means that a case already ruled on by a first instance (trials level) court may be appealed to a higher court (appeals level). Above the appeal court, a judge of the Court of Cassation (*Cour de Cassation*) may rule on the legality of lower court decisions. No appeals against rulings of the Court of Cassation are allowed within the national legal system. Anyone who considers that their fundamental rights, as defined in the ECHR, have been violated, and who have exhausted domestic legal remedies, may institute proceedings, within six months, before the European Court of Human Rights. In some cases the European Court will examine a case even where domestic remedies have not been exhausted, but have been lengthy or inadequate.<sup>4</sup>

There are different kinds of criminal court, depending on the nature of the case. Petty offences, or contraventions, are tried by the police courts (*tribunaux de police*). More serious offences (*délits*) are tried by the correctional courts. The most serious category of offences (*crimes*) are tried by the assize courts (*cours d'assises*). There is a right of appeal against the decision of all these courts, although in the case of the assize courts this is only a recent introduction, and decisions to acquit can only be appealed by the prosecutors attached to the appeal court (*avocats généraux*).

Complaints about abuse, ill-treatment or excessive force by state agents can be submitted in several different ways, through the public prosecutor, the investigating judge, the police complaints bodies or the police oversight body, the *Commission nationale de déontologie de la sécurité* (CNDS). None of these procedures is entirely satisfactory.

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<sup>4</sup> See, for example, case of Ahmed Selmouni, under 5.2.

## 1.1. The judiciary

The French judiciary comprises the public prosecutors and the bench judges (including the independent examining or investigating magistrates – *juges d'instruction* - and the judges that supervise detention - *juges des libertés et de la détention*<sup>5</sup>). The public prosecutors, who form part of the *ministère public*, are responsible to the Minister of Justice. The prosecutors have different titles, according to the role or court to which they are attached. The general term often referred to for the prosecution as a whole is the *parquet*. By virtue of the principle of discretionary prosecution, the public prosecutors decide how to classify the case. When they decide to pursue a case they can either send defendants to the correctional courts or police courts (if the matter is a straightforward one and ready to be tried) or request that it be followed by an investigating judge (procedure of *ouverture d'une information*) in more complex cases which require further investigation. They can also close a complaint as having no legal case to answer (*classement sans suite*).

Many complaints of police ill-treatment are closed in this way, either because the prosecutor deems the case inappropriate, or feels it is poorly substantiated or, in many instances, because, in their opinion, there is a lack of evidence which makes a prosecution difficult to sustain. Victims or victims' relatives can approach the investigating judge to join proceedings as a civil party (for *crimes*) or, in the case of *contraventions* or *délits*, by means of *citation directe*. Joining proceedings as a civil party allows for access to information about the case which they may not otherwise obtain, owing to the secrecy of the instruction, and to take part in the proceedings. However, this can be costly. The European Court of Human Rights recently criticized the French authorities for failing to conduct an effective official inquiry into the death of a detained person. The Court held that an effective inquiry into a death must automatically keep families of victims informed of the proceedings without these having to join the process as a civil party, as the French authorities had argued.<sup>6</sup>

According to recent estimates, 80 per cent of complaints brought by civil parties to the proceedings end with a decision to dismiss the case, on the grounds that there is no case to answer (order of *non-lieu*).<sup>7</sup>

In September 2004 the president of the Court of Paris suggested imposing a limit on the ability of civil parties to join proceedings with their own complaints (and

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<sup>5</sup> The *juge des libertés et de la détention*, created by Law No. 2000-516 of 15 June 2000, has taken over the traditional responsibilities of the investigating judge in decisions on provisional detention, extension of administrative detention and extension of police custody in certain areas, such as drug trafficking.

<sup>6</sup> *Case of Slimani v. France* (application no. 57671/00), judgment of 27 July 2004 (see under Section 4 of this report).

<sup>7</sup> Cited in *Le Monde*, 9 September 2004.

lawyers) and that a case should be referred to the state prosecutor (*procureur de la République*) before an investigating judge can open an inquiry. As regards the cases of concern to Amnesty International, where the victims or families almost invariably become a civil party to proceedings, precisely because of the failure of the prosecutor to pursue the case effectively, there is a danger that a move of this kind would contribute to the problem of effective impunity.

## 1.2. Police and police mechanisms

French law enforcement has traditionally been divided between a national civilian police force, placed under the control of the Minister of the Interior, and a *gendarmerie nationale*, placed under the responsibility of the Minister of Defence and seen as an integral part of the military, alongside the army, navy and air force. Gendarmes may act in a civilian as well as a military capacity. The national police have tended to operate mainly in the cities and urban conglomerations; the gendarmes, (who descend from *la Maréchaussée*, created as a military force in the sixteenth century), are distributed all over the territory of France, but are concentrated mainly in rural areas, as well as in recently urbanized zones. Their charter, laid down by the law of 28 *germinal* of Year VI (17 April 1798), is still in force.

The institution of the National Police was created by a law of 9 July 1966. It includes a number of specialized services, such as the PAF (*Police aux frontières*) which operates in border areas, including airports; the UNESI (National Escort, Support and Intervention Unit), which is involved in special escort operations such as deportations; and special operational units or “anti-terrorist” units. One specialist unit worthy of mention is the BAC (*Brigades Anti-Criminalité*), which is deployed against “petty and medium-sized delinquency” (“*la petite et la moyenne délinquance*”). The BAC has often come into conflict with young people in the “sensitive” areas of the *cités*, the city suburbs or urban conglomerations of France, acquiring a controversial reputation from the 1980s onwards. Another specialist intervention and anti-riot squad is the CRS (*Compagnies républicaines de sécurité*). The divisions of the judicial police, grouped under the *Direction Régionale de la Police Judiciaire* (DRPJ), act as an ancillary to the judicial authority, and are also involved in the prevention and repression of organized crime, such as trafficking in drugs or people, fraud and “terrorism”. The responsibilities of the judicial police have increased in recent years to include urban violence.

The French Penal Code envisages sanctions for police officers who are convicted of carrying out illegal acts, and police forces have their own deontological codes, or codes of conduct, designed to uphold ethical standards of policing, and specifically to uphold the French Declaration of the Rights of Man, the French Constitution and the international laws and conventions. Among the main articles of

the code of conduct of the National Police (set down in a decree of 18 March 1986), which is given to every police officer, are:

- Article 2: the police must carry out their missions with regard to respect for human rights, the French Constitution and international standards;
- Article 6: if a police officer violates the code of conduct he or she will be subject to disciplinary sanction;
- Article 7: the police officer must show “absolute respect” for persons, whatever their nationality or origin;
- Article 10: all persons arrested [by the police] are placed under the responsibility of the police and must not be submitted to any kind of violence or degrading treatment.

Criminal and disciplinary investigations into police conduct are carried out by a specialist unit within the National Police force, the *Inspection Générale de la Police Nationale* (IGPN), created in October 1986. This covers the whole of French territory apart from Paris, where the corresponding body is the *Inspection générale des services* (IGS). Complaints may be made by individuals directly to police officers. The *Gendarmerie nationale* has a similar internal inspection unit called the *Inspection de la Gendarmerie Nationale*. Internal police inquiries can take several months. The results of the police investigations are then passed to the public prosecutor, who decides whether action needs to be taken in the form of a complaint to an investigating judge.

As long ago as 1997 the UN Human Rights Committee, in its concluding observations on France’s third periodic report regarding its implementation of the International Covenant on Civil and Political Rights (ICCPR), stated that it was “seriously concerned” at the number and grave nature of the allegations it had received of ill-treatment by law enforcement officials of detainees and other persons “who come into conflictual contact with them”, and at the fact that “in most cases there is little, if any, investigation of complaints of such ill-treatment by the internal administration of the police and the *gendarmerie nationale*, resulting in virtual impunity”.<sup>8</sup>

By October 2004 the failure by the IGS to effectively and impartially fulfill its role as “police of the police” remained a problem and the IGS was criticized by the president of the CNDS (see below) for its inertia in dealing with cases brought to its attention. In making his criticism the president, Pierre Truche, referred specifically to the case of a police attack on a Kabyle café in Paris on New Year’s Eve 2003-04, in which a peaceful celebration was disrupted by tear gas and after which one person died (see sections 2 and 5.8.).

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<sup>8</sup> Concluding observations of the Human Rights Committee: France, UN Doc. CCPR/C/79/Add.80 (hereinafter: HRC concluding observations), 4 August 1997, para 16.

### 1.2.3. Independent oversight mechanisms

An independent police and prison oversight body, the *Commission nationale de déontologie de la sécurité* (National Commission of Deontology in Security, CNDS) was set up by a law of 6 June 2000, in the wake of a sequence of police shootings, and began to function on 14 January 2001.<sup>9</sup> It has powers to investigate cases of alleged abuses by police officers and others and to take statements from victims, witnesses and those accused of abuses, including police officers. It can take no disciplinary or judicial action of its own, but is empowered to make recommendations and is required to inform the public prosecutor of acts which it deems constitute a criminal offence.

Complaints may be lodged with the CNDS by individual citizens who have suffered from or witnessed unethical acts by public security officials. However, they can only forward a complaint to the CNDS indirectly, through the Prime Minister, the Ombudsperson for Minors, a senator or member of the National Assembly.

Amnesty International is concerned that individuals cannot submit a complaint directly to the CNDS and that the current requirement to submit a case through a parliamentary intermediary can lead to considerable delays in investigation of the complaint. The CNDS publishes an annual report and also publishes specific reports on certain cases.<sup>10</sup>

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<sup>9</sup> Loi 2000-494 du 6 juin 2000

<sup>10</sup> It should be noted that, in its third report on France, published in February 2005, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe “strongly” encouraged “the extension of the powers of the national commission on the ethics of public security and the facilitation of access to it by members of the public. It invites this authority to pay close attention to any elements of racism or racial discrimination that may be present in some of the cases submitted to it.”

## 2. Amnesty International's concerns about effective impunity in France

### 2.1. Increase in complaints of police violence, including racism

Amnesty International has worked for many years on cases of police killings, deaths in custody and cases of torture and ill-treatment in France. In most cases drawn to its attention the victim is young, male and of North African or sub-Saharan origin. In recent years the number of reckless, fatal shootings by police officers or gendarmes, in disputed circumstances, has – fortunately – declined. However, the number of complaints about ill-treatment by police officers – often stemming from police identity checks that end in violence – has, on the contrary, risen. The increase in the number of complaints has not been accompanied by a recognition on the part of the authorities that they are being inadequately handled, and the French government has not so far introduced an effective independent mechanism to ensure that violations by police officers are investigated promptly, thoroughly, and impartially from the very beginning of the alleged incident.

A study <sup>11</sup> of the issue of racial discrimination in the French police force gives a classic description of the kind of case with which this report is concerned -- that of **Faudil Benllili**. In October 1999 Faudil Benllili, a youth outreach worker who worked at the town hall of La Courneuve, and a friend, "Mimoun", were driving a car, which bumped against a tram. The incident was slight, and the tram did not stop, but the two young men got out of the car to check for damage. Three CRS officers arrived. Suspecting the car might be stolen, they searched it "violently" and the key broke in the ignition lock, which seemed to confirm the officers' suspicions. At this point the police reportedly resorted to violence against the two young men themselves. Faudil Benllili and his companion were hit with baton blows which "rained" down on them, and Mimoun fell on his knees. Faudil Benllili protested that the police had no right to act like that and that he worked in the town hall. They were then reportedly racially abused (*"sale race de merde"* – dirty race of shit, etc.), and taken to the police station of La Courneuve. After four hours in police custody they were taken to hospital for medical treatment, then returned to the station for another 20 hours of police custody. During this time, it was alleged, old bitternesses linked to the Algerian war were raised by the officers. Owing to his injuries, Faudil Benllili was signed off work for six days. He was unable to lodge a complaint at the police station, where colleagues of the CRS officers worked; one of the officers told him that his

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<sup>11</sup> *"La sensibilisation aux discriminations dans la police,"* a study by GELD (groupe d'études et de lutte contre les discriminations) working group, 2002



complaint would not be transmitted to the prosecutor by the police, so there was no point in trying. He therefore lodged a complaint with the prosecutor, with the support of his employers. According to the report, the case was still pending in 2002, but legal documents were lost, and the medical information had also disappeared. In the meantime the police officers brought a counter-complaint of “incitement to resistance” (*“provocation à la rébellion”*).

Also in 2002 two associations, the *Syndicat de la Magistrature* (magistrates’ union) and the *Syndicat des avocats de France* (lawyers’ union), working with a major non-governmental organization (NGO), the *Ligue des Droits de l’Homme (LDH)*, carried out an inquiry which came to disturbing conclusions. The inquiry found that prosecutions brought by police of insulting officers or resisting arrest (*outrage ou rébellion*) had risen by 27.92 per cent between 1996 and 2000, and that allegations of police violence had also risen in number.

In May 2004 the CNDS published its annual report for 2003, which noted a steep rise in complaints of police abuse and violence. The CNDS investigated 70 complaints, compared to 40 and less in previous years, and urged major structural reforms in the police response. The trend was borne out by a rise, for the sixth consecutive year, of 9.10 per cent in complaints both to the IGS and to the *Inspection générale de la police nationale* (IGPN), which covers France as a whole, according to police figures. New police figures for 2004, published in February 2005, showed a large increase of 18.5 per cent in the number of complaints of police violence received by the IGS and IGPN, compared to 2003. This was accompanied by an increase in disciplinary measures taken against police officers. Over 80 per cent of complaints regarding police violence took place in the Paris area. Faced with this large increase in complaints, the Ministry of the Interior wrote to all police officers on 25 February to remind them of the need to use force proportionately and to combine rigour in applying the law with principles of humanity and the equal dignity of all. As regards the latter, the current president of the CNDS, Pierre Truche, a former president of the Court of Cassation, reportedly stated that he was struck by the “statistical frequency” of complaints involving people with foreign names, and this “statistical frequency” would have to be examined further in future reports.

In October 2004, in a specific report, he strongly criticized the “perverse racist aggression” involved by the storming of a Kabyle<sup>12</sup> café in Paris by 30 officers on the night of Saint-Sylvestre (31 December – 1 January 2004). An account of the case is given below (under 5.8.).

In December 2004 a report was published by a national commission, *Citoyens-Justice-Police*, consisting of the LDH, the two associations mentioned above, and another French NGO, the *Mouvement contre le Racisme et pour l’Amitié entre les*

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<sup>12</sup> An Amazigh (Berber) people

*Peuples* (MRAP), which deals with many cases of racist, or race-related violence.<sup>13</sup> The report showed that in 60 per cent of cases studied the victims were foreign nationals; the remaining 40 per cent were of French nationality, but, with only a few exceptions, their name or appearance implied a foreign origin.<sup>14</sup> MRAP had earlier also noticed a rise in incidents of such violence, especially in the context of police identity checks or in police custody, and the frequent use of the above-mentioned charges of *outrage* (either by gesture or word) or *rébellion*, often in the form of a counter-complaint against someone wishing to make their own.<sup>15</sup>

Amnesty International is concerned that police officers and gendarmes use this offence as a justification or excuse for identity checks which degenerate into violence, often as a result of their own aggressive or insulting conduct, as in the well-known case of **Hayat Khammal** at Ris-Orangis (5.6.).

The commission, *Citoyens-Justice-Police*, also referred in its report to the concern that despite the increased volume of work of the CNDS, its funding levels were falling. The commission also noted that the CNDS rarely referred cases to the prosecution services, and only one such case had resulted in disciplinary sanctions against an officer; and that in general its recommendations rarely produced an effect.

In its third report on France, published on 15 February 2005, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe also expressed concern about identity checks with a racial bias.<sup>16</sup> It noted that the complaints about discriminatory identity checks were persisting. ECRI was “especially concerned about information from NGOs to the effect that when someone lodges a complaint against a law enforcement official, the latter almost invariably retaliates with a charge of insulting an officer of the law or malicious accusation, which weakens the position of the civil plaintiff”.

ECRI also expressed doubt about the full effectiveness so far of certain laws introduced in France to combat racism and discrimination. In February 2003 the so-called “*Loi Lellouche*” had introduced an aggravating factor into sentencing policy on

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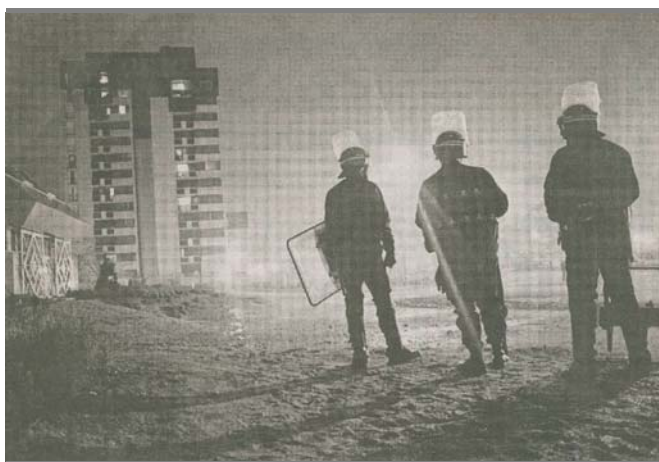
<sup>13</sup> *Citoyens-Justice-Police*: “Commission nationale sur les rapports entre les citoyens et les forces de sécurité, sur le contrôle et le traitement de ces rapports par l’institution judiciaire, Rapport d’activité de juillet 2002 à juin 2004”.

<sup>14</sup> *Justice*, no. 174, March 2003, “Des contrôles policiers abusifs.”

<sup>15</sup> *Outrage* by gesture may be defined as a gesture made by any part of the body which “clearly expresses disdain or contempt for the person it is addressed to”. *Outrage* by word is defined as any verbal utterance which attacks the moral authority of a person and diminishes the respect due to their functions. Under Article 433-5 of the Penal Code *outrage* against a “person holding public authority” is a specific offence (*délit*) and is punished more severely than insulting an “ordinary” citizen. It can even result in imprisonment.

<sup>16</sup> ECRI, Third Report on France, adopted on 25 June 2004, CRI (2005) 3.

certain violent acts which were proved to be racially motivated.<sup>17</sup> However, the effectiveness of such laws in addressing racist violence by police officers has arguably been very limited to date. Amnesty International is not, so far, aware of any case in which aggravating factors have been taken into account in a police officer's sentence, despite the frequency of allegations of violence with a racist element.



Riot police at Dammarie-les-Lys in 1997. Several nights of disturbances followed the fatal shooting of 16-year-old Abdelkader Bouziane. ©Laurant Troude.

