



# PUBLIC OUTRAGE

POLICE OFFICERS  
ABOVE THE LAW  
IN FRANCE

**AMNESTY**  
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

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*Front cover photo:* French riot police patrol on Avenue des Champs Elysées in Paris, 9 July 2006. © AP/PA Photo/Baz Ratner

*Back cover photo top:* Blood-stained clothes belonging to “Philippe” after he was allegedly assaulted by a police officer, 2007. © Private

*Back cover photo bottom:* A memorial calling for justice for Abdelhakim Ajimi, France 2008. On 9 May 2008 Abdelhakim Ajimi died in Grasse after being restrained by police officers. © Private

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Banner and photos of Abdelhakim Ajimi at a demonstration calling for a full investigation into his death. © Private, 2008.

## 1. INTRODUCTION

“Much better to be a police officer than just a citizen. They’ve got themselves covered.”<sup>1</sup>

Boubaker Ajimi, father of Abdelhakim Ajimi

Amnesty International has longstanding and continuing concerns regarding allegations of human rights violations by law enforcement officials<sup>2</sup> in France, and the failure to bring those responsible for such acts to justice through independent, impartial and effective investigations. In 2005 the organisation published the report *France: The search for justice* (AI index: EUR21/001/2005), which examined allegations of serious human rights violations by law enforcement officials going back to 1991. Such violations included unlawful killings, excessive use of force, torture, and other ill-treatment. Racist abuse was reported in many cases, and racist motivation appeared to be a factor in many more.

On the basis of the evidence examined, Amnesty International concluded that a pattern of *de facto* impunity existed with regard to law enforcement officials in France. The report identified a number of factors contributing to this impunity, including gaps or flaws in legislation; reluctance or failure of police, prosecutors and courts to thoroughly investigate and prosecute human rights violations involving law enforcement officials; and sentences which were not commensurate with the gravity of the crime.

Amnesty International recognizes that law enforcement officials in France perform a difficult and dangerous task, often at great personal risk, and that the majority of officers fulfil their duties professionally and lawfully. However, the organization believes it is also necessary to recognize that mistakes and misconduct can and do take place. When human rights violations are alleged to have occurred they must be investigated promptly, thoroughly, independently and impartially. Disciplinary measures should be taken where appropriate and officers responsible for criminal conduct must be brought to justice in full and fair proceedings. The failure to ensure accountability of those responsible, including by showing to the public that this has been done, undermines the credibility of the law enforcement agencies as a whole and damages their relationship with the public. The effects of this are most clearly visible in the outbreaks of violence which have occurred sporadically after deaths related to police interventions, for example the riots which followed the deaths of two young men pursued by police officers in Clichy-sous-Bois in November 2005.<sup>3</sup> Less dramatic but still important are the displays of frustration and distrust evident in the peaceful demonstrations demanding justice following, for example, the death of Abdelhakim Ajimi in Grasse in May 2008 (see below).

Regrettably, the French authorities have failed to implement any of the key recommendations aimed at combating the human rights violations and impunity identified in Amnesty International's 2005 report. As a consequence, the problems identified in 2005 persist four years on. Amnesty International's current research has uncovered continuing allegations of human rights violations by law enforcement officials in France. The procedures for investigating such allegations are still failing to live up to the standards required by international law, and people in France expect better.

Furthermore, Amnesty International is concerned at what appears to be an increasing trend for individuals who protest or attempt to intervene when they witness apparent ill-treatment by law enforcement officials to find themselves subjected to criminal charges of *outrage*<sup>4</sup> (insulting a law enforcement official) or *rebellion*<sup>5</sup> (violently resisting a law enforcement official in the course of his/her duties). In other instances, individuals who have complained about ill-treatment they have suffered have been charged with defamation by the officers concerned. Amnesty International believes that these trends may have a very serious dissuasive effect on individuals seeking justice for human rights violations they have witnessed or suffered, and consequently exacerbate the existing climate of impunity.

## **TAÏS V. FRANCE, 1 JUNE 2006**

European Court of Human Rights Chamber Judgement

On 1 June 2006 the European Court of Human Rights issued its judgment in the case of Taïs v. France (Case no 39922/03). It found that the death of Pascal Taïs in police custody constituted a violation of the right to life guaranteed under Article 2 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms (European Convention on Human Rights, ECHR). In addition the Court concluded that the failure of the French authorities to conduct an effective investigation into the death was itself a further violation of the government's obligations under Article 2.

On the evening of 6 April 1993, Pascal Taïs and his girlfriend had been involved in a minor traffic accident and were subsequently detained by police during a fight which broke out in Arcachon at around 11.45pm. Pascal Taïs was taken to hospital around midnight for a medical examination but refused to be examined and behaved violently. Police officers forcibly restrained him and hit him with batons to subdue him. The medical report issued by the examining doctor noted Pascal Taïs' state of intoxication but recorded no signs of injury. Pascal Taïs was then taken to Arcachon police station and put in a cell overnight to sober up.

At approximately 7.30am the following morning Pascal Taïs was found dead in his cell, lying in a pool of blood and excrement. The autopsy report (performed the same day) noted a large number of injuries on the body, including multiple bruises and erosions across the face and body, two fractured ribs and a damaged lung and spleen. The autopsy concluded that Pascal Taïs had died of a haemorrhage following an injury to the spleen.

A judicial investigation into the death was launched, with Pascal Taïs' parents joining the proceedings as a civil party. However, on 28 June 1996 the investigating judge closed the case, stating that there was insufficient evidence to indicate that officers at the police station were responsible for the injuries leading to Pascal Taïs' death and concluding that the cause of the injuries was unknown. On 19 June 2003 the Court of Appeal in Bordeaux upheld the decision of the investigating judge.

The European Court of Human Rights clarified in its judgement that the state has a particular duty to account for the condition of individuals held in police custody. In the present case, the discrepancies between the medical report made during Pascal Taïs' visit to the hospital on the evening of 6 April and the injuries noted in the autopsy report, along with "inconsistent" police custody records, and the failure to present any plausible alternative explanation for the injuries (which must have occurred during the period in custody), led the Court to conclude that the French authorities were responsible for the death of Pascal Taïs, in violation of the right to life guaranteed under Article 2 of the ECHR.

The Court also stated that "a prompt response by the authorities when investigating the death of a person in detention could generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts."<sup>6</sup> It found that in the case of Taïs v. France, after more than 10 years the investigation by national courts had failed to determine the cause of death. The investigating judge had not interviewed the police officers implicated until four years after the event, nor permitted a reconstruction of events – requested by the civil party prosecution – which might have helped to establish the cause of the injury to Pascal Taïs' spleen. No detailed testimony had been taken from Pascal Taïs' girlfriend, who was also in custody at the police station on the night of the incident, having been detained along with Pascal Taïs.

Consequently, the Court found that the investigation conducted by the national courts was neither effective nor prompt, and therefore in itself constituted a violation of France's obligations under Article 2.

During the course of its research, Amnesty International repeatedly heard comments from victims and lawyers that although they felt they had a legitimate grievance against a law enforcement official, they did not intend to make a complaint because they perceived the systems in place for investigating the complaint (both internally within the law enforcement

agencies and through the criminal courts) were unfair and therefore ineffective. Furthermore, many individuals chose not to report their complaints to the independent oversight body, the National Commission on Ethics in Security (CNDS)<sup>7</sup> because they were discouraged by the fact that the CNDS has no powers to enforce any type of sanction.

In order for France to fully uphold its international treaty obligations to prohibit torture and other ill-treatment and respect and protect the right to life, it must take measures to reform the current mechanisms for investigating alleged human rights violations.



## 2. NATIONAL AND INTERNATIONAL CRITICISM OF FRENCH LAW ENFORCEMENT AGENCIES

Since the publication of Amnesty International's 2005 report, *France: The search for justice*, allegations of ill-treatment by law enforcement officials in France have continued to arise. The independent oversight body, the CNDS, regularly raises concerns about allegations of human rights violations by law enforcement officials, in addition to less serious breaches of professional ethics. In 2006 the CNDS published a review of its first six years in function which revealed persistent complaints relating to excessive or inappropriate use of force leading, in some cases, to permanent injury or death.<sup>8</sup> Such incidents continue to be reported in its subsequent annual reports.