In its third report ECRI noted that: "Law enforcement officials and members of the judicial service are not always sufficiently alert to the racist aspect of offences, and the victims are not always adequately informed or assisted with the formalities." It recommended that: "the French authorities duly implement the provisions stipulating that racist motivation constitutes an aggravating circumstance

in the case of the specified offences, and take the necessary steps to monitor the implementation of these new provisions". In its 2005 report ECRI also "noted with anxiety that complaints persist concerning ill-treatment inflicted by law enforcement officials on members of minority groups. The complaints implicate police and gendarmerie officers, prison staff and personnel working in the ZAPI (*zones d'attente des personnes en instance*; zones specially designated for persons awaiting clarification of their legal status). They allege acts of physical violence, humiliation, racist verbal abuse and racial discrimination." ECRI recommended the adoption of measures to "put a stop to all police misconduct including ill-treatment of minority groups".

The rise in incidents of police violence, much of it race-related, has gone hand in hand with the perception that crime in general has largely increased, and by public demands for "security"-based policies of tackling crime or suspected crime.

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<sup>17</sup> *Loi no. 2003-88 du 3 février 2003 visant à aggraver les peines punissant les infractions à caractère raciste, anti-sémite ou xénophobe*, published in the *Journal officiel* (JO) no. 29 of 4 February 2003. An earlier law of 1 July 1972 ("*Loi Pleven*") criminalized "instigation of" racial discrimination, hatred and violence and increased penalties for racial defamation or abuse.

According to a police officer who has written about the challenges faced by an increasingly “insecure” society, the urban environment has seen an “inexorable progression in violence”, in which essential public services have been put at risk by “all kinds of aggression under the sole pretext that they represent Authority in the eyes of the aggressor”.<sup>18</sup> The writer noted that much of the increased tension between French law enforcement and the youth of the “sensitive areas” or “*quartiers sensibles*” – predominantly inhabited by French nationals or residents of African or North African extraction – has grown with the tentacular post-war growth of the *banlieues* or *cités*, urban conglomerations around city centres and affected by long-term, endemic unemployment and poverty, but at the same time adjacent to places of conspicuous consumption, such as hypermarkets with large car-parking facilities. Parked vehicles may become a tempting target for petty delinquency, symbolized by the burning of cars or “*rodéos*” of stolen cars – a situation at the root of some of the cases described below. The writer refers to the need for a “reconquest of the *quartiers*”.

The frequency of complaints by persons of foreign origin is attributable, at least in part, to police actions, including abusive identity checks, or identity checks which deteriorate into violence, that are carried out by police units in the “*quartiers sensibles*”. The real difficulties and stress levels faced by police officers who are having to police such areas - often seen as “no-go” - cannot be denied. Nonetheless, such notions as “reconquest” appear at times to be taken literally by members of police intervention units, who may see themselves as part of a force engaged in hostilities against adversaries and as operating in the *quartiers* as in a theatre of war. For the police, and for many citizens, there is “impunity” in the *quartiers*, meaning that (mainly young) delinquents commit offences or crimes without fear of discovery. However, the sense that the police are engaged in a “reconquest” and in a fight against impunity no doubt makes it more difficult for officers to recognize that they too benefit from impunity during those moments when they overstep the mark, and ignore their own codes of conduct.

## 2.2. Police custody (*garde à vue*)

Some of the factors which contribute to effective impunity relate to the treatment of people once they have been detained and taken into police custody. Amnesty International is particularly concerned at the failure to ensure that all detainees are granted immediate access to legal assistance, including having a lawyer present during interrogations; at the prolonged period of police custody without access to a lawyer for some categories of detainees; at the failure to provide detainees with

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<sup>18</sup> Richard Bousquet, *Insécurité, Nouveaux Enjeux*, 1999. His comments are still relevant.

prompt medical examinations when required; and at the failure of police officers to properly implement regulations governing police custody.

The decision to place a person in police custody must be taken by an officer of the judicial police, either gendarme or civil police officer, who is obliged to inform the public prosecutor or the investigating judge as soon as the decision has been taken. Detainees must be informed at once of their rights in a language they understand; of the provisions relating to police custody; of the reasons for their arrest and of any charge against them. Detainees have the right to inform relatives, partners or employers that they are being held in custody within a period of three hours at the most, unless this is held to jeopardize the inquiry; and to be examined by a doctor. Responsibility for the proper functioning of police custody is with the prosecutor, who should visit police stations whenever it is felt necessary, and is obliged to do so at least once a year.

The maximum length of police custody, in most cases, is set at 24 hours. However, this can be extended by another 24 hours with the agreement of the prosecutor or investigating judge, and in cases deemed to be of exceptional gravity (such as “terrorism” or drug trafficking), a 48-hour period of police custody can be extended for another 48 hours on the decision of the investigating judge or *juge des libertés et de la détention*.

### **2.2.1. Access to a lawyer**

The right of prompt access to a lawyer is a well-established international norm. For example, Principle 7 of the Basic Principles on the Role of Lawyers provides for “prompt” access, or “in any case, not later than 48 hours from the time of arrest and detention”.<sup>19</sup> The UN Special Rapporteur on torture has recommended that access be within 24 hours after arrest.<sup>20</sup>

On 15 June 2000 the French Parliament passed a law on the “protection of the presumption of innocence and rights of victims” (*loi no. 2000-516 du 15 juin 2000 renforçant la protection de la présomption de l’innocence et les droits des victimes*). This included the provision of access to a lawyer from the first hour of police custody in most cases, although not in the case of “terrorism”-related crimes or drug-trafficking offences. Suspected “terrorists” or drug traffickers were dealt with under a special custody regime, whereby detainees could be held for up to 96 hours and denied access to a lawyer for up to 36 hours. The introduction of video-recording of police interrogation of minors was expected to help prevent brutality in police

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<sup>19</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>20</sup> UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

custody, but Amnesty International is concerned that a plan to introduce similar safeguards for adults was postponed in the face of fierce police opposition.

In March 2003, after the coming to power of a new government, a law on internal security (*loi 2003-239 du 18 mars 2003 pour la sécurité intérieure*) reversed some of the reforming measures of the previous law. A range of new offences was created, such as gatherings in public spaces within residential apartment blocks, liable to lead to public disorder; public soliciting; “aggressive” collective begging; and swearing at, or insulting, the national flag and national anthem at certain public events. Amnesty International was concerned that this law restricted the right to prompt assistance to a wider group of people, including minors between 16 and 18, who would be denied access to a lawyer for the first 36 hours of police custody. The following year, Law No. 2004-204 of 9 March 2004 (*portant adaptation de la justice aux évolutions de la criminalité*) was passed.<sup>21</sup> Among other measures, the law extended the 96-hour special custody regime to a wider range of offences, including “organized crime”. Moreover, under this law persons suspected of “terrorism” or drug trafficking would be held incommunicado for the first 48 hours without access to a lawyer.

Torture or ill-treatment often takes place in the first moments of police custody, and Amnesty International has for long been concerned that those subjected to *garde à vue* without access to a lawyer, were at continuing risk of torture and ill-treatment. Several cases illustrating effective impunity and described in this report refer to deaths, torture or ill-treatment in police custody in which lawyers were not present from the outset. Even in the case of minors, the presence of cameras in some parts of the police station did not necessarily prevent ill-treatment occurring (see 5.4.).

In a report published in March 2004 by the European Committee for the prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CPT), the CPT reiterated its disagreement with the French authorities about the law denying access to a lawyer for the first 36 hours in police custody, stressing that all detainees should have access to a lawyer from the outset of police custody, and also for the right of a lawyer to be present during police questioning. This latter right is not currently permitted. The CPT criticized the fact that the new law on security of 2003 had retained the deviation from the norm on access to a lawyer for a whole range of criminal offences. The CPT pointed out that, during the course of its visits to France it continued to receive allegations of physical ill-treatment by police officers at the moment of arrest or during police custody. It urged the French authorities “to abandon the derogatory regime in police custody as regards access to a lawyer and ultimately to recognise that all persons deprived of their liberty by the forces of law and order –

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<sup>21</sup> The so-called “Law Perben II”

for whatever motive – have access to a lawyer (though not necessarily a lawyer of their own choice) from the outset of their deprivation of liberty”.<sup>22</sup>

A case which came to Amnesty International’s attention in 2003 raised concerns about respect for the role of lawyers when visiting clients in police stations. On 31 December 2002, a lawyer, **Daniel François**, was asked to assist a 17-year-old boy being held in police custody in Aulnay-sous-Bois (Seine-Saint-Denis). Noting lesions on the boy’s face, the lawyer told the duty officer that he wished to register allegations that his client had been subjected to acts of violence and requested a medical examination, but his attempts were frustrated. A police officer told Daniel François that there was no photocopier that would allow him to make a copy of his handwritten request and refused to order a medical examination. When the lawyer protested he was asked to leave and accompanied to the door. He returned to the police station to deposit his handwritten text. He was then arrested and placed in police custody on charges of *outrage et rébellion*. In its annual report for 2003, published in 2004, the CNDS referred to the case of Daniel François. It expressed astonishment that the lawyer had been held for 13 hours and that he had been subjected to an alcohol test despite there being no evidence that he had been drinking. The CNDS recommended that “measures be taken to reinforce the protection of lawyers in the course of [carrying out] their professional duties and that no further decisions be taken to place someone in police custody by an officer claiming to be a victim”.<sup>23</sup>

### 2.2.2. Medical examinations

As regards medical care in police custody, a reform of conditions in police custody in 1993, in order to provide prompt access to a doctor, was instituted following the death of **Aïssa Ihich** (4.1) from an asthma attack following a beating. A detainee may ask to be examined by a doctor appointed by the prosecutor or by the judicial police officer. The request can be renewed in case of prolongation of police custody. However, several recent cases have highlighted the problems associated with trying to obtain a medical examination while in police custody. The above-mentioned case of **Daniel**

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<sup>22</sup> “Le CPT en appelle aux autorités françaises pour qu’elles renoncent au régime dérogatoire de garde à vue en ce qui concerne l’accès à un avocat et qu’elles reconnaissent enfin à toutes les personnes privées de liberté par les forces de l’ordre – pour quelque motif que ce soit – l’accès à un avocat (sans qu’il s’agisse nécessairement de l’avocat de leur choix) dès le début de leur privation de liberté.” Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 11 au 17 juin 2003. CPT/Inf (2004) 6], para 64.

<sup>23</sup> “La Commission a recommandé que des mesures soient prises pour renforcer la protection des avocats dans l’exercice de leur profession et pour qu’une décision de placement en garde à vue ne soit plus prononcée par un officier se présentant comme victime.”

**François** is one example, as is the case of **Omar Baha**, a French national of Algerian origin, arrested in December 2002. Omar Baha (5.7.) had intervened in a police interpellation, involving children. His nose was broken by a police officer wielding a gas canister. His complaint, made in 2002, is still pending in the courts.<sup>24</sup>

### 2.2.3. Other issues concerning custody

As pointed out above, detainees held in police custody are allowed to make contact by telephone with a family member or employer, a rule which is designed to prevent the risk of ill-treatment resulting from the lack of the detainee's contact with the outside world. A judicial police officer may, nonetheless, refuse the right to make a telephone call if he or she deems it prejudicial to the development of the inquiry, providing that the prosecutor agrees. Some cases brought to Amnesty International's attention indicate that the right has not always been upheld, even where no prejudice to the inquiry could be involved. In July 2001, for example, a 16-year-old minor called **Yacine** (5.4.)<sup>25</sup> was taken to Asnières police station, in the Paris area. Contrary to the law, his mother was not immediately informed that Yacine was in the police station, although Yacine had requested that she be informed.

On 11 March 2003 a ministerial circular was sent to the headquarters of the *Police Nationale* and of the *Gendarmerie Nationale*, and to the Prefect of Police, with respect to improving material conditions in police custody. The Interior Ministry circular stated that body searches should be exceptional and called, among other things, for improved access for detainees to telephones and confidential communication with lawyers, as well as for hot meals to be served to detainees. The practice of tying detainees to radiators was criticized. In its above-mentioned report, the CPT urged the Government to accord a high priority to the implementation of the circular. However, it should be noted that this circular did not refer to problems of police violence and did not refer to the existence of disciplinary sanctions for officers who did not respect the rules governing police custody. Continuing allegations of ill-treatment in police custody, such as that of the lawyer, **Alex Ursulet**, who maintained that he was ill-treated in police custody and tied to a radiator, suggest that the "spirit" of the circular is still not necessarily being respected.

Alex Ursulet, a lawyer from Martinique, was arrested in January 2005, in this case as the result of a traffic incident. He was allegedly fastened to a radiator while in custody in the Rue de Rivoli police station in Paris. He brought charges of arbitrary arrest, assault, racial discrimination and insulting conduct against the police. Writing to the Minister of the Interior about this case, the head of the Paris bar (*bâtonnier*),

<sup>24</sup> France: The alleged ill-treatment of Omar Baha by police officers in Paris (AI Index: EUR 21/002/03, March 2003, and *Amnesty International Report 2004*.

<sup>25</sup> The full name has been withheld by AI in this case.



Me Jean-Marie Burguburu, referred to “excesses of power” (“*excès de pouvoir*”) on the part of the police and the reports of racist conduct. At the time of writing the IGN was carrying out an internal inquiry.

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

Failures to properly administer police custody, either as a consequence of apathy or of bad faith, can lead to situations of impunity. The absence of a medical report, if a detainee has been injured either during or after arrest; an inadequate rendering in the *procès-verbal* of the conditions in which police custody has been carried out, omitting possible improprieties; the reluctance of some officers to register a complaint against colleagues by the victim of police violence, or the bringing of a counter-complaint against someone who tries to register such a complaint; the obstruction of a lawyer trying to carry out his or her professional duty, are among factors which contribute towards the obstruction of a judicial inquiry from the outset, and make it more difficult in practice than it is in principle for justice to be done.

### **2.3. Discretionary powers of the public prosecutor**

Throughout the years Amnesty International has been concerned about the power given to public prosecutors when deciding whether to pursue complaints of human rights violations by police officers, and their reluctance to prosecute in a number of such cases. International treaty bodies have also expressed concern about the procedures of investigation of human rights violations by law enforcement officers. The concerns expressed or recommendations made to France on this issue by the Human Rights Committee in 1997 or the CAT in 1998 (the last time France appeared before either of these bodies) are still current.

In 1997 the Human Rights Committee expressed concern at: “existing procedures of investigating human rights abuses committed by the police. It is also concerned at the failure or reluctance of prosecutors to apply the law on investigating human rights violations where law enforcement officers are concerned.”<sup>26</sup> In 1998 the CAT, which considered the second periodic report of France on its compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, expressed concern about the system of “appropriateness of prosecution”, (*l’opportunité des poursuites*) which, in the words of the CAT, left “public prosecutors free to decide not to prosecute perpetrators of acts of torture, or even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention”. The CAT urged the State party to “pay maximum attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and, in proven cases, applying appropriate penalties”. It also urged France to abrogate the current system of “appropriateness of prosecution”, thus removing “all doubt regarding the obligation of the competent authorities to institute systematically and on their own initiative impartial inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed ...”.<sup>27</sup> However, the system of “appropriateness of prosecution” still applies.

In a case still pending before the courts, and which is illustrative of many others to date, **Karim Latifi** (5.5.) decided to pursue his complaint by means of the *citation directe* procedure. He did so after the prosecutor decided to close the complaint, despite the existence of much evidence of police violence, and the fact that police officers had been disciplined. Faced with a continuing failure by prosecutors to effectively pursue human rights violations by police officers, victims or their families or supporting groups have very often lodged their own complaints with an investigating judge. This, as explained above, allows them to be a party to the proceedings and in some instances this participation has been crucial in developing a prosecution case. In a 2004 judgment (under 4.), the European Court of Human Rights found that, in serious cases of possible human rights violations, such as a death in custody, an effective inquiry must automatically keep family members or partners informed of proceedings without these having to join the process as a civil party. The French authorities have not so far followed this practice.

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<sup>26</sup> HRC concluding observations, para 15

<sup>27</sup> Concluding observations of the Committee against Torture: France, UN Doc. A/53/44, 27 May 1998 (hereinafter: CAT concluding observations), paras. 143(b); 146; 147 respectively. These are the most recent of the CAT’s Concluding observations regarding France, which is scheduled to appear again before the CAT in 2005.

In a number of the cases of concern to Amnesty International, and which involve fatal police shootings or deaths in custody, the public prosecutors have, in reality, played the role of counsel for the defence, often when acting as *avocats généraux* before the assize courts. However, prosecutors in the correctional courts have also effectively acted on behalf of the police defence team. In the case of the ill-treatment of **Yacine** (5.4.), which is still open, and which the correctional court concluded had involved acts of police violence “well in excess of a reasonable use of force”, the prosecutor had nonetheless requested the acquittal of the police officers (5.4.). Under the inquisitorial judicial system the prosecutor is obliged to represent the state’s viewpoint, not that of the civil party to the prosecution. Nevertheless, it has been a matter of concern that, even in some extremely serious and controversial cases of police violence, prosecutors have abandoned the prosecution role altogether and effectively taken the role of the defence, thus leaving the prosecution entirely in the hands of the lawyer acting on behalf of the family, or civil party.

Particularly striking examples of this phenomenon have been provided in the past by such cases as that of **Todor Bogdanović** (3.1.), in which an Amnesty International trial observer commented that the decision of the prosecutor to play the role of the defence greatly facilitated the argument of the police officer and rendered the task of the civil parties and lawyer representing the family “extremely difficult”. Again, in the case of **Etienne Leborgne** (3.2.) the actual role of prosecution was left to a section of the Court of Appeal, while the *avocat général* in the assize court reportedly went so far as to argue that the police killing of the taxi driver was justified by the taxi driver’s “suicidal” attitude – an astonishing argument in the circumstances of the case and an injustice compounded by the fact that there could be no appeal from an assize court.<sup>28</sup> In the case of the death of **Mohamed Ali Saoud** (4.2.) which is now pending before the European Court of Human Rights, the prosecutor failed to notify an investigating judge, who did not, therefore, open an inquiry until two months after the death had occurred. In the case of the death of **Riad Hamlaoui** (3.5.), who, while sitting unarmed in a car, was shot dead at point blank range by a police officer in 2002, the public prosecutor’s office (*parquet*) decided not to appeal against the assize court decision, which had been criticized by a former French government minister as unlikely to inspire confidence in the French justice system. This decision not to pursue the case was taken despite the fact that a prosecutor, acting as *avocat général* at the assize court, had requested a six-year prison term, to reflect the gravity of the crime, which he believed had been the result of a deliberate decision.

In its *Amnesty International Report 2000*, the organization referred to the reluctance of courts to convict police officers for crimes of violence or excessive

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<sup>28</sup> Although appeals are now allowed from assize courts, these are left to the discretion of the public prosecutor.

force, or to uphold sentences that attempted to reflect the seriousness of the crime. “In some cases,” it commented, “prosecutors appeared to play an active part in perpetuating a situation of effective impunity where police officers were concerned.” To date this remains a real concern.