In 2006, during its review of France's implementation of its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) the UN Committee against Torture<sup>9</sup> noted efforts made by France to improve and extend the training of police officers but raised concern about "the number and seriousness of the allegations it has received regarding the ill-treatment by law enforcement officers of detainees and other persons with whom they come in contact".<sup>10</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT),<sup>11</sup> visited France in 2006. In its report on the visit it noted that in addition to allegations of ill-treatment collected by the CPT itself directly from detainees, it had also received such allegations from medical, legal and police authorities, and independent bodies such as the National Ombudsperson and the CNDS. According to data provided to the CPT by the Head of Service of the Medico-Legal Emergency Service at the Hôtel Dieu hospital in Paris<sup>12</sup>, approximately 5 per cent of detainees examined by them made allegations of ill-treatment by law enforcement officials at the time of arrest or during the period in police custody. This figure was corroborated by examination by members of the CPT delegation of a sample of files selected at random.<sup>13</sup>

In 2005, the UN Committee on the Elimination of Racial Discrimination<sup>14</sup> noted in its Concluding Observations on France's implementation of the Convention on the Elimination of All Forms of Racial Discrimination that it was "concerned at allegations of persistent discriminatory behaviour towards the members of certain ethnic groups" by members of the security forces, and called on the French authorities to ensure that "impartial investigations are carried out into all these complaints".<sup>15</sup>

Similarly, in 2008 the UN Human Rights Committee<sup>16</sup> expressed its concern "about allegations that foreign nationals, including some asylum seekers, while detained in prisons and administrative detention centers, are subjected to ill-treatment by law enforcement officials" and that France "has failed to investigate and appropriately punish such human rights violations".<sup>17</sup>

In its 2004 annual report, the CNDS devoted an additional chapter to analysis of discrimination by law enforcement officials as a contributing factor to incidents of misconduct.<sup>18</sup> The CNDS noted an increasing number of cases over the years examined (from 2001 to 2004) in which discrimination was a factor<sup>19</sup> and commented that: “The sense of impunity is a significant cause of misconduct and encourages officers to relax their ethical duties towards certain categories of the population... Racist acts are covered up in the name of solidarity between colleagues”.<sup>20</sup>

In 2005 the Council of Europe Commissioner for Human Rights visited France and examined, among other things, allegations of human rights violations by law enforcement officials. His conclusions were highly critical about the lack of accountability for such acts. He stated:

“It would seem that at present the prevailing mood among police officers is one of impunity. As a result, few cases of police violence result in convictions which are proportionate to the offences committed. Procedures are highly complicated for victims and investigations are a delicate matter. The sense of mutual loyalty between the different branches of the security forces accounts partly for the fact that statements [of law enforcement officials] very often match one another perfectly. In many cases, police officers anticipate the victims’ complaints and file their own complaints for insults to or obstruction of officers in the course of their duties.”<sup>21</sup>

### 3. THE OBLIGATION TO CONDUCT AN EFFECTIVE INVESTIGATION

Under international human rights law, states have an obligation to respect and protect the right to life and ensure the absolute prohibition of torture and other-ill treatment. A crucial component of this obligation is the requirement that relevant authorities conduct a prompt, thorough, impartial and independent investigation into all credible allegations of violations of these rights, or whenever there are grounds to believe that such a violation has occurred. Furthermore, the authorities are required to ensure that persons responsible for such human rights violations are brought to justice in fair proceedings and to ensure an effective remedy, including reparation, for the victim.

France is a party to the International Covenant on Civil and Political Rights (ICCPR). This treaty codifies the right to life and the prohibition of torture and other ill-treatment in Articles 6 and 7 respectively. In addition, Article 2 of the ICCPR places a duty on states "To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". In its General Comment No. 20 the Human Rights Committee has clarified that: "It is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime... Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective".<sup>22</sup> The Human Rights Committee has also stated that "The responsibility for investigations falls under the State party's obligation to grant an effective remedy".<sup>23</sup>

Similarly, the European Convention on Human Rights (ECHR), to which France is also a party, requires that state parties respect the right to life and the prohibition of torture and other ill-treatment (Articles 2 and 3 respectively). Article 13 of the ECHR guarantees an individual's right to an effective remedy before a national authority in the event of any violation.

The European Court of Human Rights has clarified that, to comply with the requirements of the ECHR, investigations into allegations of human rights violations must meet the following criteria:

- Independence: there should be institutional and hierarchical and practical independence in police complaints investigations;
- Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- Promptness: crucial for maintaining trust and confidence in the rule of law;
- Public Scrutiny: accountability is served by open and transparent procedures and decision-making;

- Victim Involvement: in order to safeguard his or her legitimate interests.<sup>24</sup>

The Convention against Torture states 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” (Article 12). Article 13 of the Convention against Torture further specifies that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities”.

In addition, the CPT guidelines for combating impunity state that “It is now a well established principle that effective investigations, capable of leading to the identification and punishment of those responsible for ill-treatment, are essential to give practical meaning to the prohibition of torture and inhuman or degrading treatment or punishment”.<sup>25</sup>

Amnesty International’s research and the conclusions of expert international and European human rights bodies indicate that, both in theory and practice, the current mechanisms for investigating alleged human rights violations by law enforcement officials in France do not meet the requirements of international law and standards as detailed above. The rest of this report explains how and why, and concludes with recommendations to rectify the current failings.

## 4. CAUSES OF IMPUNITY

### INDEPENDENCE AND IMPARTIALITY?

In France, any individual who wishes to make a criminal complaint, including a complaint about a human rights violation committed by a law enforcement official, can direct their allegation directly to the public prosecutor. The prosecutor is responsible for managing the preliminary investigation as well as deciding whether to pursue charges and send the case for trial or to close the investigation. If a case is particularly serious or complex, the prosecutor will refer the case to an investigating judge who will then conduct the investigation.

The prosecutor and investigating judge are structurally independent from the law enforcement agencies, but work in close collaboration with them daily. Although it is the prosecutor or investigating judge who has overall responsibility for the investigation, in practice they rely heavily on the assistance of police officers from the national police force, gendarmerie or municipal police forces (known as “judicial police”) who act on behalf of the prosecutor or judge in collecting evidence and interviewing witnesses. Consequently, the level of practical independence (rather than structural independence) of prosecutors and judges from the law enforcement agencies is questionable.

#### **Law enforcement agencies: internal inspectorates**

Each of the law enforcement agencies in France has its own internal inspectorate (internal affairs department). The National Gendarmerie inspectorate is known as the Inspection de la Gendarmerie Nationale (IGN). The National Police force has one inspectorate for forces based in Paris – the Inspection Générale des Services (IGS) – and one for the rest of France – the Inspection Générale de la Police Nationale (IGPN).

The inspectorates investigate possible misconduct by law enforcement officials within their force, ranging from minor disciplinary matters to incidents of suspected torture or unlawful killing. When a judicial investigation is underway concerning a possible criminal act by a law enforcement official, the prosecutor or judge can ask the relevant inspectorate to conduct an internal investigation and submit its findings for use in the judicial investigation.

Furthermore, in cases relating to alleged misconduct by law enforcement officials, there is no prohibition on prosecutors or judges instructing judicial police from the same force as the alleged perpetrator to assist with the investigation. In the case of Pierre (below) the victim’s family has publicly demanded that the investigating judges handling the case instruct judicial police officers from the national gendarmerie instead of continuing to rely on information from the national police in Nantes – the police force which the accused officer belongs to.

#### **THE CASE OF PIERRE<sup>26</sup>**

On 27 November 2007 Pierre, aged 16 at the time, permanently lost the sight in his right eye after being shot with an experimental type of rubber bullet by a hooded police officer during a demonstration in Nantes.

His family made a complaint to the public prosecutor on 6 December 2007, who immediately ordered the IGPN to conduct an internal investigation in an attempt to establish what had happened. The IGPN's report was given to the prosecutor in April 2008. The IGPN investigation stated that just two officers had fired rubber bullets during the demonstration. However, neither of these officers was identified as responsible for firing the bullet which injured Pierre. Pierre's family told Amnesty International that they had the impression the



Pierre at the demonstration, immediately after being shot in the eye. © Private, 2007.

IGPN investigation was deliberately trying to avoid apportioning blame and was therefore totally unsatisfactory.

Videos of the demonstration submitted to the investigating judge by two different police forces do not contain footage of

the key moment at which Pierre was shot. Furthermore, Pierre's family complain that the IGPN report did not include police records which would indicate which guns were fired and how much ammunition was left in each officer's gun at the end of the demonstration.

On 10 July 2008 a judicial inquiry was opened into charges of "voluntary injury with a weapon by a public official causing more than eight days' incapacity". The investigation continues slowly.