## 2.4. Delays in judicial proceedings

International law provides for prompt investigation of complaints concerning human rights violations. For instance, Article 12 of the UN Convention against Torture provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” Criminal proceedings must be started and completed within a reasonable time, both as a right of the accused<sup>29</sup> and as part of the right to “effective remedy” of persons whose rights have been violated<sup>30</sup>.

In 1997 the UN Human Rights Committee expressed concern “at the delays and unreasonably lengthy proceedings in investigation and prosecution of alleged human rights violations involving law enforcement officers”.<sup>31</sup> A number of cases on which Amnesty International has worked illustrate the real problem of lengthy delays and failure to show due diligence in judicial proceedings in cases involving complaints against law enforcement officers.

One such case is that of **Lucien Djoussouvi**, a Benin national on whose behalf Amnesty International campaigned. Two French police officers were found guilty in 1996 of using illegal violence and causing injury to him and were given suspended sentences of 18 months’ imprisonment each and ordered to pay damages. However, Amnesty International was particularly concerned that the investigation and hearing took five years and four months before its conclusion. The lawyer who observed the proceedings on behalf of Amnesty International said that he did not consider the explanations by the private prosecutor justifying the length of the proceedings to be convincing.

Another such case is that of **Mourad Tchier**, a young man of Algerian origin who was fatally shot in the back in Saint-Fons, near Lyon. Mourad Tchier, who was unarmed, was shot dead in 1993 while reportedly trying to escape police custody. The case was characterized by procedural irregularities and continual delays. The police officer who fired the fatal shot was not indicted until after a complaint was made by the civil party – in other words, until the family had taken the initiative to act. A

<sup>29</sup> See, for instance, Article 14(3)(c) of the ICCPR.

<sup>30</sup> See, for instance, Article 2(3) of the ICCPR.

<sup>31</sup> HRC concluding observations, para 15.

reconstruction of the facts of the shooting was only held two years after the victim's death. In 1998 a police officer was sentenced to a suspended five-year prison term.

Some of the cases described below illustrate this facet of effective impunity. On 25 March 1998, prior to the July 1999 judgment of the European Court of Human Rights in the case of **Ahmed Selmouni** (5.2.), the European Commission on Human Rights had found that, in the Selmouni case, France was in violation of Article 6 of the ECHR regarding fair trial within a reasonable time. According to the Commission, the criteria for assessing a "reasonable time" involve:

- the complexity of the case;
- the conduct of the parties in the case;
- the conduct of the authorities.

The Commission found that, although an inquiry had opened into Ahmed Selmouni's allegations in March 1993 - but only after the plaintiff had become a civil party to the case - police officers had not been placed under investigation by an investigating judge until 1997, and that the judicial investigation was still underway more than four years and eight months after it had been initiated, despite the fact that the case, though extremely serious, was not a particularly complex one. The Commission added that, given the gravity of the allegations, and the length of time since the events had occurred, the authorities had failed to show the diligence required in the interests of a prompt investigation.

The cases of **Youssef Khaïf** (police killing) and **Aïssa Ihich** (death in custody) are among others which strikingly illustrate this failure. The case of Youssef Khaïf, who died in 1991, took 10 years to come to court. Equally, that of Aïssa Ihich (4.1.), who died in 1991, took 10 years. So long a time to wait for the resolution of cases is not only a real problem for the families and relatives but may also add to the stress on the police officers involved.

Amnesty International is concerned about the existence of what is effectively a "two-speed" system for dealing with judicial proceedings in cases which involve police officers. One case which illustrates this problem is that of **Omar Baha**. In February 2003 the Correctional Court of Paris threw out charges that were brought against him by National Police officers in December 2002 for "resisting arrest", "insulting behaviour" and "incitement to riot" (*incitation à l'émeute*) - the latter a charge that does not exist in the French Penal Code but which was used to justify an extension of police custody. However, Omar Baha had also brought a complaint of ill-treatment against the National Police officers. By the time of writing, the case brought against the officers by Omar Baha was still under examination two years after the case brought against him by the officer had been heard and resolved.

## 2.5. Nominal sentencing or “token penalties”

Apart from a number of highly controversial acquittals in cases involving police officers, another factor contributing towards a climate of effective impunity is a pattern of nominal sentencing. Token penalties are often requested by prosecutors, and acceded to by the courts, despite the gravity of the offence. In 1997, with respect to another country in western Europe, the CAT expressed concern about the application of “token penalties, not even entailing a period of imprisonment” in cases where public officials were accused of acts of torture.<sup>32</sup> Amnesty International believes that similar concerns apply in France today, both in respect of cases of torture and ill-treatment and of unlawful and excessive use of force resulting in death or injury.

In most of those cases of fatal shootings in which convictions have been handed down, penalties rarely exceeded a suspended prison term. Although it is not unheard of for a police officer who kills a suspect in a shooting incident to receive a relatively long prison term, it has been highly unusual and the circumstances require evidence that the officer acted in an exceptionally blatant manner, or that he or she had a previous conviction or a tarnished disciplinary record.<sup>33</sup> In most cases, however, prosecutors, judges and - in the case of assize courts - juries, have fought shy of an actual prison term. Under Article 734 of the Code of Penal Procedure a judge may take into account a good service record and other factors, such as remorse or acknowledgement of fault, but is not obliged to account for his or her decision when handing down a suspended sentence. In practice, officers convicted of unlawfully killing a suspect have almost always benefited from a suspended sentence under the terms of Article 734. The bulk of the cases documented in this report involve either controversial acquittals or token sentencing, even when courts have admitted that the case was an extremely serious one.

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<sup>32</sup> Concluding observations of the Committee against Torture: Spain. UN Doc. A/53/44, 27 November 1997, para 128. According to the CAT, “The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have ...” *ibid.* The CAT felt that increased severity of penalties would help to eliminate the practice of torture.

<sup>33</sup> In December 1997 Fabrice Fernandez was shot dead by an officer while being interrogated, in handcuffs, in a police station. The officer, who had previously been suspended from the police force for assault, was sentenced for murder (“*violences volontaires avec arme ayant entraîné la mort sans intention de la donner*”) to 12 years’ imprisonment in December 1999. In August 1998 Eric Benfatima, who had been begging cigarettes, was shot dead by an officer, who fired at him four times while chasing him down a street. The officer, who was portrayed by both prosecutor and defence as a ‘good officer’ but suffering from a nervous crisis, was found guilty of the same charge and sentenced to 10 years’ imprisonment in June 2000.

**Rachid Ardjouni** was a 17-year-old of Algerian origin who was shot in the back of the head and killed in April 1993. The police officer was convicted of voluntary homicide and sentenced to 24 months' imprisonment, of which 16 were suspended. In May 1996 the Douai Court of Appeal reduced the sentence, even though the officer was drunk (see *Amnesty International Reports 1994 to 1997*). The court increased the period of suspension from 16 to 18 months and reduced the damages and financial compensation awarded to the family of the deceased. The court even overturned the decision of the Correctional Court that the conviction should be entered on the officer's criminal record (*casier judiciaire*). This meant that the officer could continue to serve in the police force and to carry arms.

Since that time there appears to have been little change in the pattern of token sentencing. Further examples include the case of an unarmed minor, **Habib Ould Mohamed** (3.4.), who was shot dead in December 1998 and left by the roadside, in which the court referred to an "astonishing series of reckless and clumsy professional errors" by the officer, who failed to report, as required, that he had fired his weapon. However, the officer was only sentenced to a suspended prison term. In the case of **Riad Hamlaoui** (3.5.), who was shot dead by a police officer in 2000, the court argued that, although the crime was serious, it served no purpose to imprison the officer and that his action could be attributed to "insipid" training. The police officer was given a suspended sentence.

## 2.6. Problematic role of assize courts

Until recently, the assize courts, composed of three magistrates (the 'Court') and a jury of nine to 12 French citizens, sat in judgment on relatively serious criminal cases that were sent to it by the *chambre d'accusation*, the section of a court which decides on the status of a case – whether to proceed, and if so, which court should try it. While there was a right to appeal decisions of the correctional court, which tries lesser crimes or offences and has no jury, no such right existed regarding the assize courts, which thus sat in both first and last instances. (The only means of recourse against assize court decisions was a *pourvoi en cassation* to the Criminal Section of the Court of Cassation. But this could only examine questions of law and procedure, not the facts of a case, thus strictly limiting the possibilities of appeal.)

The general rationale for the absence of a full appeal mechanism lay in the belief that there could be no appeal from a jury's verdict because the people were sovereign and, as such, infallible. However, the failure to provide any means of appeal, except on technicalities, such as faults of procedure, constituted an evident and fundamental breach of international human rights law. Article 14(5) of the ICCPR

provides that: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”<sup>34</sup>

The problem was compounded in the case of “anti-terrorism” legislation. Law No. 86-1020 of 9 September 1986 “concerning the struggle against terrorism” provided that cases involving “terrorism” were to be tried by a special Court of Assizes in Paris, sitting without a jury. Amnesty International was concerned not only at the fact that “terrorism” suspects were automatically tried by the special assize court, and therefore had no right of appeal, but also that the victims or families of victims of serious crimes, or possible serious crimes, whose cases were tried by assize courts, had none.

On 1 January 2001, Law No. 2000-516 of 15 June 2000 on the “presumption of innocence” was introduced as part of a general and wide-ranging reform of the French justice system. The law introduced an appeal mechanism into the assize courts, in an attempt to bring France into line with the ECHR. According to the law, a case tried before an assize court could be appealed or re-tried by another assize court, sitting in appeal, with three judges and 12, instead of nine, members of the jury. The latter court was obliged to re-summon witnesses during oral proceedings.

This reform of the assize courts, though both welcome and necessary, was not sufficient to remove Amnesty International’s concerns about the effective impunity of law enforcement officers who were acquitted by assize courts acting as first instance courts, since the law did not provide for an appeal in the case of acquittals, as it did in other courts. This meant that particularly serious cases such as those of **Todor Bogdanović** (3.1.) or of **Etienne Leborgne** (3.2.), despite ending in extremely controversial acquittals, could not be appealed. The situation was all the more lamentable in that the *chambres d’accusation* tended only to send to assize courts those cases in which there were serious grounds for believing that a violation by a law enforcement officer had occurred.

In 2002 prosecutors were given the right to appeal against acquittals, but the right was not extended to the civil parties to a case. Thus, as things stand, the possibility of appeal in such cases depends solely on the will of the prosecutors (*avocats généraux*), whose role to date has often been ambiguous. The case of **Riad Hamlaoui** (3.5.) illustrates Amnesty International’s ongoing concern about the role of prosecutors in such cases and the inability of the civil parties to appeal against controversial judgments in assize courts, despite reform.

<sup>34</sup> A similar provision exists in Article 2 of Protocol 7 to the European Convention on Human Rights.



## 2.7. The concepts of “legitimate defence” and “state of necessity”

Like most legal systems, French criminal law provides for “defences”, that is, exceptions from criminal liability for acts which would otherwise have been illegal, when certain exceptional conditions are met. Two of these “defences” are particularly relevant in this context.

### 2.7.1. “Legitimate defence” (self-defence)

French law requires that, where force is used, the means should be proportionate to the severity of the threat or attack. According to articles 122-5 of the French Penal Code, it is lawful for a person to act to defend themselves or others against an attack which is unjustified, as long as the action is both necessary for self-defence, or defence of another, and simultaneous with the attack, and as long as there is *proportionality* (our emphasis) between the means of defence used and the gravity of the attack.

The principle of proportionality is also clearly enshrined in Article 9 of the Code of Deontology (or code of conduct) of the National Police (decree of 18 March 1986). Article 9 of the Code states: “When lawfully authorized to use force, and in particular, to use weapons, the police officer must only do so when strictly necessary and in proportion to the objective to be achieved.”

In addition, according to Article 10: “Every person arrested is placed under the responsibility and the protection of the police and may not suffer any violence or inhuman or degrading treatment by a police officer or third party.”<sup>35</sup> The police officer who witnesses such incidents is liable to disciplinary proceedings if he or she does nothing to stop them or fails to bring them to the attention of the competent authority.

The principle of proportionality has not, however, applied to the military officers of the *Gendarmerie nationale* (see 2.8. below).

A French police training manual succinctly states that: “If there is the slightest possibility of the police officer avoiding, without serious consequences for himself and others ... an illegal attack ... he must opt for that solution rather than use his weapon. For example, if a vehicle is driven intentionally at the officer and he has the time and is physically able to move aside ... he should do so rather than use his weapon. Once the vehicle has passed, the criteria for legitimate defence no longer

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<sup>35</sup> *Code de déontologie de la police nationale*, Article 9: “Lorsqu’il est autorisé par la loi à utiliser la force et, en particulier, à se servir de ses armes, le fonctionnaire de police ne peut en faire qu’un usage strictement nécessaire et proportionné au but à atteindre.”

Article 10: “Toute personne appréhendée est placée sous la responsabilité et la protection de la police; elle ne doit subir, de la part des fonctionnaires de police ou de tiers, aucune violence ni aucun traitement inhumain ou dégradant.”

existing, the use of the weapon by the officer is forbidden.”<sup>36</sup> This provision is in line with international norms for the use of force in general, and firearms in particular, by law enforcement officials (see below).

### 2.7.2. “State of necessity” (defence of necessity)

According to Article 122-7 of the French Penal Code:

“A person is not criminally responsible if confronted with a present or imminent danger to himself, another person or property, he performs an act necessary to ensure the safety of the person or property, except where the means used are disproportionate to the seriousness of the threat.”

This defence differs from “legitimate defence” in that the danger does not necessarily result from the aggression of a third party but from a combination of circumstances. For instance, if a fire officer, or private person, breaks into a private home to save its inhabitants from a fire, the “state of necessity” would shield him or her from criminal liability for breaking and entering, causing damage to property, etc.

### 2.7.3. Abuse of such “defences”

Amnesty International is concerned that the defences of “legitimate defence” or “state of necessity” have been widely abused in cases where French police officers have resorted to violence. The two defences have been almost invariably used by police officers charged with murder or manslaughter/involuntary homicide or other crimes, and have been frequently accepted by the courts, even where the circumstances clearly pointed to unnecessary, reckless and excessive use of force by a police officer.

Some of the cases cited in section 3 (below) ended in controversial acquittals – controversial not only from the point of view of lawyers, human rights groups or the relatives of the individual involved, but also in the sense that differing judgments were handed down by courts throughout the judicial process. Central to the cases was the question of the interpretation of the arguments of “legitimate defence” or “state of necessity”, which has led to some bizarre arguments in favour of the police officers concerned and tended to give the benefit of often considerable doubt to police officers. Prosecutors have, for example, argued that the victim showed a “suicidal” attitude (see case of **Etienne Leborgne**); or that to convict an officer would “dematerialize” his action (**Todor Bogdanović**). Other examples are given below. Among them is the case of **Mohamed Ali Saoud**, who died of slow asphyxiation

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<sup>36</sup> *Gestes et techniques professionnels d'intervention – Direction du personnel et de la formation de la police, Ministère de l'intérieur et de l'aménagement du territoire.*

while being held under restraint by police officers. In this case the court argued that the police had acted in “legitimate defence” and that there was no police case to answer, despite the fact that the death had incontestably occurred 15 minutes or more after the victim had been restrained, and was handcuffed and shackled, and yet was still being subjected by officers to restraint pressures that suffocated him to death.

## 2.8. Use of weapons by gendarmes

Amnesty International has had serious and longstanding concerns about the continued use by officers of the *gendarmerie nationale* of special powers regarding the use of firearms.<sup>37</sup>

Granted by a decree of 20 May 1903, modified by a decree and law of 1943, under the Vichy government, and unchanged since that time, these powers have traditionally enabled gendarmes to use their firearms without the restrictions imposed on police officers, in clear contravention of international standards on the use of firearms. Whereas police officers are obliged to abide by legal provisions on “legitimate defence”, gendarmes have had the powers to halt fleeing or escaping suspects by firing at them, as long as the officers concerned were in uniform and had made a warning signal first, such as firing a shot into the air. In effect, the latitude given to gendarmes in this matter has meant that they have been able to fire their weapons with less fear of legal reprisals than civilian police officers.

For example, in November 1997, four years after the killing of a young engineer, **Franck Moret**, in July 1993, the Correctional Court of Valence (Drôme) acquitted (*relaxer*) a gendarme who had shot him in the back of the head while attempting to drive away in his car on the grounds that he had used his weapon legally. In 1998 the acquittal was overturned by the Court of Appeal of Grenoble (Isère). The court stated: “the authorization given by the law or regulations governing the military officers of the *gendarmerie* to make use of their weapons to immobilize cars must not be considered an absolute and unlimited authorization which relieves the [officer] from the general obligation, if not to act with proportionality ... then at least to carry out an action with caution and a minimum of skill”.<sup>38</sup> However, the Court of Cassation again overturned this verdict in January 2000, when it found that the gendarme had acted within the law (decree of 1903).

In 1997 the UN Human Rights Committee stated that it was “concerned that the powers of the *gendarmerie nationale*, which is basically a military corps, when

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<sup>37</sup> Amnesty International’s submission to the (UN) Committee against Torture in 1998, *FRANCE: Excessive force: A summary of Amnesty International’s concerns about shootings and ill-treatment*, (AI Index: EUR 21/05/98) referred to this concern, which was shared by the UN Human Rights Committee.

<sup>38</sup> Cour d’appel de Grenoble, 29 July, arrêt no. 886/gj.

operating in a civilian public order situation, are wider than that of the police. The Committee recommends that the State party consider repealing or modifying Decree 22 July 1943 so as to reduce the powers of the gendarmerie when it comes to the use of firearms in public order situations, with a view to harmonizing them with those of the police.”

The French government has firmly resisted doing any such thing. However, the situation may change owing to a recent decision of the Court of Cassation that the 1903 decree was no longer tenable. According to reports, **Romuald Laffroy** was shot dead by a gendarme while driving an uninsured car in 1996. He had been trying to avoid a road block. The gendarme faced a manslaughter charge (*homicide involontaire*) but in October 2001 the Court of Appeal of Caen (Calvados) acquitted him on the grounds that the 1903 decree had allowed him to fire the fatal shot. The family was not, therefore, entitled to compensation. The case was taken to the Court of Cassation, which apparently based its decision on international case law, a judgment of the European Court of Human Rights.<sup>39</sup>

## 2.9. Problem of identification

Amnesty International is concerned by cases which end in the acquittal, or failure to proceed against police officers because of the difficulty of identification. The problem of identifying police officers who may have been involved in a human rights violation arises mainly when an alleged victim of police abuse has no witnesses independently of police officers; when officers refuse to testify against their colleagues or when testimonies are not sought by those conducting the inquiry. A problem also arises, clearly, when officers are in plain clothes, and may not be wearing an armband, or may not be wearing clear identifying numbers on their uniforms.

In January 2005 the Court of Appeal of Paris closed an inquiry into police ill-treatment of **Abdelhamid Hichour** and **Abdassamad Ayadi** at l’Hay-les-Roses on 30 September 1999. The court accepted that the police violence was “illegal” (“*illégitime*”) and “inexcusable” (“*inexcusable*”) but could not identify the officers responsible among the many who were present. According to reports, up to 25 police teams took part in an interpellation following a burglary and a car chase. There was a

<sup>39</sup> The European Court of Human Rights ruled in 1995 that the UK government had violated the fundamental right to life under the ECHR when its agents killed three unarmed Irish Republican Army (IRA) members in 1998 in Gibraltar. The court stated that the killings had been unnecessary. It stated that it was “not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence” and that there had been “a lack of appropriate care in the control and organisation of the arrest operation”. *McCann and Others v. the UK* Series A, No. 324, Judgment of 27 September 1995, paras. 213 and 212, respectively.

difficult arrest. Some police officers who had succeeded in restraining the two young men reported that, after this had happened, another group of (unidentified) officers rained blows on the two, particularly Abdelhamid Hichour, who lost consciousness. The two victims were subsequently signed off work completely (*incapacité totale de travail* – ITT) for 10 and nine days respectively. Despite an inquiry carried out by an investigating judge at Créteil, in which the officers were methodically confronted with one of the victims of the ill-treatment, identification was not possible, reportedly owing to the large numbers of police involved in the incident. The case was therefore closed (*ordonnance de non-lieu*) on 22 October 2002, a decision confirmed in January 2005.

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

The case of **Baba Traoré** (5.3.) emphasizes the problem faced by those trying to make a complaint when there are no witnesses other than police officers and when those officers, for reasons of “solidarity”, are not prepared to testify against colleagues. This appears also to have been the situation in the case of **Karim Latifi** (5.5.), despite the presence of many eye-witnesses to the attack.

The report by *Citoyens-Justice-Police* (mentioned earlier in this section), refers to a case in which a man (unnamed) got involved in a violent altercation with several police officers on leaving a discotheque in Mulhouse on 9 August 2000. The man, who had been drinking, was taken to the police station. During the journey he was hit in the face by a heavy blow which caused injuries estimated by doctors as taking 27 days to heal. The man lodged a complaint. The Correctional Court of Mulhouse recognized that he had been violently attacked but acquitted the two officers because it was unable to determine which of them had carried out the attack.

### 3. Fatal shootings by law enforcement officers

In the past decade Amnesty International has expressed repeatedly its serious concern about reports that police officers were resorting to the use of force recklessly and in a manner wholly disproportionate to the situation. It has also expressed concern, as stated above, at the judicial outcome of such cases in terms of delays in judicial proceedings, token sentencing, inadequate appeal structures for civil parties to a case and abuse of the “defences” which can exempt police officers from criminal liability.

The right to life is guaranteed under Article 2 of the ECHR (the force used must be no more than absolutely necessary) and Article 6 of the ICCPR (no one shall be arbitrarily deprived of their life). Furthermore, international standards require all states to ensure that law enforcement officers:

- “as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>40</sup>
- Use firearms only “when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender”.<sup>41</sup>

If the use of force and firearms is unavoidable, Principle 5 of the UN Basic Principles states, among other things, that law enforcement officials must:

- “(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimise damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”

International standards also emphasize the importance of proportionality in judging whether the use of force is legitimate and strictly unavoidable, in order to protect life. Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that: “... officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury” or to prevent “... a particularly serious crime involving grave

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<sup>40</sup> Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>41</sup> Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December, Article 3, Commentary.

threat to life, to arrest a person presenting such a danger” and “only when less extreme means are insufficient to achieve these objectives”. The article continues: “In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life.”

Principle 7 also calls on governments to ensure that: “arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”. Governments and law enforcement agencies are further called upon to establish “effective reporting and review procedures” where injury or death is caused by the use of force and firearms by law enforcement officers.

Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions<sup>42</sup> states that: “There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death ...” Principle 18 states that perpetrators should be brought to justice. Principle 11 states that, where the established investigative procedures are inadequate, because of lack of expertise or impartiality or the importance of the matter or if there are complaints from the family of the victim about inadequate investigative procedures, or other substantial reasons, “Governments shall pursue investigations through an independent commission of inquiry”.

Principle 20 calls for the families and dependents of victims of such executions to be entitled to fair and adequate compensation, within a reasonable period of time.

Amnesty International is concerned, among other things, about the wide, and on occasion, somewhat imaginative interpretations of “legitimate defence” and “state of necessity”, and urges the authorities to review the application of the law by the courts. The section below examines five out of a number of other cases of fatal shootings which were considered by the courts between 1995 and 2003. Because these cases originated several years ago, and are now closed, it is possible to describe their history from beginning to end; but they also illustrate continuing concerns. None of the victims whose cases were documented carried firearms and several had no previous police record.

### 3.1. Todor Bogdanović

An eloquent illustration, about which the Human Rights Committee expressed concern at an oral session of the Committee in 1997, is the case of **Todor Bogdanović**, an eight-year-old Romani child from Serbia, shot dead by border police

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<sup>42</sup> Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989

near Sospel (Alpes-Maritimes) on the night of 19-20 August 1995.<sup>43</sup> Todor Bogdanović was asleep in the back of a car, part of a convoy of 43 Roma attempting to reach France after fleeing from Novi Pazar. The convoy, consisting of four cars and two trailers, was travelling up a remote mountain road in the dark. The two border police claimed that as it approached the checkpoint they attempted to stop it. They said they were in uniform and the checkpoint had a warning light. When the first two cars failed to stop --at first slowing down, but then accelerating forwards, and avoiding the police car -- an officer fired three shots: one at the first car with a rubber bullet, and two at the second car with metal bullets, which he inserted into the same pump-action shotgun after firing the rubber bullet. This gun is of the kind that requires a separate action of the trigger each time it is fired. The bullets fired at the second car, driven by the child's father, hit the rear window at very close range, piercing Todor Bogdanović's shoulder and emerging by the thorax.

Members of his family claimed they had seen no warning light and no uniforms, but only "shadows", and had feared the men were bandits. The police car allegedly did not have its lights on.

Members of the convoy applied at once for asylum, but only the immediate members of the family were allowed to stay temporarily in France. The day after the killing the rest of the convoy, including at least one key eye-witness, and possibly a number of others, were expelled from France and thus never interviewed throughout the judicial proceedings. In June 1997 the Council of State (*Conseil d'Etat*) ruled that the expulsion orders were illegal and they were consequently annulled.

Police and judicial inquiries were opened. The police officer concerned claimed that he had felt threatened by the oncoming cars, which appeared to be driving at him as he stood in the road, and that he was acting in self-defence or in "*légitime défense*". The internal police inquiry, by the *Inspection générale de la police nationale* (IGPN), was unable to establish that the officer had acted in self-defence and was reported to have concluded that the two shots aimed at the second car had been fired prematurely ("*coups de feu intempestifs*"). The deputy prosecutor of Nice was also quoted as saying that: "The argument of legitimate defence cannot be upheld without reservation ... Legitimate defence cannot be taken for granted, it has to be proved. Now, according to the preliminary findings of the IGPN it seems that the gunshots were premature." The officer was placed under investigation on a charge of manslaughter (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner*) and freed from custody under judicial control. The Bogdanović family presented a complaint as civil parties.

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<sup>43</sup> The officers were members of the *Direction centrale du contrôle de l'immigration et de la lutte contre l'emploi des clandestins* (DICCILEC). It was formed in a climate of growing tension in France with regard to "terrorism" and illegal immigration.



However, in December 1996 the investigating judge decided to dismiss the case (*ordonnance de non-lieu*). The prosecutor seemed to be in agreement with the judge that the officer had behaved instinctively and through fear – that, in other words, he had legitimately feared his life was in danger from the cars accelerating through the checkpoint. The judgment was immediately appealed by the Bogdanović family. The case went to the *chambre d'accusation* of the Court of Appeal of Aix-en-Provence which, in December 1997, overturned the order of *non-lieu*. The court accepted that the two officers had been clearly identifiable as police and accepted that, fearing *refoulement*, the convoy had deliberately driven through the roadblock. However, the court argued that, to have used his weapon in legitimate defence, the officer would have needed to fire in such a way as to stop the second vehicle before it had passed. Instead, he fired laterally, from the hip and from behind, as the car was already passing. The court also stated that the officer would have needed to manipulate the mechanism of the gun and press the trigger each time he fired. Although the time needed to fire each shot was brief, it would or should have been sufficient to have allowed him to decide not to fire once any possible danger had passed.

The case was referred to the Court of Assizes of Alpes-Maritimes. In December 1998 the court acquitted the police officer on grounds of legitimate defence. The prosecutor had requested only a nominal sentence (*peine de principe*) on the grounds that the circumstances of legitimate defence had been established once the car had gone through the roadblock, but that the officer could not claim to be acting in legitimate defence by firing, as he had done, once the car had passed him. The question was, therefore, one of degree.

Amnesty International sent a lawyer to observe the trial. The observer, in his report to the organization, referred to his “clear impression” that the *avocat général* had appeared to assume the role of the defence, which had greatly facilitated the case of the police officer and rendered, on the other hand, “extremely difficult” the task of the civil parties and lawyer representing the Bogdanović family. At no time had the prosecutor suggested that the officer had not needed to fire the third, and fatal, shot, or that his colleague, the second officer, had found it unnecessary to use his weapon. On the crucial question of time the officer had had available to him for deciding whether to shoot, the prosecutor had argued that to convict the officer would be to artificially “dematerialize” his action, whereas the jury should take a “psychological” approach and see his action as “one and the same movement”, arising from a single decision. The observer also noted that the judge presiding over the court had not given an impression of “perfect impartiality”, showing clear bias towards the defence (and, in this case, prosecution) against the civil party, and he referred to the preponderance of witnesses for the defence against a single witness for the civil party. The trial seemed,

he stated, and as one newspaper had described it, like a “chronicle of an acquittal foretold”.

The decision of the Court of Assizes could not be appealed at the time, and given the attitude of the *avocat général*, it is unlikely that there would have been an appeal even with the change in the law to allow for appeals by prosecutors against acquittals.

### 3.2. Etienne Leborgne

The apparently curious situation noted by the above-mentioned observer, in which a prosecutor appeared to take the part of the defence was also a feature of the case of the taxi driver from Guadeloupe, described below. Although it is still not unusual in France for prosecutors to make a case for the defence of police officers and to request either their acquittal or a nominal sentence, the role of the prosecutor in such a case raises the question of “equality of arms” between prosecution and defence in a court of law. This principle, an essential part of the right to a fair trial, means that both parties in a trial are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in an equal position to make their case, so that trials are conducted in conditions that do not place either side at a substantial disadvantage vis-à-vis the opposing party.<sup>44</sup>

On 6 January 1996 Etienne Leborgne, a Paris taxi driver born in Guadeloupe, was stopped by police officers at Roissy airport to check the time-clock, which records the number of hours a driver has been working. In attempting to escape the check, he injured a police officer, who had his arm caught in the door. On 9 January a team of four officers blocked and immobilized his car at Saint-Ouen (Seine-Saint-Denis). Three officers got out of the patrol car. Two ran to his car shouting “Police!” Etienne Leborgne refused to get out of his taxi. One officer then shattered the side window on the driver’s side with his foot and held him round the neck in a stranglehold. But, suddenly fearing that the driver “had something in his jacket”, a second officer, after firing twice toward the ground, then deliberately fired a third shot through the shattered window of the taxi, from a distance of just 10 centimetres. The bullet pierced the face of Etienne Leborgne. The officer claimed he had acted in self-defence (*légitime défense*) because he saw the driver had “a black object” in his hand, and feared it was a gun. This appears to have been a small gas canister.

Etienne Leborgne’s mother brought a complaint of murder and conspiracy to murder against the police officers, but the prosecutor requested that the case be dismissed on the grounds that there was no case to answer (*non-lieu*). He argued that,

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<sup>44</sup> See for instance the judgments of the European Court of Human Rights in *Delcourt v. Belgium*, Series A, No. 11 (1970); *Brandstetter v. Austria*, Series A, No. 211 (1991).

even if the fatal shooting might appear, with hindsight, to be disproportionate to the driver's "aggression", the previous incident at Roissy (when an officer was injured in an escape attempt), and the heat of the moment, when the officer could have legitimately feared he was in grave danger, also had to be taken into account. The investigating judge did not agree. The investigating judge was concerned about the extremely close quarters at which Etienne Leborgne had been shot. He was also concerned that according to eye-witness reports, including the testimony of another officer, the "black object" in the taxi driver's hand (a small gas canister) did not resemble a firearm. The *chambre d'accusation* of the Court of Appeal of Paris decided, in March 1998, that there was enough evidence to refer the officer to an assize court on a manslaughter charge. In its decision this section of the Court of Appeal stated that it was "*incontestable*" that the officer's action in firing point blank at the taxi driver had been disproportionate, and that even taking into account the prosecutor's points, it could not reasonably be argued that the officer's life had been endangered.

Despite this strong legal advice, the *avocat général* requested the acquittal of the police officer, reportedly commenting that Etienne Leborgne had shown a "suicidal" attitude in refusing to obey police orders, and therefore that the officer had been entitled to shoot at him. The jury agreed with the prosecutor and the officer was acquitted. Despite the highly controversial nature of the judgment in this case, the civil party could not lodge an appeal against the acquittal, and under the law would still not be allowed to do so. It was also a matter of concern that, in requesting an order of *non-lieu*, the prosecution based its argument on the first "incident" that had taken place at Roissy, when the police officers' action was not supposed to be founded on any knowledge of this in the first place.

### 3.3. Abdelkader Bouziane

On the night of 17 December 1997 16-year-old Abdelkader Bouziane, a resident of Dammarie-les-Lys (Seine-et-Marne), was shot dead at a police roadblock at Fontainebleau. Abdelkader Bouziane was driving with a passenger, his cousin Jamel Bouchareb, 19, when a patrol car began to pursue them, reportedly because the driver was breaking the highway code.

When the car attempted to pass a roadblock at Fontainebleau two officers of the Anti-crime Brigade (*Brigade anticriminalité* – BAC) of the National Police opened fire, killing the 16-year-old with a bullet in the nape of the neck. The officers had reportedly run towards the car as it tried to drive through the block and, finding themselves within a few metres of it, feared it would run them down. They claimed they had fired their guns in self-defence. One officer fired two bullets.

The other officer also fired two bullets, one of which ricocheted against the side of the driver's window and entered the driver's body through the nape of the neck. Jamel Bouchareb, who was pulled from the passenger seat, lodged a judicial complaint, alleging attempted murder and ill-treatment. An independent witness reportedly claimed that Jamel Bouchareb was punched in the back and stomach, thrown to the ground and beaten and kicked on the head. Jamel Bouchareb later claimed that his friend had panicked when he realized they were being followed by a police car and tried to get through the block by mounting a grassy bank on the right, but braked to avoid a stationary lorry, swung round and stopped before any shots were fired.<sup>45</sup>

In the aftermath of the killing there were violent scenes at Dammarie between police officers and youths, many of immigrant origin. Members of the family of Abdelkader Bouziane appealed for calm.



Young people wave placards and hold a silent march to protest over the police killing of Abdelkader Bouziane, aged 16, in Fontainebleau, December 1997.

© Laurent Trude

<sup>45</sup> Jamel Bouchareb joined proceedings as a civil party and lodged a complaint against the police for attempted murder and illegal acts of violence (*tentative de meurtre* and *violences illégitimes*). According to a medical report, dated 6 January 1998, he had been admitted to hospital, where he remained between 18-22 December 1997 for a series of tests. He was given a certificate exempting him from work for five days on account of injuries received. Judicial proceedings were opened but declared inadmissible. An appeal was lodged with the *chambre d'accusation* of the Court of Appeal of Paris. However, the case was deemed inadmissible on grounds that the force used by the officer had not been excessive.

A ballistics report reportedly suggested that the officers each fired two bullets at close range and that two of these were fired into the car at head or shoulder level while the car was passing or had already passed the officers. The claim of legitimate defence was therefore in question.

An investigating judge concluded that the two officers should be sent before the Court of Assizes. The *chambre d'accusation* of the Court of Appeal of Paris decided that only one officer - the one who had shot Abdelkader Bouziane - should be tried by an assize court (the court of Seine-et-Marne) on a homicide charge (*coups mortels*) and that the other's case should be dismissed with an order of *non-lieu*. On 20 March 2001 the Court of Cassation annulled the order committing the first officer for trial before the assize court. On 20 December 2001 the *chambre d'instruction* of the Court of Appeal of Orléans agreed with the Court of Cassation and his case too was dismissed (with an order of *non-lieu*) on the grounds that he had acted in self-defence. The decision was radically at odds with that of the investigating judge and the magistrates of the Court of Appeal of Paris, who had rejected the plea of self-defence a year before. The lawyer representing the Bouziane family appealed the decision to the Court of Cassation. In February 2003 the Court of Cassation declared the appeal inadmissible ("*irrecevable*"), but did not publish the grounds for its decision. This left the family with a sense of intense frustration. Their son had been shot dead but, after five years, they still did not know why the courts had decided not to prosecute the police officers involved.

### 3.4. Habib Ould Mohamed

Habib Ould Mohamed, a 17-year-old accountancy student of Algerian origin, was shot dead by a police officer on 13 December 1998. Ten days of disturbances followed. The acting Interior Minister was reported to have stated that, according to the IGP, "basic instructions" ("*les prescriptions indispensables*") had not been respected, and the then Prime Minister asked the family and friends of Habib Ould Mohamed to have faith in the justice system.

At about 3.30am on 13 December 1998 Habib Ould Mohamed and a friend, "Amine", were spotted attempting to break into a BMW car, parked in a school car park in a district of Toulouse. A four-man police patrol saw someone leaving the BMW and returning to another car, a Peugeot, in which they had arrived. The patrol immediately positioned their car to prevent the occupants of the Peugeot escaping. Two, a sergeant and an auxiliary officer, drew their weapons. The sergeant stood in a firing position in front of the car, while the other covered him from behind the car. The car was then immobilized.



**Habib Ould Mohamed was shot by police and left to die by the roadside. © Private**

The companion of Habib Ould Mohamed, Amine B., managed to escape through the front right hand door, in the process knocking the auxiliary officer to the ground. The auxiliary officer then fired his gun. As the sergeant, meanwhile, tried to pull Habib Ould Mohamed out of the car, with his gun still in his hand, the gun went off and Habib Ould Mohamed was fatally injured. Police officers are obliged to file a report whenever they fire a weapon, but in this case no such report was filed. The sergeant decided not to report the shot fired by the auxiliary officer. At the same time he claimed that he had not realized he had himself fired a shot, and only later discovered that he must have accidentally fired it. Although he

had heard a shot, he did not check his weapon at the time. He stated that he had placed himself initially in a firing position because he believed the two youths would try to get away by running him down. He had tried to disable the car by leaning into it to cut the wires and was then locked in a grapple with Habib Ould Mohamed.