Amnesty International is concerned that this procedure does not comply with international standards of impartiality and independence for investigations of human rights violations which require that such investigations be conducted by investigators "who shall be independent of the suspected perpetrators and the agency they serve [and] shall be competent and impartial".<sup>27</sup> The CPT has commented that in legal systems where a prosecutor or judge manages the investigation, "it is not unusual for the day-to-day responsibility for the operational conduct of an investigation to revert to serving law enforcement officials... It is important to ensure that the officials concerned are not from the same services as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated".<sup>28</sup>

The inherent fallibility of systems such as that in France has also been noted by the UN Special Rapporteur on torture, who stated that "the main obstacle [to combating impunity] is manifested by the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions".<sup>29</sup>

The importance to the fairness and integrity of a criminal justice system of a prosecutor's actual independence and impartiality in each case, and of being seen by the public to be independent and impartial, cannot be overstated. The close working relationship between

prosecutorial authorities and the law enforcement agencies makes it difficult for the public to perceive them as genuinely independent, impartial and fair when dealing with complaints against law enforcement officials. For this reason, some lawyers interviewed by Amnesty International said that they advised their clients against pursuing criminal complaints of ill-treatment against law enforcement officials on the grounds that the likelihood of success was minimal.

## THE CASE OF ALBERTINE SOW

On 17 August 2006, three police officers in civilian clothes arrived at rue Clovis-Hugues, Paris, in response to an apparent altercation between a young man and a young woman. The police asked to see the identity papers of a young man named Jean-Pierre who was standing in front of the apartment building. There was subsequently a violent incident involving several police officers and three local residents. The police account of the event is dramatically different to that given by Albertine and numerous witnesses.

According to witness statements reviewed by Amnesty International, the police officers immediately handcuffed Jean-Pierre in an aggressive and violent manner as he did not have his identity papers with him. Jean-Pierre's cousin, Albertine Sow, who was six months' pregnant at the time, witnessed the scene from a window and told Amnesty International that she came outside to ask the police what was happening. She said that the police officers did not respond to her question but when she persisted one of the police officers began shouting at her and acting in an aggressive and threatening manner, telling her to leave or he would hit her. Albertine asked the police officer to calm down, but he began pushing her aggressively and she tried to defend herself. In the struggle, she tore his t-shirt and he punched her in the mouth. The other police officer apparently appeared shocked by his colleague's behaviour, but said nothing.



Albertine Sow and her daughter Safi-Jeanne, with whom she was pregnant at the time of the incident.  
© Amnesty International, 2009.

At this point Albertine Sow's brother, Yenga Fele, rushed to the scene after seeing what was happening from a building along the street and asked the police officer if he realized he had punched a pregnant woman.

According to witnesses, one of the police officers asked the other if he should use teargas on Yenga Fele, and was told to do so. Witnesses state that when Yenga Fele repeated his question the policeman fired teargas at him and Albertine Sow.

At the same time, more police officers arrived and both Albertine Sow and Yenga Fele were hit with batons. Despite her obvious pregnancy, Albertine Sow was hit with a baton close to her lower abdomen. Albertine Sow told Amnesty International that she fell down and lost consciousness. When she regained consciousness she says she was lying on her stomach, being handcuffed. As she had injured her head in the fall a female police officer asked for the handcuffs to be removed, and she was taken to the Lariboisière hospital. She remained in hospital under police custody for 48 hours, accused of "group assault" against the police officers. She was signed off work for three days and following the incident she began suffering contractions but eventually gave birth to a daughter, Safi-Jeanne, at full term. Her brother, Yenga Fele, was also arrested and spent more than three months in prison on remand.

According to the version of events given by the police officers involved, Albertine Sow violently intervened to prevent the arrest of Jean-Pierre, swore at the police officers, and threw herself at one of them, tearing his shirt, kicking him in the leg and clawing at his face. They also claimed that when Yenga Fele arrived he tore off his T-shirt and threatened to kill the police officers present before attacking them. The police officers claimed that Yenga Fele, Albertine Sow and Jean-Pierre continued to attack them and they had to use their batons and tear gas in self defence. After police reinforcements had arrived, the officers claimed that Albertine Sow threw herself “hysterically” at another officer who was allegedly lying unconscious on the ground, tore at his clothes and tried to hit him. They said this officer hit her with his baton in self defence and she was then arrested.