The latter was seen by his companion stumbling away “in slow motion” along the boulevard. The police officers claimed they had looked for the fugitives in the patrol car but could not find them. They appeared to have only made a desultory search. The body of Habib Ould Mohamed was found later by a woman who noticed it lying partially under a stationary car some 100 metres away from the scene of the shooting.

The police sergeant, charged with involuntary homicide, was tried by the Correctional Court of Toulouse in August 2001. The charge was that the officer had killed the youth either from clumsiness, recklessness, inattentiveness, negligence or failure to carry out his legal and professional obligations. On 6 September 2001 the court sentenced the officer to a suspended three-year prison term.

The court argued that, although the sergeant was initially justified in drawing his weapon (the nature and conditions of the situation; the darkness, etc) any danger he may have faced had evaporated once he had placed himself on the left side of the vehicle, which had been immobilized. However, it was at that very moment that the officer, weapon in hand, had begun to commit an “astonishing series of reckless and clumsy acts and professional errors”.<sup>46</sup>

As in a number of other such cases, the judgment was greeted with angry shouts and tears by friends and relatives at such a lenient sentence.

### 3.5. Riad Hamlaoui

Riad Hamlaoui, a 25-year-old Algerian man resident in Lille, was shot dead on 16 April 2000 in a car, suspected to have been stolen, in which he was a passenger. He was returning from a night out celebrating a new job contract. A police officer, one of two called to the scene of a reported car theft in the Rue Balzac in Lille – a street in the southern part of the city, where many immigrants live – fired at Riad Hamlaoui at close range and a bullet pierced his neck, killing him instantly. Both Riad Hamlaoui and his friend were unarmed. The driver had got out of the car, but Riad Hamlaoui, still inside, was reported by the officer to have made a sudden movement, which caused him to fear for his life. The dark night and condensation on the car window were also put forward by police as factors justifying their action. The officer was placed under investigation on a charge of “voluntary homicide”. He was detained and suspended from the police force pending the outcome of inquiries. He was released from detention a few days later.

On 4 July 2002 the police officer was found guilty of involuntary homicide after the jury threw out the murder charge (*homicide volontaire*). He was sentenced to a three-year suspended prison term by the Court of Assizes of Nord and banned from further service in the police force. He was also banned from carrying or using weapons for five years. The president of the court took the unusual step of reading out a declaration, according to which it believed that the “unfair death” of Riad Hamlaoui was not an intentional act of homicide but the result of a “series of blunders” (*“ensemble de maladresses”*), induced by a state of panic, because the officer felt threatened by dangers which, in reality, did not exist. The court considered that it served no purpose to society or to the family of the victim for the officer to be imprisoned. In effect, it took the line that the officer’s action could be attributed to 11 months of “insipid” training at a police academy, in the words of his defence lawyer, and that he was simply not equipped for the work he had undertaken.

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<sup>46</sup> “*Pourtant, dès cet instant, le Brigadier H. B. ... - l’arme toujours à la main a commis une étonnante succession d’imprudences, de maladresses et de fautes professionnelles.*”

The family's lawyer had, on the other hand, argued that the killing had indeed been a voluntary act. The *avocat général* had backed this line, requesting a six-year prison sentence. He argued that, for the bullet to be fired, there needed to be a hard and deliberate pressure on the trigger. He was only 50 centimetres away from his victim and knew he could not fail to kill or injure. It was not feasible to take refuge in an argument about panic or stress. However, the prosecutor's position was possibly weakened when he reportedly failed to oppose the court's decision to bring a supplementary charge of inflicting "mortal blows" ("*coups mortels*"), which carries a less severe prison term than "voluntary homicide"; this charge was also thrown out.

Despite the conviction, the nature of the sentence angered family and friends, and was criticized by others, including a former French government minister, who remarked that the decision was influenced by a "security-minded climate" and "was not of a kind to induce confidence in the justice system of our country".<sup>47</sup>

On 15 July 2002 the *parquet* of Douai stated that it would not appeal against the verdict, which had led to several nights of violence in the area of Lille-Sud, where Riad Hamlaoui lived.



Mother, father and sister of Riad Hamlaoui, who was shot dead in April 2000 by police. © Denis Charlet, AFP

<sup>47</sup> Martine Aubry, quoted in *Le Monde*, 10 July 2002



## 4. Deaths in police custody

Article 10 of the Code of Police Deontology states that any arrested person is “placed under the responsibility and protection of the police”. Officers must refrain from “all violence or inhuman or degrading treatment”. Officers who witness ill-treatment must take steps to end it or bring it to the attention of a competent authority. Moreover, “police officers who have custody of a person needing special care must call for medical care and, should the occasion arise, take measures to protect the life and health of that person.”

Deaths rarely occur as the direct result of someone being deliberately beaten to death. However, Amnesty International is concerned that deaths in custody arise more often from a combination of acts of police violence or excessive force inflicted in the course of an identity check that degenerates, or a difficult arrest or, in some (rare) cases, a forcible deportation. Such acts may involve the spraying of gas, or dangerous methods of restraint, or physical beatings. Such acts can lead to deaths which are often, however, dismissed as attributable to “cardiac arrest” – a phrase which, in itself, is meaningless, since all deaths are caused by the heart ceasing to beat.

In the cases described below, three involved individuals who were subjected to methods of restraint which may have led to positional asphyxia.

When an investigation is opened into a death in custody and placed in the hands of an investigating judge at the request of the public prosecutor, the victim’s relatives or those representing the victim automatically receive notice that they can join proceedings as a civil party. However, if the victim’s relatives have not joined proceedings as a civil party, they have not, until now, been kept informed of the proceedings or outcome of the complaint. This practice was challenged at the European Court of Human Rights.

In a recent judgment of July 2004 about the death of **Mohsen Sliti**, who was being held at the *centre de rétention administrative* of Marseille-Arenc in 1999, the European Court of Human Rights found that France had violated Article 2 of the ECHR (right to life) by failing to keep his partner, Mme Dalila Slimani, informed of the proceedings. The French authorities argued that because she had not joined proceedings as a civil party, she had no right to be kept informed of the judicial inquiry held into the death. The Court reminded France that when a detainee dies in disputed conditions, Article 2 of the ECHR required the authorities to conduct effective official inquiries (*“enquête officielle et effective”*) of their own volition as soon as the case came to their attention to enable the cause of death to be established, and anyone responsible for the death to be identified and punished. “To demand, as the French Government did, that those close to the dead man must lodge a complaint joining them to proceedings as a civil party, contradicts these principles. As soon as they are made aware of a death which has taken place in suspect circumstances, the

authorities must as a matter of course carry out an inquiry which gives automatic equal access to those close to the dead person.”<sup>48</sup>

The five cases listed here are among those which Amnesty International has been able to follow through in detail.

#### 4.1. Aïssa Ihich

In May 1991 Aïssa Ihich<sup>49</sup>, an 18-year-old school student, and a chronic asthma sufferer, died following an asthma attack, at the police station of Mantes-la-Jolie, after he had been severely beaten while lying on the ground.

Aïssa Ihich had been arrested after disturbances in which a group of youths had attacked cars and thrown stones at police officers, and he was beaten with truncheons by officers before being taken to the police station, where he was held for about 36 hours until his death.

In 1992 a doctor on duty at the police station was charged by an investigating judge with manslaughter (*homicide involontaire*) based on alleged medical neglect. (He had not referred to Aïssa Ihich’s asthma in the medical certificate requested by the latter and gave no instruction to the police relating to the detainee’s treatment or conditions of detention.) However, the prosecutor did not request the committal for trial of any police officer and a decision was taken not to proceed against the officers (*ordonnance de non-lieu*). Only in 1997, after a long procedural battle by the lawyers

<sup>48</sup> ... comme la Cour l’a précédemment souligné, dans tous les cas où un détenu décède dans des conditions suspectes, l’article 2 met à la charge des autorités l’obligation de conduire d’office, dès que l’affaire est portée à leur attention, une “enquête officielle et effective” de nature à permettre d’établir les causes de la mort et d’identifier les éventuels responsables de celle-ci et d’aboutir à leur punition: les autorités ne sauraient laisser aux proches du défunt l’initiative de déposer une plainte formelle ou d’assumer la responsabilité d’une procédure d’enquête. Or à cela il faut ajouter qu’une telle enquête ne saurait être qualifiée d’“effective” que si, notamment, les proches de la victime sont impliqués dans la procédure de manière propre à permettre la sauvegarde de leurs intérêts légitimes ... Selon la Cour, exiger que les proches du défunt déposent une plainte avec constitution de partie civile pour pouvoir être impliqués dans la procédure d’enquête contredirait ces principes. Elle estime que, dès lors qu’elles ont connaissance d’un décès intervenu dans des conditions suspectes, les autorités doivent, d’office, mener une enquête à laquelle les proches du défunt doivent, d’office également, être associés. Case of Slimani c. France (application no. 57671/00, judgment of 27 July 2004, para. 47. Only available in French).

<sup>49</sup> It was the death of Aïssa Ihich which provoked the disturbances at Mantes-la-Jolie (Yvelines) in which Youssef Khaïf was shot dead in the back of the neck by a police officer on the night of 8-9 June 1991. On 28 September 2001 – 10 years after the killing – the Yvelines Assize Court acquitted the officer. A psychiatric expert had argued that the emotional state of the officer could not be dissociated from an earlier incident, unconnected to Youssef Khaïf, in which a police officer had been knocked over and fatally injured by a stolen car, and that the officer who shot Youssef Khaïf had been in an “altered state” when he did so. The prosecutor had requested a suspended prison term. (The driver of the car which had killed the police officer was sentenced to a 10-year prison sentence.)

for the family, was this decision annulled in the case of three of the officers by the *chambre d'accusation* of Versailles. The three faced charges of voluntary assault with weapons (“*violences volontaires avec arme par personne dépositaire de l'autorité publique dans l'exercice de ses fonctions*”).

In the meantime, the controversy surrounding the fact that Aïssa Ihich had been denied access to medication led, in 1993, to a reform of the conditions of police custody, which authorizes a visit from a doctor at the outset of police custody.

On 23 June 1999, eight years after the death, the *chambre d'accusation* of the Versailles appeal court ordered the trial before a correctional court of three police officers and the doctor.

On 20 March 2001, the correctional court of Versailles sentenced two officers of the local *brigade urbaine* to a nominal, suspended, 10-month prison sentence for committing acts of violence. The doctor was sentenced to a suspended one-year prison term. A third officer was acquitted. The police officers were found guilty of acts of violence, inflicted during and immediately after arrest and found to have had an indirect link with his death. Officers of another police force, the *Compagnie républicaine de sécurité* (CRS), testified that Aïssa Ihich had been beaten with a truncheon on his head, body and hands while he was lying, immobilized on the ground.

Throughout the trial the prosecutor did not accept that there was enough evidence against the police officers, and at the trial requested that they be found not guilty. The police officers appealed against the sentence, and in February 2002 the 10-month suspended prison sentence was reduced to an eight-month suspended prison term, thereby making the officers eligible for an amnesty and allowing them to continue their careers in the police force. The conviction against the doctor was upheld.

## 4.2. Mohamed Ali Saoud

The death of **Mohamed Ali Saoud**, who was known by police to be suffering from a mental illness at the time of his arrest, is a vivid example of impunity. This is the case of someone who, even after being brought under control, and despite having been shot with rubber bullets, was held under restraint, slowly suffocating to death for between 15-20 minutes while paramedics were asked to attend to (lightly injured) police officers. In this highly disturbing case no-one was held responsible. The fact that the arrest had been a particularly difficult one, involving someone not properly responsible for his actions, and whose state of health and particular vulnerability had been notified to police in advance, did not seem, in the eyes of the judge, to warrant pursuing through the courts, even though an examination of the case (described below) shows that the officers committed a series of serious and even appalling errors.

Apart from the fact that justice in such a case was not seen to be done, and a family was left with a deep and unresolved grief, the courts' failure to pursue the case means that important lessons were left unlearned.

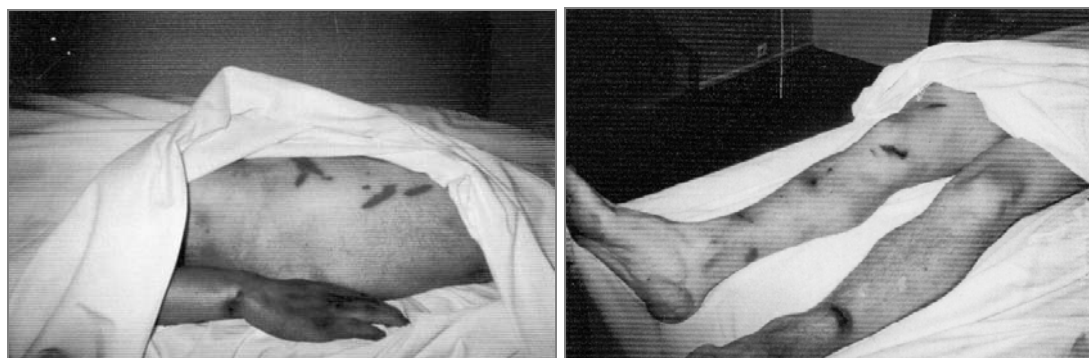
On 20 November 1998 Mohamed Ali Saoud, a French and Tunisian citizen of Tunisian origin, died at Fort-Blanc, Toulon, while being held under police restraint. Mohamed Ali Saoud, who lived with his mother and sisters at Fort-Blanc, developed a depressive illness after returning home from military service in 1994. His condition deteriorated after his father's death in 1997 and he was registered as suffering from an 80 per cent mental disability. He became highly agitated after an altercation with a neighbour on 20 November and appeared on the ground floor balcony of his flat with an iron bar and a baseball bat. He then grabbed hold of one of his sisters and tied up her feet. Neighbours called the police, and members of his family asked the police to contact a doctor, or the SAMU (national paramedics service), warning them that he was mentally ill and needed to be tranquillized. However, this was apparently not done. In the meantime, between 20-30 officers arrived.



Mohamed Ali Saoud died on 20 November 1998 while under police restraint. © AI

After the intervention of a neighbour, Mohamed Ali Saoud released his sister, but then grabbed his other sister, and "tapped" her twice on the back with the iron bar, in an apparent attempt to get her to leave the house. An officer with a "flashball" gun (one that fires rubber bullets) shouted a warning at him. He then fired up to three shots at Mohamed Ali Saoud, who was running up and down the balcony. Two bullets hit him in the abdomen. Although he was hit, medical support was still not summoned. Some officers then climbed over the balcony wall and, in a struggle, in which one officer's wrist was broken, they wrested the iron bar away from him. Now on his knees, and in a state of blind panic, Mohamed Ali Saoud managed to grab one of the officer's service weapons. In the continuing struggle several unaimed shots were fired, and one officer was hit in the toe. Three officers were injured before he was brought under restraint. They were given first aid by members of the Saoud family pending the arrival of paramedics (*sapeurs-pompiers*), followed by the SAMU.

Family members claimed that, after the gun was retrieved, seven or eight officers began to beat Mohamed Ali Saoud with their fists and batons, also pulling his hair and shouting insults. Yasmina Saoud claimed that, while her brother's arms were held behind him by two officers, he was beaten on the head and hands. He was forced face down on the ground and his feet and hands were shackled. His arms were placed above his head. By then it was about 11am. The family, notably Yasmina and their mother, Majhouda Saoud, claimed that he was still being beaten with batons on the head and back even after he had been brought under restraint, and that, although he had been shot in the stomach with a rubber bullet, he was being kicked in the stomach and on the back. He was held to the ground by three officers. One sat astride his back, with his arms pressed against his shoulders and one knee against his back; a second had his foot on Mohamed Ali Saoud's neck and a third held his ankles. Nail marks later found on his body were attributed to his being crushed against a plank of wood with nails in it. He was pinned to the ground, under restraint, for up to 30 minutes. During part of this time he was still agitating and calling for his mother.



**Mohamed Ali Saoud died on 20 November 1998 while under police restraint. © AI**

Paramedics arrived at 11.22am. On arrival, the sergeant in charge asked if they should first attend to Mohamed Ali Saoud, but was told it was not necessary, and medical care should first be given to the injured officers. Yasmina Saoud claimed that between 11.30-11.35am she saw that her brother's hands and face were "violet". At about the same time, that is, between 10 and 15 minutes after the arrival of the paramedics, one of the police officers reported that Mohamed Ali Saoud was "not well". Only then did the paramedics attend to him, attempting resuscitation, but without success. The death of Mohamed Ali Saoud was officially noted at 12.30pm. Members of the family, although clearly in a state of shock, were immediately taken for questioning to the police station.

An autopsy was carried out on 20 November by forensic doctors of the *Unité de Médecine de l'Aire Toulonnaise*. The autopsy report concluded that the cause of death could not be ascertained with any clarity. It referred to multiple wounds and haematoma on the head, neck, chest, stomach, wrists and legs. The stomach and small intestine contained blood. Visceral lesions were found to be consistent with “direct shocks or compression of the torso”.<sup>50</sup> Although no fractures were found, no X-ray examination was made to confirm the absence of fractures, despite one police report which apparently referred to a fracture of the skull. No photographs of the body were taken by the judicial authorities, although photographs taken at the mortuary by relatives show that the body was covered with marks. An examination of injured organs of the body (*étude anatomopathologique*) was carried out on 15 January 2000. This concluded that the injuries could be attributed to “positional asphyxia”. An expert medical examination dated 27 May 2000 confirmed that Mohamed Ali Saoud had died as a direct result of being held on the ground under restraint, while shackled and handcuffed and pressed down by a weight on his back.

An inquiry was opened by the IGP. It interviewed family members, police officers, the sergeant in charge of the paramedics and one of the hospital ambulance service staff, but reportedly did not interview other paramedics or hospital doctors and none of the neighbours who witnessed the events. The inquiry concluded that officers had acted in “legitimate defence” against “an individual using an iron bar and a baseball bat”. It found that the blows administered to Mohamed Ali Saoud were proportional to the injuries he had inflicted on the officers, said to include fractures, and justified the fact that he had been pinned to the ground “for about 30 minutes” by the injuries sustained by the officers, the problems of access to medical care and the absence of any medical means of tranquillizing him – something which the family had asked for as soon as the officers arrived on the scene.

The body of Mohamed Ali Saoud was quickly released, by order of the public prosecutor, for burial in Tunisia. The family became concerned that this took place before discrepancies which they felt had arisen between the police reports and the autopsy reports had been clarified, and before any further examinations could be carried out.

On the other hand, a judicial inquiry was not opened for two months, since the prosecutor’s office had reportedly not found it necessary to notify the investigating judge immediately. Concerned about lack of progress in the case, the family joined proceedings as a civil party in the first week of January 1999, lodging a formal complaint, under Article 221-4 of the Penal Code, for “voluntary homicide, committed against a particularly vulnerable person”. Only on 14 January 1999 did the prosecutor refer the case to the investigating judge on the all-embracing grounds of

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<sup>50</sup> “...compatibles avec un mode de production par chocs directs ou compression du tronc”.

“voluntary or involuntary homicide”. The IGPN was asked to carry out further inquiries. The family believed that, since the autopsy report had not found the cause of death, the original police inquiry, exonerating the officers, had been conducted too hastily and its conclusion that they had acted in self-defence was premature. Fearing that the IGPN inquiry might lack the necessary impartiality, the family asked that any supplementary inquiry be carried out by a different police body, in this case the Gendarmerie Maritime, but this request was refused.

A reconstruction of events was carried out on 22 June 1999. On 12 October 2000 the investigating judge attached to the court of Toulon issued a *non-lieu* decision in respect of the death. The judge concluded that the officers had found themselves in a dangerous situation and had not acted criminally. An appeal was lodged against the decision on 17 October 2000 by the lawyer acting for the civil party. On 4 January 2001 an order of the investigation section of the Appeal Court of Aix-en-Provence confirmed the *non-lieu*. The court found that Mohamed Ali Saoud had suffered from serious mental problems and that he had been shot twice by rubber bullets in the abdomen but had continued to struggle, in the course of which time some officers were injured. It concluded that the paramedics had attended to him *as soon as necessary*. However, this was clearly not the case. The court did not explain why, if he had been shot twice in the stomach, the victim should not have been attended to at once. Nor did it explain why the officers continued to hold the victim in a suffocating hold long after he had been shackled and handcuffed. Other questions remained unanswered. Why, for example, if the police were warned from the outset that Mohamed Ali Saoud urgently required medical help, was this not sent for immediately in conformity with Article 10 of the code of conduct of the National Police?

The case is currently awaiting examination by the European Court of Human Rights.

### 4.3. Sydney Manoka Nzeza

Sydney Manoka Nzeza, a young amateur boxer of Zairean origin, died in custody on 6 November 1998, at Tourcoing (Nord), after involvement in a violent arrest. Four police officers were placed under investigation in relation to possible charges of manslaughter (*homicide involontaire*) and failing to provide assistance to someone at risk (*non-assistance à personne en danger*). Three of the officers were suspended from work, pending the result of the judicial inquiry, on the order of the acting Interior Minister. Two other officers were also placed under investigation on a possible charge of failing to provide assistance. An autopsy concluded that the death had been caused by “a process of asphyxia due to compression of the thorax” (“*un processus asphyxique par compression thoracique*”). The police complaints body, the

IGPN, was expected to establish whether the rules on police apprehension and questioning of suspects had been respected at the time of arrest.

Sydney Manoka Nzeza was arrested after police received a report about a traffic incident in the town, involving the boxer, who was on roller skates, and a car driver (a retired police officer), whose mirror he reportedly tapped, or knocked, in the course of a dispute. He was arrested after having continued on his way. Two BAC officers, reinforced by another four, were involved in his arrest, after he refused to get into a police vehicle. According to reports, Sydney Manoka Nzeza, after being forced to the ground, tried to get up again. He was forced to the ground again. One officer pressed his knee against his shoulder blades; a second officer pressed down on his thighs with a baton, and a third officer lay across his legs, while a fourth cuffed him by both wrists and ankles. The officers denied hitting or beating him. They claimed they thought he was “simulating” unconsciousness on the way to the station. He was taken to Tourcoing police station, where he was reportedly placed in a cell, even though by that time he had either collapsed or was already dead. The organization SOS-Racisme, which became a civil party to the case, reported having collected eye-witness accounts, according to which Sydney Manoka Nzeza collapsed on the pavement before arriving at the police station, and stated that medical help should have been sought immediately.



Sydney Manoka Nzeza died on 6 November 1998 from asphyxia after a violent arrest.

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During the trial, the family's lawyer argued that Sydney Manoka Nzeza had died because the rules of police conduct had not been respected. The public prosecutor, however, referred to the difficulty of arrest and a "series of blunders" committed by the officers. Nevertheless, as members of the BAC, they would have been trained in control and restraint techniques.

On 5 July 2000 two BAC officers were convicted of a manslaughter charge and sentenced to a nominal, seven-month suspended prison term by the Correctional Court of Lille. They and three others were acquitted of failing to assist a person at risk. The public prosecutor had requested a suspended prison term of between 10 and 12 months. The family of the victim and the civil parties protested against the lightness of the sentence. The mother of the dead man was expelled from the court when she exclaimed "You killed my son to give me 40,000 francs!" (referring to the compensation award). An aunt, who insulted the judges after hearing the sentence, was formally charged with "insulting a judge" (*outrage à magistrat*).

The lawyer for the family stated that an appeal would be brought. However, in March 2001 the Court of Appeal of Douai upheld the original suspended prison sentences.

#### **4.4. Edourd Salumu Nsumbu**

On 29 October 2001 Edouard Salumu Nsumbu, a national of the Democratic Republic of the Congo, died following a police identity check in disputed circumstances in the centre of Paris. Edouard Salumu Nsumbu, who had just left a restaurant in or near the Place de Pigalle, was stopped while driving away in his car with a friend. There was a heated exchange of words and he apparently resisted an attempt to handcuff him. He was reportedly wrestled to the ground and sprayed with tear gas before being taken to a police station in the rue de Parme. While at the police station he lost consciousness and was taken to hospital by police officers, but died in transit.

According to an autopsy, Edouard Salumu Nsumbu ("no delinquent", according to the police), died as the result of a heart attack following arrest. The autopsy apparently failed to find any signs of traumatic injury apart from those left by attempts to resuscitate him, but a relative who witnessed the identity check stated that he had been "beaten" (*tabassé*) and sprayed with tear gas, and that police violence could have led to his death. The public prosecutor asked the IGS to open an inquiry. However, the IGS concluded that there had been no act of police violence, and no judicial inquiry was opened. On 14 November 2001 the family, concerned at the lack of progress of the inquiry, joined proceedings as a civil party, making a complaint against the police for "voluntary acts of violence leading to death" (*"violences volontaires ayant entraîné la mort"*).

Amnesty International raised the case with the Minister of the Interior, who told the organization in October 2002 that the judicial inquiry was ongoing. This was still the case at the time of writing.

#### 4.5. Ricardo Barrientos

Ricardo Barrientos, an Argentinian national, died while under restraint on board an aircraft at Roissy-Charles de Gaulle airport during a forcible deportation on 30 December 2002. He was escorted, struggling, onto the aircraft before other passengers embarked and seated, bent double, and with his hands cuffed behind his back. Two police officers and three gendarmes applied continuing pressure to his shoulder blades. His torso, thighs and ankles were bound with Velcro tape. A mask was placed over his face and he was covered in a blanket so that he could not see or be seen by the passengers. He collapsed before take-off. An autopsy concluded that he had died of naturally occurring complications of a heart condition, and a police inquiry concluded that procedures had been followed, although it was not clear what exactly these procedures were.

A judicial inquiry was opened on a possible homicide charge – “acts of violence leading unintentionally to death” (*“violences ayant entraîné la mort sans intention de la donner”*). On 20 September 2004 the Court of Appeal of Paris issued an order that the case be dismissed as there was no case to answer (*ordonnance de non-lieu*). The court decided that Ricardo Barrientos had not been subjected to acts of violence and the officers were simply obeying legitimate orders to keep the deportee under restraint. An appeal was not lodged.

Amnesty International’s concern about this case is that the inquiry should have helped elucidate whether the procedures used by the officers had been in conformity with international standards and whether the officers had taken such standards into consideration. For example, in its 13<sup>th</sup> General Report the CPT pointed out the “risk when a deportee, having been placed on a seat in the aircraft, struggles and the escort staff, by applying force, oblige him/her to bend forward, head between the knees, thus strongly compressing the ribcage”, and noted that “the use of force and/or means of restraint capable of causing positional asphyxia should be avoided wherever possible”.<sup>51</sup>

In a letter to the Minister of the Interior of January 2003, Amnesty International asked the French authorities for clarification of the procedures in place for forcible deportations and whether these were fully in line with international

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<sup>51</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 13<sup>th</sup> General Report on the CPT’s activities covering the period between 1 January 2002 to 31 July 2003, Strasbourg, 10 September 2003, <http://www.cpt.coe.int/en/annual/rep-13.htm>, para.34.

recommendations or principles. However, it has remained unclear that this was the case, and the court decision did not help in any way to cast light on the crucial question as to whether the officers' action did indeed fall within the international requirements. As outlined by the CPT, the guiding principle is that "the force and the means of restraint used should be no more than is reasonably necessary" and should be the "subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned". Among other things, the CPT recommends that there should be "an absolute ban on the use of means likely to obstruct the airways (nose and/or mouth) partially or wholly" and deportees should "undergo a medical examination before the decision to deport them is implemented" – particularly "when the use of force and/or special measures is envisaged".<sup>52</sup>

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<sup>52</sup> See *ibid.*, paras 33; 34; 36; 39 respectively.

## **5. Torture and ill-treatment by law enforcement officers**

### **5.1. Failure to implement international obligations**

#### **5.1.1. France's international obligations to prevent and punish torture**

Amnesty International has long been concerned at persistent allegations of torture and ill-treatment by law enforcement officers. The organization has further concluded that there is a pattern of effective impunity for law enforcement officers who commit torture or ill-treatment, because of the failure of the authorities to address the lack of prompt, thorough, independent and impartial investigations into all allegations, and to bring perpetrators of such human rights violations to justice.

This is in spite of clear provisions against torture and ill-treatment, and France's obligations to uphold them, contained in a number of international treaties to which France is party. These include the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN Convention against Torture), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Torture is given a clear and specific definition by the UN Convention against Torture (which France ratified on 4 February 1985) as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ..." (Article 1).

Article 4 of the UN Convention against Torture obliges states parties to ensure that all acts of torture are offences under their criminal law and that offences are punishable by appropriate penalties which take into account the gravity of the crime.<sup>53</sup> States parties are also obliged, under Article 12 of the Convention, to investigate,

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<sup>53</sup> Under the French Penal Code of 1 March 1994 acts of torture became separate crimes rather than aggravating circumstances. According to Article 222-1 "the act of submitting a person to torture or acts of barbarity is punished with 15 years' imprisonment". Under Article 222-3.7 a public official, such as a police officer, who carries out such acts may be punished with up to 20 years' imprisonment.

promptly and impartially, whenever there is reasonable ground to believe that an act of torture has been committed, irrespective of whether there has been a formal complaint by the victim or anyone else. Under Article 14 victims of torture must obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible.

### **5.1.2. France's failure fully to implement these obligations**

Amnesty International is concerned that France's failure fully to abide by its obligations under the UN Convention against Torture, and by the provisions of other international treaties aimed at preventing and punishing torture and ill-treatment, contributes to a pattern of effective impunity of law enforcement officials who commit such torture or ill-treatment. Such failures include the absence of a definition in the French Penal Code which conforms to the definition of torture as laid out by the UN Convention against Torture; excessive delay to the investigation and prosecution of cases of alleged torture and ill-treatment; the failure to treat instances of police violence in accordance with the gravity of the offence; and the lack of effective redress.

For example, the absence of a definition of torture in the French Penal Code which is in line with that of the UN Convention against Torture is a possible further hindrance to adequate prosecution of cases of torture.

The French government has stated that, although the French Penal Code contains no such definition, a circular of the Ministry of Justice of 14 May 1993, commenting on the dispositions of the new Penal Code of March 1994, makes express reference to the Convention's definition of torture. It states that: "In general ... any act by which acute pain or suffering, whether mental or physical, is intentionally inflicted on a person" can be qualified as torture.

Such a definition falls short of a full definition of torture and Amnesty International has urged that a full definition be included in the Penal Code, which would give greater significance and visibility to the crime.

Other forms of ill-treatment ("other acts of cruel, inhuman or degrading treatment or punishment") are not defined in the UN Convention against Torture. Such ill-treatment is, nevertheless, prohibited under Article 16, which requires states parties to take a number of measures to prevent them. It is important to note that both under the ICCPR (articles 7 and 4) and the ECHR (Articles 3 and 15), ill-treatment, like torture, is a "non-derogable" human right, that is, it applies in all circumstances, even in times of "emergency" which threaten "the life of the nation".

Amnesty International is also concerned that, under national law, the prosecution of crimes such as inflicting severe ill-treatment often appears to be conditional upon a formal complaint by the alleged victim or civil party.

The authorities' failure to create an independent mechanism to investigate thoroughly, promptly and impartially alleged acts of torture or ill-treatment, and to ensure the effective prosecution of perpetrators and their punishment by penalties which reflect the gravity of the crime also contravenes France's obligations under international human rights law and standards.

### **5.1.3. International scrutiny of France's obligations**

Cases illustrative of Amnesty International's longstanding concerns about effective impunity for torture and ill-treatment are given below in this section. Such concerns have also been echoed consistently over many years by international bodies set up to monitor implementation of the treaties mentioned above.

The UN Human Rights Committee, the UN Committee against Torture (CAT) and instruments of the Council of Europe, have consistently expressed concern about allegations of ill-treatment by law enforcement officers. (In most cases of ill-treatment the victims are kicked, punched, slapped and beaten with a baton or their heads are slammed against car bonnets.) In July 1997 the UN Human Rights Committee was "seriously concerned" by the number and gravity of the allegations it had received of ill-treatment by law enforcement officers of detainees and others, and underlined that the risk of such ill-treatment was "much greater in the case of foreigners and immigrants".<sup>54</sup> In 1998, considering France's second periodic report, the UN CAT urged France to "pay maximum attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and, in proven cases, applying appropriate penalties".

In 1999 the European Court of Human Rights concluded that France had violated the absolute prohibition against torture (see 5.2.). In 2001 the CPT, in its report on a visit to France in May 2000, observed that most allegations of police ill-treatment involved the National Police and consisted principally of individuals being punched, pushed to the ground, kicked and handcuffed too tightly. The CPT also noted allegations of ill-treatment of foreign nationals at airports during attempts to deport them.

The European Commission against Racism and Intolerance, in its report published in February 2005, noted with anxiety that "complaints persisted concerning ill-treatment inflicted by law enforcement officials on members of minority groups". The report stated that the allegations consisted of physical violence, humiliation, racist verbal abuse and racial discrimination, including discriminatory identity checks.

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<sup>54</sup> Examination of the French government's third periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR).

#### **5.1.4. Cases illustrative of Amnesty International's concerns**

The following cases are given as illustrations of Amnesty International's concerns regarding effective impunity for torture and ill-treatment. Many, for example, illustrate the organization's concern with regard to the way in which complaints against police officers have been treated in the courts. Others, which are still open, and have not yet come to court, reflect certain factors which lead to effective impunity. In the experience of Amnesty International, it is rare indeed for a case of police violence to be treated by the courts with the gravity which it deserves, and any court wishing to be exemplary in its punishment has an uphill struggle.

### **5.2. Ahmed Selmouni**

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

Moroccan and Netherlands national Ahmed Selmouni was arrested by judicial police for a drug trafficking offence in November 1991 and held in police custody for three days at Bobigny (Seine-Saint-Denis). In its judgment the European Court found that Ahmed Selmouni had "endured repeated and sustained assaults over a number of days of questioning" and stated that "the physical and mental violence, considered as a whole, committed against the applicant's person caused 'severe' pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture."<sup>55</sup> The treatment included repeated punchings, kickings, beatings with a baseball bat and truncheon and hair-pulling. The court also noted that he was forced to run along a corridor with police officers positioned on either side to trip him up, and made to kneel in front of a young woman to whom someone said: "Look, you're going to hear someone sing." He was also urinated on and threatened with a syringe and a blow lamp.

France argued that Ahmed Selmouni's case was inadmissible, because he had not exhausted all domestic remedies and the police officers had (finally) been committed for trial at the criminal court of Versailles. However, the European Court rejected this argument on the grounds that "the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness". In this case, the proceedings, which were still in progress before the Court of Cassation on points of law at the time of the Court's decision, had already lasted more than six years and seven months; delays had already been excessive and Ahmed Selmouni had not been granted effective redress.

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<sup>55</sup> *Selmouni v. France*, Judgment of 28 July 1999, Reports 1999-V. These rights are provided for in Articles 3 and 6. 1 of the ECHR, respectively.

Finding that France had breached both Articles 3 and 6.1 of the ECHR, the court ruled that Ahmed Selmouni should be paid 500.000 French francs in damages and 113.364 French francs for costs and expenses.

The officers involved in the case belonged to the *Service départemental de la police judiciaire* (SDPJ). They were not placed under investigation by a judge until 1997, although the events had taken place in 1991, and did not appear before the Correctional Court of Versailles (Yvelines) until February 1999 – only about six weeks before the case was heard by the European Court in Strasbourg.

The five officers faced charges of committing violent acts and sexual assault against Ahmed Selmouni and another man, Abdemajid Madi. The defendants denied the charges, suggesting that the two men had injured themselves, or had perhaps watched too many films. The prosecution requested that they be sentenced to between two and four years' imprisonment. In March 1999, a few days before the hearing in Strasbourg, the court convicted all five officers. Concluding that they had committed acts of "organized and particularly severe violence" which "strike deeply at public order and contravene the most basic principles of the rule of law", and that they had "responded to the victims' statements with nothing but silence and denials without giving the least explanation for their actions", the court sentenced one officer to an "exemplary" four-year prison term and he was taken from the court to the *maison d'arrêt* of Bois d'Arcy (Yvelines).<sup>56</sup> Three other officers were sentenced to three years' imprisonment and the fifth officer to two years' imprisonment.

The verdicts were met with a series of angry protests and demonstrations by members of all the police unions in France, and the officers immediately appealed. The appeal was heard within an unusually swift time, before the Court of Appeal of Versailles in May and June 1999. The court drastically cut the "exemplary" four-year prison term to one of 18 months, of which 15 were suspended, allowing for the officer's immediate release. The sentences of the other four officers were reduced to suspended prison terms of 15, 12 and 10 months. The prosecutor attached to the appeal court even requested that the officers be "returned their honour" and declared not guilty of the offence of sexual assault and that, if they were to remain convicted of violent acts, they should benefit from an amnesty.

The court upheld the convictions against the officers for violent acts but set aside the conviction for sexual assault. It recognized that the officers had committed "particularly degrading treatment" and that their conduct could in no circumstances be justified. However, the officers appealed to the Court of Cassation against the reduced sentences. This meant that they continued working in their posts as before. On 31 May

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<sup>56</sup> "Les policiers se sont livrés à des violences organisées et particulièrement graves ... Ces faits ... sont de ceux qui heurtent profondément l'ordre public et contreviennent aux principes constitutifs d'un Etat de droit ... Face aux déclarations des victimes, les fonctionnaires de police n'ont opposé que silence et dénégations sans donner la moindre explication de leurs agissements."