On 19 August the Paris prosecutor opened an investigation against Yenga Fele and Albertine Sow, for alleged “group assault” against police officers. Albertine Sow presented a complaint of ill-treatment against the police officers to the IGS on 28 August 2006. On 21 September 2006 she also presented a criminal complaint of ill-treatment to the Paris criminal court. However, despite the numerous witness testimonies (including one from the local town councillor, Halima Jemni, who testified to the “insolence” of the police officers present) and medical reports presented to support her complaint, on 27 November 2006 her complaint was closed without further investigation by the prosecutor. The IGS report into the incident stated that “Mme Sow herself caused the situation which she complains of. Her procedure with the IGS has an underlying air of menace and intimidation against the victims, and can be qualified as a counter-attack”. This report was submitted as evidence in the criminal investigation against Albertine Sow.

Although Albertine Sow’s complaint had been closed by the prosecutor in 2006, on 19 November 2008 she was ordered to appear before an investigating judge who was apparently re-examining her complaint. Albertine Sow attended the hearing and gave her testimony to the judge, but has had no news on the complaint since then. She said that the judge had indicated to her during the hearing that it was likely the case would be closed due to lack of evidence.

Despite the fact the prosecutor had recommended she be acquitted of the charges against her, on 27 January 2009 Albertine Sow was convicted of assaulting the police officers and was given a one month suspended prison sentence. Her brother Yenga Fele was sentenced to six months’ imprisonment and ordered to pay 1,500 euros in compensation to each police officer. They have both appealed against the judgement.

Amnesty International notes that according to the limited information made available, the IGPN examined 663 complaints of “violence” in 2005<sup>30</sup> leading to just 96 disciplinary measures for “proven acts of violence” of which only 16 resulted in dismissal.<sup>31</sup> In 2006, the IGPN received 639 allegations of violence; 114 disciplinary measures were taken against officers for proven acts of violence, with just 8 resulting in dismissal “or a similar penalty” for the officers involved.<sup>32</sup>

As noted previously, Amnesty International is aware that not every complaint submitted has merit. However, the discrepancy between the number of complaints received and the number of disciplinary sanctions imposed raises questions regarding the thoroughness and impartiality of the investigations. In its special report on discrimination, the CNDS noted that “Discriminatory actions or comments are very rarely sanctioned” and recommended more thorough investigation of such incidents “to put an end to the widely noted sense of impunity, notably due to the low number of cases which result in disciplinary sanctions”.



## THE CASE OF ÉVELYN AND PATRICIA

On 25 August 2007 Évelyn and Patricia<sup>33</sup> were driving home in Paris at around 3am after having dinner in a restaurant with friends. Évelyn says that a police patrol car blocked their route and ordered them to pull over into a bus lane, which they did. She says that police officer X approached their car and, in an aggressive manner, accused Évelyn of driving in the bus lane and shouted at her to give him her documents. Évelyn responded that she had entered the bus lane because the police officer had ordered her to and it was not necessary to be so aggressive. As she turned to get the vehicle documents from Patricia (who was the owner of the car) she says that officer X violently pulled her out of the car and pushed her forcefully against its back door.

Évelyn says she began to cry and asked the police officer why he was acting so aggressively. He did not reply but handcuffed her and took her to the police patrol car. Patricia got out of the car and told the police officer not to be so violent but she says instead of responding he punched her in the arm. She says two other police officers then restrained her while officer X gave her an alcohol tester and shouted at her to blow into it. She did so and gave a positive result, but tried to explain that she had not been driving the car. Officer X returned to the police car and Patricia says she heard Évelyn shouting that he was hitting her on the head, so Patricia moved towards the patrol car to find out what was happening. She says officer X grabbed her by the neck and dragged her back to her own car, pushed her violently against the vehicle and then returned to the patrol car. Patricia asked one of the other police officers to help her, but she says he did not respond. When she tried to make a phone call with her mobile phone, he took it from her. Officer X then handcuffed her and she was made to sit on the pavement until another police car arrived and took her to the police station.



Injuries to Évelyn's arm. © Private, 2007.

Upon arrival at the Orteaux police station, Évelyn says she had injuries to the mouth, shoulders and back, and was unable to walk unassisted. Her blouse was undone leaving her breasts partially exposed. Patricia says she saw Évelyn being pushed by police officers, which caused her to fall to the ground. Finally, the two women were made to sit together on a bench. The police officers referred to Patricia, a Spanish citizen who does not speak much French, as “the fucking Spaniard” and to Évelyn as “the old lesbian whore” and made insulting homophobic remarks about the two women. Due to the poor physical state of Évelyn, an officer ordered her to be taken to hospital.