2000 the criminal section of the Court of Cassation confirmed the sentences. However, in March 2002, Amnesty International received reports that the officers had not yet been subject to any internal disciplinary procedures, despite the fact that the Court of Cassation had stated that the officers had carried out acts of an “exceptional gravity” which clearly violated their code of conduct.

### **5.3. Baba Traoré**

Baba Traoré, a Malian national resident in the Canary Islands, Spain, alleged that, on 21 February 2001, he was arrested by uniformed border police officers of the PAC (*Police de l'air et des frontières*) while on a train at Hendaye railway station, close to the border, and taken by car to the police station.

Baba Traoré stated that he was travelling to Paris to renew his passport, as he was not able to do this in Spain. He had a valid return train ticket and his Spanish residence and work permits. He claimed that he was seriously ill-treated while at Hendaye police station. He could not speak French but attempted several times to ask why he had been arrested. He was reportedly punched hard in the left eye while sitting in a chair.

About half an hour later two officers escorted him to Biriattou police station and handed him over to Spanish police officers, who released him, reportedly calling a taxi so that he could be taken to the local hospital of Bidasoa. Shortly afterwards, he was transferred by ambulance to the hospital of Nuestra Señora de Aranzazu in San Sebastián. On the same day he underwent surgery on the left eye, which, according to medical reports, was severely damaged by a “direct blow”. He remained in hospital for six days.

Baba Traoré lodged a judicial complaint with the prosecutor of Bayonne. The prefect of Pyrénées-Atlantiques, responding to publicity about the case, reportedly stated that the Malian had violently opposed readmission to Spain and therefore had to be handcuffed and brought under control.

In July 2003 the lawyer for Baba Traoré informed Amnesty International that the investigating judge had ordered that the case be dropped (*ordonnance de non-lieu*). The investigation had concluded that although Baba Traoré had, undoubtedly, been injured, it was impossible to establish whether this had occurred as a result of a difficult arrest or in the police station, as Baba Traoré maintained. In addition, despite numerous interrogations, and although Baba Traoré had been able to identify, in a photograph, the officer he claimed had hit him, it had not been possible to identify the officer who had struck Baba Traoré with such severity. The obvious implication is that the officers had agreed among themselves not to cooperate with the inquiry, since it was clear that one of the officers had indeed inflicted the injury. Thus, despite his serious injury, Baba Traoré received no compensation and no sanctions were brought

against the officers. The case highlights the problem facing a victim, or alleged victim, of police violence when it is not possible to identify the officer involved and when safeguards have not been put in place, such as video-recording.

#### **5.4. Yacine<sup>57</sup>**

Yacine was a 16-year-old minor when he claimed that he was severely beaten by police officers at Asnières-sur-Seine police station after arrest on 10 July 2001. As a result of the beating he had to undergo urgent treatment in hospital and one of his testicles was removed.

Yacine was found by police in a car at the railway station of Bois-Colombes (Hauts-de-Seine). Officers suspected that he and a friend were trying to steal the car and that the starter motor was damaged. The two minors had no papers with them and were taken to the police station for identification. According to a report drawn up by the IGS, Yacine resisted attempts to handcuff him. In the ensuing struggle Yacine reacted with violence, kicking out at the officers. Yacine protested that it would have been difficult to kick at the officers because he was being held by both hands and feet and his neck was trapped by one of the officer's elbows, while another was shouting in his ear. He said he heard laughter around him. He was not allowed to telephone his mother.

After being handcuffed, Yacine reportedly insulted the officers. The officers were ordered to take him to a detoxification cell. Instead he was taken into a corridor by the detoxification cells, where he was allegedly punched, kicked, and kneed in the testicles. According to the police version of the case, Yacine had damaged his testicle by falling on a water fountain with a tap attached to it. Seriously injured, Yacine was subsequently taken to the hospital of Beaujon de Clichy, where he was operated upon and one of his testicles was removed. He was then transferred to the psychiatric hospital of Sainte-Anne because he had reacted violently on waking from the anaesthetic. He was subsequently allowed home.

Amnesty International expressed concern about this case because of the alleged severe beating received by a 16-year-old minor, and because of other alleged irregularities in procedure while he was being held at the police station. Mme D. had not been informed immediately about her son's arrest and it is not legal for minors to be put into handcuffs. A medical report drawn up at the hospital referred to a contusion of the right eye, multiple bruises on the face and neck and multiple haematoma on the scalp, as well as a contusion on the right wrist and back. An X-ray examination revealed damage to the right testicle, which had to be removed.

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<sup>57</sup> The full name has been withheld in this instance.

In February 2002 the *Procureur de la République* of Nanterre informed Amnesty International that he had asked the investigating judge to open an inquiry into the case and also requested information from the IGS. A judicial inquiry had been opened on 20 July 2001. On 29 January 2002 two out of the three police officers who had been placed under investigation were questioned by the investigating judge. The family joined proceedings as a civil party. On 14 October 2004 two police officers appeared before the correctional court of Nanterre, charged with committing voluntary acts of violence as police officers (*"violences volontaires par agents dépositaires de l'autorité publique"*). At the hearing the prosecution requested the acquittal of the police officers on grounds of insufficient evidence to support the charge (*"faute d'infraction caractérisée"*). The prosecutor reportedly did not express any concern about infringements of procedure during police custody. The defence counsel for the police officers reportedly argued that Yacine "had made violent sweeping kicks", and she spoke of the "hatred of young people for the *bleus*" (police). Yacine's mother was reportedly expelled from the court after laughing when the lawyer said that the police officers' version of events was the "crying truth".

On 14 December 2004 the 18<sup>th</sup> section of the Correctional Court of Nanterre (Hauts-de-Seine) found the two officers guilty of "voluntary acts of violence" and sentenced them to nominal penalties of an eight-month suspended prison term and a four-month suspended prison term respectively. According to the court the violence used was "well in excess of a reasonable use of force" (*"bien au-delà de l'usage raisonné de la force"*). The police officers have appealed against the convictions.

## 5.5. Karim Latifi

On 22 February 2002 a French IT consultant, Karim Latifi, was reportedly involved in an altercation with police officers in Paris, in which he was severely assaulted and racially abused by police officers. According to the complaint he lodged with the IGS, Karim Latifi had got out of his car after finding the road blocked by several police vehicles. He approached some officers who were questioning a group of youths, two of whom he recognized, and asked what was happening. He was asked for identification. Karim Latifi claimed that one officer then pushed him onto a flight of steps. Describing what happened, he said: "I'm feeling off-balance; he [the police officer] gets out his baton and hits me on the head, then pounces on me, kicks my face. I'm terrified, I can feel the ground vibrating between my head and my shoulder. I shout for help. I drag myself away. A dozen policemen throw themselves at me. It's a deluge of blows, kicks, insults – 'dirty Arab', 'son of a bitch'."<sup>58</sup> His head began to

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<sup>58</sup> "Je suis déséquilibré; il sort sa matraque et me frappe à la tête, puis se rue sur moi, me tape au visage, cette-fois-ci avec sa jambe. Je suis terrifié, je sens presque le sol vibrer entre ma tête et mon épaule. Je crie au secours. Je me traîne plus loin. Une dizaine de policiers se ruent sur moi. C'est un

swell and his nose was broken. He claimed that he was forced to “lick the wall”. During the car journey to the police station he was allegedly subjected to continued racial abuse. He was held in the police station for 15 minutes, after which a police lieutenant, who had not been involved in the incident, told him no charges were being brought against him and he was released.

After examining the judicial complaint and medical reports Amnesty International brought the case to the attention of the Interior Minister and asked for prompt, thorough and impartial police and judicial investigations. The Minister replied, in October 2002, that the case had been closed (*classé sans suite*) by the public prosecutor on 10 July 2002. In a letter to Amnesty International dated 24 July 2003, the prosecutor attached to the court of Paris stated that the case had been investigated by the IGS, as a result of which his predecessor had decided to close the case. He did not explain why, but stated that, through the IGS, he had reprimanded three police officers for (unspecified) infringements of legal regulations in the course of the inquiry.

After his complaint had been archived Karim Latifi expressed the intention to use the *citation directe* procedure, but when the prosecutor informed Amnesty International that he was not aware that any such procedure had been invoked, Karim Latifi wrote, in September 2003, to the president of the bar (*bâtonnier*) of Paris to bring the matter to his attention. At the time of writing the inquiry was ongoing.



Karim Latifi sustained a broken nose following an altercation with Paris police officers in 2002. ©AI

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*déluge de coups de poing, de pied, de matraque et d'insultes, 'sale Arabe', 'fils de pute'.*” (Quoted in *Libération*, 9-10 March 2002. AI delegates on a visit to France obtained the same information.)

## 5.6. Hayat Khammal

The following case illustrates the way in which identity checks can quickly degenerate owing to an officer's unprofessional conduct. The case, known as the "Ris-Orangis" case, became well known because of the video clips of the incident. The case also shows the way in which the abusive use of the charge of "insulting a person vested with public authority" (*"outrage à une personne dépositaire de l'autorité publique"*) is often brought by the same officer who has been offended while himself offending.



Hayat Khammal said she was racially insulted and struck by police while pregnant in March 2000. © Jack Guez, AFP

On 26 March 2000, at about 4am, Hayat Khammal, a 27-year-old pregnant Frenchwoman of Moroccan origin, was driving home from a wedding with her mother and three other women when she was stopped in Ris-Orangis (Essonne) by a police patrol for an identity check after allegedly failing to give way to the police car and making a rude gesture at the police. Hayat Khammal, who denied she had made a rude gesture, and said that, on the contrary, it had been intended as an acknowledgment of thanks for letting her pass, did not have her *carte grise* (car identification and insurance documents), which she said were in her father's possession, but handed over her driving licence. However, the head of the patrol was not satisfied. The identity check began to degenerate. Hayat Khammal pointed out that, according to the law, people were given 48 hours to hand over a *carte grise*, and used her mobile telephone to contact her father. The police officer then reportedly said he too would call for reinforcements. He then allegedly called her a "dirty Arab and a dirty whore"

(“*sale Arabe et sale pute*”), at which she replied that he was, among other things, a “dirty racist” (“*sale raciste*”). However, the officer insisted that only he had been insulted.

Exceptionally, the identity check was partially filmed and later made public by some young people looking out of the upper window of a nearby apartment block. The officer tried to cuff Hayat Khammal by one of her wrists. He tried to make the other women stand against the car, while his colleagues attempted to restrain him. The women did not move. The officer grabbed Hayat Khammal, who was pregnant, by the neck, then allegedly struck her several times on the chest with the handcuffs still in his hand. The officer subsequently denied he had been violent but acknowledged that he had pushed against her thorax several times with his right hand. (The court later noted that Hayat Khammal had been “brutally” pushed against the car while the officer held handcuffs in the same hand, in such a way that it could be said that he struck her with them.) The women began to scream. One pointed out that Hayat Khammal was pregnant. Reinforcements arrived and officers got out of the car with their batons. A magistrate who watched the film reportedly commented: “You’d think it was a scene filmed in the United States. The atmosphere’s terrible.”<sup>59</sup>

The police officers took Hayat Khammal, in handcuffs, to Evry police station, where she was charged with violently resisting arrest (*rébellion*) and with insulting a police officer by both word and gesture (*outrage*). On 27 March Hayat Khammal brought a judicial complaint against the officer, accompanied by a medical report, for inflicting violent blows and injuries and for making racist remarks. The medical certificate referred to her as being in a state of shock and totally unable to work for eight days. Following a police inquiry the police officer also faced a charge brought by the prosecutor for violent acts committed by a person in authority.

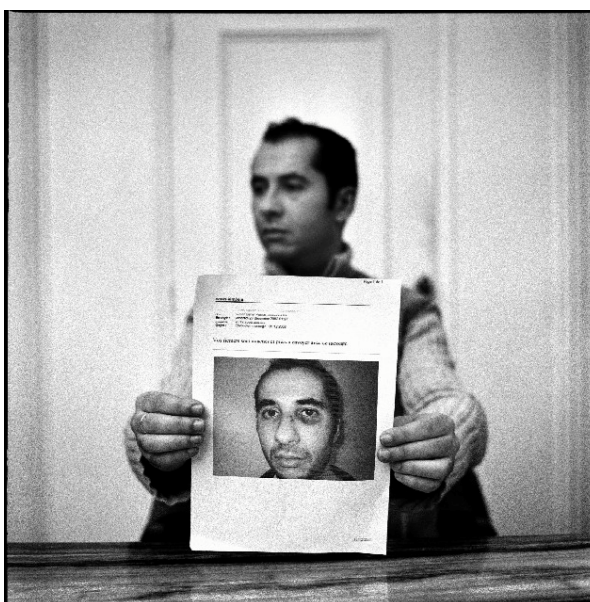
The case was tried by the *Tribunal de grande instance* of Evry on 24 October 2000. Police witnesses did not testify that Hayat Khammal had made a rude gesture. (One said that she had “smiled ... it was a bit ironic but not a grimace”. The patrol car driver said that she had “waved with the fingers closed as you would wave to a child”). The prosecutor criticized the officer’s lack of professionalism, lack of calm and “illegal act of violence” (“*violence illégitime*”) and called for a sentence in the form of a suspended fine. He also called for the acquittal of Hayat Khammal. She was acquitted of the charge of *outrage par gestes* and of *rébellion*, but sentenced to a suspended fine of 3000 F. for *outrage par paroles*. The police officer was convicted of deliberate acts of violence (*violences volontaires*) and forbidden from carrying a firearm for two years. (The court judgment later defined “violence” as “blows or

<sup>59</sup> “On croirait une scène tournée aux Etats-Unis. L’atmosphère est terrible”. (*Libération*, 30 March 2000).

assault or any gesture or attitude designed to overcome a reasonable person”.<sup>60</sup>) He was not convicted of making racist remarks because the witnesses were divided and the videotape, which only partially showed the incident, had not picked them up. The court, however, noted that the video-tape showed the police officer to be in an excitable, irritated and aggressive state. According to the court judgment, he was clearly not in control of the situation, although head of the patrol, and his attitude was “no longer that of an officer ensuring public order”. (The judgment referred to a police evaluation of 1999 which referred to the officer as someone who got carried away by an incident, could lose touch with reality and “personalized police situations as an aggression against his own person” rather than against his function as an officer.)

### 5.7. Omar Baha

On 23 December 2002 Omar Baha, a 38-year-old French actor of Algerian origin, witnessed the ill-treatment of Sebastien de Freitas at the hands of a group of police officers who had used tear gas to disperse a large crowd outside the Château d’Eau Metro station on the Boulevard de Strasbourg in Paris. Sebastian de Freitas was reportedly Christmas shopping with relatives, including his four-year-old brother. Angry at the effect of the gas on the little boy, who was distressed, Sebastien de Freitas had



**Omar Baha had a broken nose after reportedly being struck with a gas canister in December 2002.**

© Frederic Stucin

reportedly insulted the officers, who demanded to see his identity papers, threw him to the ground and beat him. Omar Baha approached the officers and declared his intention to denounce their actions to the Minister of the Interior. He reminded them

<sup>60</sup> “*les violences pouvaient consister en des coups ou des voies de fait, en tout geste ou attitude de nature à impressionner une personne raisonnable*”. (Judgment of Tribunal de Grande Instance d’Evry, 7ème chambre C, 24 October 2000).

of a recent statement made by the then Minister, that he would not tolerate any police abuses or excesses.<sup>61</sup>

As Omar Baha then turned to go into the Metro station he was reportedly approached by the officer using the tear gas and struck hard on the face with the end of the gas canister. He was then further beaten by a number of officers. This account was reportedly supported by various eye-witnesses. The crowd reportedly shouted to the police to stop. Omar Baha was taken to the police station on the rue de Nancy. He was charged with insulting officers, with resisting arrest and with “incitement to riot”, an invented charge (see below). A duty doctor found that his nose was fractured but he was not allowed to receive the hospital treatment advised by the doctor while being held in police custody. (The doctor had said that he needed further examination by a specialist at Larisboisière hospital.)

Omar Baha remained in police custody until 25 December. On 24 December he was transferred into the custody of the court and on Christmas Day was provisionally released until a court hearing on 7 February at the Correctional Court of Paris. He submitted a complaint about ill-treatment and the prosecutor asked the IGS to examine his complaint. On 17 January 2003 the Minister of the Interior announced that two judicial inquiries had been opened, one into the charges against Omar Baha, the other into Omar Baha’s complaint. Two officers suspected of involvement in the ill-treatment of Omar Baha were provisionally suspended from duty.

At the hearing on 7 February 2003, attended by Amnesty International representatives, the court dismissed all charges against Omar Baha. The prosecutor demonstrated sympathy for the police officers, suggesting that the invented charge of “incitement to riot” was a pure mistake. However, the court found in favour of the argument, advanced principally by the defence lawyer for Omar Baha, that the charge brought by the police officers as grounds for extending police custody – incitement to riot – did not exist in the French Penal Code. The defence lawyer also argued that the extension of police custody of a detainee who had been injured and who required medical treatment, but which, in the event, was not administered promptly or thoroughly, was not in conformity with the proper conduct of a police officer.

Although the court threw out the charges brought by the police officers against Omar Baha in 2003, the hearing of the charge brought by Omar Baha against the police officers has not still taken place. Amnesty International is particularly concerned at the “two-speed” justice which this case illustrates. It had also been

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<sup>61</sup> The then Minister of the Interior, Nicolas Sarkozy, had announced in a speech to directors of the Police Nationale on 26 June 2002 that, while promising the police more powers and greater support in the fight against crime, he would not tolerate any infringement of republican rules or any leniency towards police brutality. *“Je ne tolérerai aucune entorse aux règles républicaines justement parce qu’elles remettent en cause votre autorité ... je vous demande ... aucune complaisance envers quelque dérive que ce soit”*.



concerned that the prosecutor had shown no diligence in overlooking the situation of Omar Baha while in police custody.

### 5.8. Ill-treatment of Kabyles

On the night of 31 December 2003-1 January 2004 (Saint-Sylvestre) a party of Kabyles (a Berber people) were celebrating a family reunion in a Paris bistro owned by Mohand Amiar. Following an altercation outside the bistro, two police officers intervened and the proprietor appeared. An argument ensued, in which the officers allegedly tripped and hit the proprietor with his baton. A friend of Mohand Amiar, who was carrying his baby son, then appeared, together with his wife. The argument continued and the baby was among those who were then sprayed with tear gas. Reinforcements were called and up to 30 officers belonging to the BAC arrived at the bistro door. Again, a woman and a baby were reportedly sprayed with gas. Tear gas was released inside the little room where the party was taking place. Several witnesses complained afterwards of feeling suffocated before being able to evacuate the premises. One of the guests, a Swedish national named Gösta Claesson, was seen staggering home at about 3.30am. His body was found dead in the stairwell of his home later that morning. In the meantime, Mohand Amiar and his brother, Zouhir, were held for 48 hours in police custody, charged with *outrage et rebellion*, and ordered to appear before the 23<sup>rd</sup> Correctional Court on 2 January 2004, *en comparution immédiate*. They were sentenced to suspended two-month prison terms.

In October 2004, in a specific report, Pierre Truche, president of the CNDS, strongly criticized the “perverse racist aggression” involved in the storming of the Kabyle bistro. According to the CNDS, the case illustrated several points connected with the effective impunity of law enforcement officers. According to the CNDS report, the senior officer did not immediately refer the case to the public prosecutor, as he was obliged in law to do. The police did not send for any medical assistance to help those who may have been suffering as a result of the tear gas. The identity of the officer who released the tear gas was not revealed and the IGS appeared to make no effort to identify the officer concerned. Pierre Truche did not make any direct link between the death of Gösta Claesson and the use of the tear gas but stated that: “the violence of which he was a victim can only have aggravated the risk of death to which he was exposed”.<sup>62</sup>

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<sup>62</sup> “... la violence dont il a été victime n’a pu qu’aggraver le risque mortel auquel il était exposé” (cited in *Le Monde*, 16 October 2004)

## 5.9. Sukhwinder Singh

In April 2004 an asylum-seeker called Sukhwinder Singh was reportedly beaten brutally by a police officer in the 18<sup>th</sup> arrondissement, or Goutte d'Or area of Paris, following an argument. A woman, who was accompanied by a child, and had witnessed the incident, was reportedly thrown to the ground by police when she tried to intervene and was taken to hospital with a knee injury. Sukhwinder Singh's head was reportedly banged three times against the edge of the bonnet of a red Peugeot car, which was dented as a result. He was then handcuffed and taken to the police station, where he was reportedly punched on the face and stomach and over the abdomen and liver. He was then told to leave. Once outside, he collapsed on the pavement and a chemist called paramedics, who took him to the Bichât hospital. Here tests were carried out and medical certificates were issued.

According to reports, Sukhwinder Singh had earlier been ill-treated by the same police officer, who was allegedly demanding money from certain asylum-seekers who worked as unauthorized street vendors (*vendeurs à la sauvette*). They were not always able to give him money, or refused to do so. Sukhwinder Singh submitted a complaint about ill-treatment to the IGS in April. In January 2005 Sukhwinder Singh's lawyer informed Amnesty International that she had requested a copy of the IGS report in September 2004, but had still not received it. The lawyer complained to the public prosecutor, who ordered the IGS to release the report. The case was continuing.

## 5.10. Ill-treatment during attempts at forcible deportation

In a report published in March 2003 the *Association nationale d'assistance aux frontières* (ANAFE) referred to "psychological pressures, intimidation, insults, brutality and acts of violence" committed by police officers against foreign nationals in the holding areas of Roissy-Charles de Gaulle airport. The NGO *Médecins du Monde* (MDM) referred, in 2003, to having received the previous year 15 allegations of violence which were corroborated by medical reports confirming that the injuries were compatible with the allegations. The NGO had also received another 45 allegations of violence.

According to both reports police violence – whether carried out by the frontier police (PAF) or mobile anti-riot squads such as the *Compagnies républicaines de sécurité* (CRS) – took place in various key situations: at disembarkation from a flight; during police checks carried out in the airports when asylum requests are being lodged; during transit to the holding areas (ZAPIs) or in police posts. Ill-treatment took the form of blows and punches, kicks to legs or stomach, boxing of ears or over-tight handcuffing. ANAFE referred to a number of individual cases, which it has been documenting over several years. One such case, described in *Amnesty International*

*Report 2002*, occurred when an official belonging to the Ministry of Foreign Affairs noticed a woman lying on the floor of a holding area, with her legs covered in blood. The woman, Blandine Tundidi Maloza, from the Democratic Republic of the Congo (DRC), claimed that the injuries were caused by a police officer kicking her, pulling her backwards, and dragging her over the ground by her hair when she resisted attempts to put her on a flight back to the DRC. Her application for asylum was later accepted by the French authorities.

However, allegations of ill-treatment were rarely acted upon. NGO representatives who have visited the holding areas have noted the lack of thoroughness of medical reports: “The medical certificate of ZAPI 3 is a pre-printed form, listing the injuries but not reporting the statements of the victims. Only the box marked “*agression*” is ticked. The circumstances that gave rise to the allegations are never detailed with the necessary precision. Some medical reports merely stated ‘at CDG airport’.”<sup>63</sup>

Although some asylum-seekers have been able to lodge complaints, these are clearly often rendered ineffective in the absence of precise details on medical certificates.

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<sup>63</sup> “Le certificat médical de la ZAPI 3 est un formulaire pré-imprimé, énumérant les blessures mais ne rapportant pas les propos des victimes. Seule la case ‘agression’ est cochée. Les circonstances dans lesquelles ces allégations sont intervenues ne sont donc jamais détaillées avec la précision qui s’impose. Sur certain certificats médicaux, il est juste précisé ‘à l’aéroport CDG’.”

## 6. Conclusions

Police forces play an important role in protecting people from crime, violence and human rights abuses, and in bringing perpetrators to justice. Amnesty International is aware of the fact that, in France as elsewhere, police officers often operate in difficult, tense and dangerous situations and at times face violent criminals.

However, as those entrusted with enforcing the law, police officers must ensure that they operate under the rule of law. States must ensure that police officers are trained, instructed and equipped to uphold international human rights standards, including those prohibiting discrimination; those limiting the use of force, especially firearms, to a means of last resort and those absolutely prohibiting torture and ill-treatment. Where police officers are suspected of committing human rights violations, the case should be investigated promptly, impartially, independently and thoroughly. Suspects of such violations must be brought to justice, and while their rights as suspects and defendants, as provided in international standards, must be rigorously protected, they must be held fully accountable for any illegal acts on their part and accountable in line with the gravity of the offence. The prosecution and judiciary must treat police officers suspected of human rights violations as they do any other person suspected of breaking the law. There must be no “two-speed justice”. Amnesty International is concerned that this has not been the case in France.

This report has attempted to show some of the different factors which combine to create an atmosphere of effective impunity in cases of police brutality in France. That France is by no means unique in this regard does not detract from the urgent need to review the ways in which complaints about police abuse are handled and to change the generally indulgent attitude to police abuse by courts and prosecutors, at a time when the number of complaints of excessive and unnecessary use of force and ill-treatment is clearly on the rise.

Amnesty International’s concern is compounded by the fact that the vast majority of such cases involve foreign nationals or French nationals of foreign origin – a fact which points to a continuing failure in training and education in racial discrimination, and in the concept that human rights, including France’s traditional “republican values”, mean the application of such rights and values equally to all, regardless of racial or national origin.

The report has documented a pattern whereby elements of impunity may mark a case from the outset of detention, and may continue to manifest themselves in various ways throughout the process. Some of the cases described show how a provocative identity check, reflecting unprofessional conduct on the part of the police, can degenerate into violence and result in charges of ill-treatment on the one side, countered by charges of insulting or resisting a public official (*outrage et rébellion*) on the other. The process may continue with a failure to abide by the rules of police

custody (*garde à vue*) – such as negligence in medical care; failure to allow contact with relatives, close friends or employers; omissions or inaccuracies in *procès-verbaux*; problems of identification and police solidarity in refusing to identify culpable officers or to handle complaints against colleagues, and so forth. These may be combined with an institutional failure to allow detainees access to legal counsel from the outset of police custody in a widening number of instances, or to record and video-tape the police questioning of adults.

This report has pointed out that, in addition to such problems are those of seeking other effective means of lodging complaints. Police failure to carry out prompt, impartial, independent and thorough internal investigations into police misconduct or abuse is compounded by victims being prevented from or obstructed in lodging complaints. There are delays and lack of thoroughness in judicial proceedings. Public prosecutors enjoy excessive discretionary powers (*“l’opportunité des poursuites”*) and there is a lack of transparency in explaining decisions to close cases (*“classement sans suite”*, etc); or in automatically keeping families or close friends informed in cases of investigations into disputed deaths, as required by international standards. To these problems can be added inequality of arms in cases where public prosecutors effectively act for the defence in serious cases of police abuse; and the controversial use, amounting to abuse, of the defences of “self-defence” (*“légitime défense”*) or “defence of necessity” (*“état de nécessité”*). Police officers are, moreover, frequently acquitted or given token sentences in cases of abusive use of weapons or serious cases of ill-treatment. Courts remain extremely wary of the implications of issuing exemplary sentences against police officers, at least in part, no doubt, for fear of an outcry by police unions.

To issues such as these must be added concerns over the way in which restraint techniques have been used during difficult arrests or during forcible deportations, including those methods of restraint which can result in positional asphyxia.

## 7. Recommendations

Amnesty International recommends:

### **a) on the right to life**

*the French Government should:*

1. ensure that the authorities' interpretation of the principles of "legitimate defence" and "state of necessity" on the use of force is not weighted in favour of law enforcement officers and is in conformity with international law and standards;
2. repeal or modify the Decree of 20 May 1903 and its modifications by a Decree and Law of 1943 on the use of firearms by the Gendarmerie nationale in accordance with international standards on the use of firearms, in order to harmonize them with the powers of the police.

### **b) on the absolute prohibition of torture and ill- treatment**

*the Ministry of Justice should:*

3. incorporate a full definition of torture into the Penal Code which is in conformity with the full definition of torture as set out in the UN Convention against Torture;
4. introduce safeguards against human rights violations in police custody, including:
  - a. to ensure that all detainees are granted access to lawyers from the outset of police custody;
  - b. the introduction of video-recording of police interrogations for adults in all police stations and in the corridors and other areas;
  - c. to ensure implementation of the right of detainees to be examined by a doctor of their choice;
  - d. to ensure enforcement of the right of detainees to prompt access to relatives without delay;

*the Ministry of Interior and Ministry of Defence should:*

5. instruct senior police officers and senior officers of the Gendarmerie to deliver the clear message to their subordinates that torture, ill-treatment, and any other cruel, inhuman or degrading treatment against people

deprived of their liberty, or threats to use such treatment, are absolutely prohibited and totally unacceptable and will be the subject of severe criminal and disciplinary sanctions;

6. instruct senior police officers and officers of the Gendarmerie to issue internal circulars on a regular and periodic basis to inform their subordinates that the failure to respect the norms governing police custody will result in disciplinary and possibly criminal sanctions.

**c) on racism**

*the French Government should:*

7. sign and ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which sets out a general prohibition of discrimination, including discrimination by any public authority;
8. sign and ratify the Framework Convention for the Protection of National Minorities;

*the Ministry of Justice and Ministry of Interior should:*

9. enforce and monitor the implementation of the existing legislation prohibiting racist abuse;

*Prosecutors and Courts should:*

10. ensure proper implementation of the provisions on racist motivation as an aggravating circumstance in specified offences;

*the Ministry of Interior and the Ministry of Defence should:*

11. review procedures, guidelines and their implementation in relation to identity checks in order to ensure that they are not carried out in a discriminatory manner.

**d) on complaints**

*the French Government should:*

12. ensure that the CNDS is provided with the adequate resources and institutional capacity to receive, register and investigate complaints filed directly by any individual;
13. ensure that the CNDS has the necessary powers to investigate complaints, if the complainant is dissatisfied with the outcome of investigations;

*the Ministry of Interior and Ministry of Defence should:*

14. establish effective mechanisms to ensure that complainants of human rights violations by law enforcement officers are not in any way prevented from filing a complaint at a police station;
15. ensure that instructions about complaints procedures, in a variety of languages, are prominently displayed in all police and gendarmerie stations;

*the Ministry of Justice should:*

16. establish and implement effective measures to ensure that people who bring complaints of human rights violations by law enforcement officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police charges that detainees have resisted state authority (eg. charges of insulting or resisting a public official), particularly those which are filed only after complaints of ill-treatment have been made;
17. where complaints are filed simultaneously by a detainee alleging human rights violations by police officers and by police officers alleging resistance to state authority, ensure that neither complaint is used to undermine the investigation of the other.

**e ) on the investigation of allegations of serious human rights violations by law enforcement officers**

*the French Government should:*

18. establish a fully resourced independent agency to investigate all allegations of serious human rights violations by law enforcement officers, including deaths in custody, killings (including fatal shootings), torture, ill-treatment, racism and other cruel, inhuman or degrading treatment, with the power to direct that disciplinary proceedings be instigated against law enforcement officials and with the power to remit a case directly to the Prosecutor for



consideration of whether to bring criminal proceedings. This should ultimately replace the investigative functions of the IGPN, IGS or IGN in cases of serious human rights violations;

19. sign and ratify the Optional Protocol to the UN Convention against Torture and establish an effective domestic mechanism to inspect all places where people are deprived of their liberty in France;

*the Ministry of Justice and Ministry of Interior should:*

20. ensure that prompt, thorough, independent and impartial investigations are carried out into all allegations of serious human rights violations by law enforcement officers, including deaths in custody, killings (including fatal shootings), torture, ill-treatment, racism and other cruel, inhuman or degrading treatment, in accordance with international standards;
21. immediately initiate criminal and disciplinary proceedings against any police officer, irrespective of rank, who is reasonably suspected of committing a serious human rights violation;

*the Police Associations should:*

22. encourage members of the police associations to fully cooperate with both independent and internal investigations carried out into serious human rights violations;

*the Ministry of Interior and the Ministry of Defence should:*

23. suspend law enforcement officers who are placed under investigation for serious human rights violations pending the outcome of the disciplinary and judicial proceedings against them.

**f) on the prosecution of allegations of serious human rights violations by law enforcement officers**

*the Ministry of Justice and the Attorney General should:*

24. abrogate the system of “appropriateness of prosecution” to ensure that suspected perpetrators of alleged serious human rights violations are systematically prosecuted in all cases where there are reasonable grounds for believing that an unlawful act has been committed;

25. ensure that the prosecuting authorities themselves interview the victim, the accused perpetrators and any other eyewitnesses and, where appropriate, examine all other relevant evidence;
26. ensure that steps be taken by the prosecuting authorities to shorten unreasonably protracted criminal investigations into allegations of serious human rights violations;
27. ensure that public prosecutors do not take on the role of “defence counsel” for police officers charged with serious human rights violations during court proceedings;
28. ensure that victims or their relatives have full access to the information they need to prosecute a case and are kept informed of the progress of the investigations, whether or not they have joined proceedings as a civil party;
29. ensure that the outcome of all criminal, disciplinary and administrative procedures into alleged human rights violations be made public promptly after the completion of the investigation. Where there has been a *classement sans suite*, the prosecutor should notify the complainant directly and give clear and detailed reasons for the decision, so that complainants may pursue the case if they wish to do so;
30. ensure that all persons reasonably suspected of committing serious human rights violations are prosecuted in procedures that meet international standards of fairness.

**g) on sentencing of serious human rights violations by law enforcement officers**

*the Ministry of Justice and the Attorney General should:*

31. ensure that sentences are commensurate with the gravity of the crime.

**h) on compensation**

*the French Government should:*

32. ensure that victims of human rights violations or their families receive restitution and/or fair and adequate compensation, and where relevant, the means for as full rehabilitation as possible.

**i) on statistics on complaints of police misconduct**

*the French Government should:*

33. collect and publish regular, uniform and comprehensive statistics on complaints about misconduct, including ill-treatment, by officers of the gendarmerie and police. These figures should include: information on the number of complaints of ill-treatment made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment; statistics on allegations of racist abuse; and statistics on the national and ethnic origin of complainants.

**j) on training and human rights education**

*that the Ministry of Interior and Ministry of Defence should ensure that:*

34. human rights education is an integral part of the basic and regular training of all law enforcement officers. Since the training of police officers, particularly of mid-ranking police officers, is organized internally within the police, external human rights experts and instructors should be engaged for the purposes of training police officers in the area of human rights. Representatives of social and charitable institutions should also be involved in training, while direct exchanges between police officers and representatives of minorities as well as refugee, asylum and human rights organizations should take place during training;
35. training on human rights standards is an integral part of all areas of law enforcement training, e.g. of police operations, policy, criminology and law;
36. legal training of law enforcement officers also stresses the importance of international human rights treaties and the obligations they bestow on France, including the European Convention on Human Rights and the caselaw of the European Court of Human Rights, the UN Convention against Torture and the ICCPR;
37. training in the practical application of international standards such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as well as the police code of conduct, particularly during difficult arrests, is a fundamental part of the training of all law enforcement officers, from recruitment onwards;
38. training of law enforcement officers includes training on the national and international legal standards on the lawful and proportionate use of force;

39. a review of training courses is undertaken in order to improve the professional competence of officers in the use of firearms, and other “non-lethal” weapons;
40. all officers are trained in applicable restraint techniques with an emphasis on the inherent danger to life of some of those techniques;
41. complaints procedures and mechanisms for police officers to bring to the notice of their superiors behaviour which is contrary to the accepted norms of policing be central themes in police training. The lodging of complaints by police officers against colleagues who violate national laws and international human rights standards must not result in sanctions or negative repercussions against the complainant.

## Glossary

Some terms or acronyms are listed below:

|                            |  |
|----------------------------|--|
| Avocat général             | Prosecutor attached to Court of Appeal, including assize courts (part of the Court of Appeal structure)                                      |
| Chambre d'accusation       | Section of Appeal Court which decides on the status of a case  |
| Classement sans suite      | Decision of prosecutor to close a case where considered “ <i>irrécevable</i> ” or inadmissible   |
| Citation directe           | Procedure by which court (eg investigating judge) can be approached court directly, including by a victim                                    |
| Garde à vue                | Police custody   |
| Juge d'instruction         | Investigating magistrate   |
| Opportunité des poursuites | Appropriateness of prosecution   |
| Ordonnance de non-lieu     | Court decision that there is no case to answer   |
| Parquet                    | Collective body of prosecutors   |
| Procureur                  | Prosecutor   |
| Procureur général          | Prosecutor attached to Courts of Cassation and of Appeal (assisted by prosecutor known as <i>avocat général</i> )                            |
| Procureur de la République | Prosecutor attached to courts such as Correctional Courts (assisted by prosecutor known as <i>substitut</i> )                                |
| Tribunal correctionnel     | Court trying offences ( <i>délits</i> ), judicially classified as less grave than <i>crimes</i> (tried by assize courts sitting with juries) |
| ANAFE                      | Association nationale d'assistance aux frontières  |
| BAC                        | Brigade Anti-Criminalité   |
| CNDS                       | Commission nationale de déontologie de la sécurité   |
| CRS                        | Compagnies républicaines de sécurité   |
| DRPJ                       | Direction régionale de la police judiciaire  |
| IGPN                       | Inspection générale de la Police nationale   |
| IGN                        | Inspection de la Gendarmerie nationale   |
| IGS                        | Inspection générale des services   |
| SAMU                       | Service d'aide médicale d'urgence  |
| ZAPI                       | zones d'attente des personnes en instance  |