Patricia says she remained alone in the police station, handcuffed to a bench. She says that she asked in Spanish and French to be allowed to make a phone call, but the police officers told her they did not speak Spanish and could not understand her French. After spending the night in the police station Patricia was taken the following morning to the hospital where her blood pressure was monitored but she says the doctor did not examine her injuries. She was taken back to the police station and

questioned. She says she asked for her lawyer to be present but this was refused. She made a statement and a police officer translated her words. She was told to sign the statement, even though she said she could not read it (as it was in French). She says she was not given a copy. The police officers gave her a fine stating

she had been “drunk in the street”. At approximately 2pm she was released, without a formal record that she had been held in custody.

A few hours later Évelyn was charged with *outrage*, *rebellion* and drunk driving, and released from custody. She told Amnesty International that after going to hospital to be treated for her injuries she was signed off work for 21 days.

A few days later Évelyn and Patricia presented a complaint to the IGS concerning the incident. In January 2008 Évelyn and Patricia were called to appear before the IGS for a hearing with the accused officers. They told Amnesty International that there were 10 police officers present. Évelyn and Patricia told Amnesty International that they were ordered to attend the hearing separately, and were not allowed to have their lawyer present. Évelyn identified two of the accused officers and Patricia identified four. They said the other six officers present had no involvement in the incident. Due to the ongoing fear the women felt towards the police they asked for the officers to appear individually instead of in a group, but this request was denied. Évelyn told Amnesty International that during the hearing the police officers spoke with each other continuously. She also says she saw one officer leave the building to make a phone call, then return and change his testimony. Évelyn told Amnesty International that at the end of the hearing, both women felt that the procedure had been unfair, intimidating and biased in favour of the police officers.

The investigation into the complaint of ill-treatment was closed by the prosecutor in September 2008, despite the existence of medical reports and photographs which supported Évelyn’s testimony. Évelyn’s lawyer subsequently presented a civil party complaint, which required the case to be re-opened and examined by an investigating judge. At the time of publication of this report no further action had been taken.

On 4 December 2008 Évelyn appeared in court charged with *outrage*, *rebellion* and drunk driving. She told Amnesty International that when the judge introduced the case Évelyn realised that a lot of information was missing from the file so she explained her version of events to the judge. The judge discovered she did not have a copy of a number of important documents, including the IGS report, Évelyn’s medical reports and photographs of her injuries. The judge ordered the case to be postponed while further evidence was submitted.



Injuries to Évelyn’s arm. © Private, 2007.

Finally, Amnesty International is concerned that internal investigations into alleged ill-treatment or other human rights violations are not always thorough or impartial, as seen in the case of Gwenaël Rihet (below). This not only prejudices the effectiveness of disciplinary proceedings, but can also have a serious impact on any criminal investigations. In particular, when prosecutorial authorities base their decisions on the results of internal investigations without seeking or considering further evidence, the criminal complaint against a law

enforcement official is in effect investigated and decided on by the law enforcement agency implicated. Unsurprisingly, complainants do not perceive this system as fair, and it does not comply with France's obligation under international human rights treaties to ensure prompt, independent, impartial and thorough investigations into all allegations of torture, ill-treatment and violations of the right to life.

## ADEQUATE?

Although it is not to be assumed that every complaint against a law enforcement official will be upheld, Amnesty International believes that the high number of complaints against law enforcement officials closed by the prosecutor without reaching trial is in part a consequence of the lack of independence and impartiality of the preliminary investigations. It cannot be considered surprising that investigations carried out, *de facto*, by law enforcement officials into allegations against their colleagues frequently fail to produce sufficient evidence to support a prosecution. It is also not surprising that some prosecutors and judges show reluctance to pursue in-depth investigations into the conduct of law enforcement officials on whom they rely for assistance on a daily basis.

As a result, it is not unusual for the prosecutorial authorities to close investigations into allegations of human rights violations by law enforcement officials after minimal investigation, basing decisions heavily on testimony of law enforcement officials, and without seeking further evidence. This contradicts the requirement of "adequacy" (or "thoroughness") for such investigations, which the CPT has defined as requiring "that all reasonable steps be taken to secure evidence" and for all investigations to be "capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification... of those concerned".<sup>34</sup> Furthermore, when cases are closed without reaching trial there is no possibility for public scrutiny of the evidence, thus decreasing the transparency with which such decisions are made.

### THE CASE OF JOSIANE NGO

In the early evening of 17 July 2007 Josiane Ngo, who was eight months' pregnant at the time, was stopped by three police officers in Chateau Rouge, Paris. They told her that she was in violation of regulations concerning street vending because she had put boxes out on the street. She denied that this was the case, stating that she was just delivering some merchandise. The police officers asked for her identity papers but she said her partner, Souleymane Traoré, had her residence permit with him.

Josiane Ngo told Amnesty International that at this point, one of the police officers took her by the arm and told her they were going to the police station. Josiane Ngo asked the police officer to let go of her arm and tell her why she was being arrested. At this point, she says one of the police officers punched her in the nose, which began to bleed, and pushed her to the ground. This took place in front of a large number of people present in the street, several of whom expressed their concern to the police at the treatment of a woman who was clearly pregnant. The police officers called for reinforcements, who arrived and formed a barrier around Josiane Ngo, who was still lying on the ground.

At this point, Josiane Ngo's partner arrived. However, as he attempted to give the police officers Josiane Ngo's residence permit the police officers fired tear gas at him and his three year-old son. Josiane Ngo was also hit by the gas. She states that police officers dragged her by the hair into a police van and punched her. She told Amnesty International that a police officer sat on her back as she lay on the floor of the vehicle and punched her in the head. She also states that she was kicked when she arrived at the police station. Upon her arrival she was told she would be charged with *outrage*.

Josiane Ngo told Amnesty International that she was not permitted to see a lawyer while in custody or to make any phone calls. Her partner came to enquire after her and bring her her shoes (which had been left behind at the scene of the arrest) but he said he was not allowed to see her and was not given any information about her condition. She was not seen by a doctor until 1am the following morning.

Josiane Ngo was released from police custody at midday on 18 July. All charges against her had been dropped. She immediately went to the Hôtel Dieu hospital, where the examining doctor signed her off work for 10 days as a result of her injuries.

Josiane Ngo made a criminal complaint of ill-treatment to the prosecutor on 7 September 2007. She also submitted a complaint directly to the IGS and the CNDS. In July 2008 Amnesty International was informed that the prosecutor had closed the complaint without further investigation.

A video recording of Josiane Ngo's testimony, made by a journalist of the French newspaper *Libération*, is available at <http://indociles.blogs.liberation.fr/laske/2007/07/josiane-raconte.html>

Although the presumption of innocence of the accused must prevail in criminal proceedings, Amnesty International is particularly concerned by cases in which prosecutorial authorities favour the testimony of law enforcement officials even when it contradicts the testimony of multiple civilian witnesses, or other evidence (such as video recordings or medical reports) discredits it.

## THE CASE OF GWENAËL RIHET

Gwenaël Rihet, a news cameraman for the television channel France 3, was filming a demonstration at the Cannes Film Festival on 15 May 2004 when he was allegedly assaulted by police officers who pushed him to the ground and kicked him. He received hospital treatment for his injuries (bruising and a head wound requiring four stitches) and the following day lodged a criminal complaint against the officers involved. Immediately after he made his complaint, the principal accused (P.G.) made a complaint accusing Gwenaël Rihet of punching him.

On 24 June 2004 the public prosecutor in Grasse requested that the IGPN hold a hearing with Gwenaël Rihet and the accused officer, but no such hearing was held. Nevertheless, the prosecutor closed his investigation into Gwenaël Rihet's complaint on 21 September 2004. His decision was based on the evidence gathered by the IGPN which included interviews with Gwenaël Rihet and various police officers (who claimed to have seen Gwenaël Rihet punch P.G.). None of the other (non-police) witnesses present at the scene were questioned. The IGPN report also included still images extracted from CCTV camera footage, which the report claims shows Gwenaël Rihet punching an officer. Amnesty International has seen these images, but could not see any indication in them of Gwenaël Rihet punching a police officer.

The IGPN report also notes that "a video was watched" during the second of two hearings with Gwenaël Rihet,

but does not provide any detail on its content. Amnesty International has watched this two minute video, filmed by another journalist at the scene, which clearly shows Gwenaël Rihet being forced to the ground by two police officers in civilian clothes and then a uniformed riot police officer kicking him as he lies on the ground. It also shows Gwenaël Rihet putting his arm out to stop P.G. from making him drop his video camera, but there is no indication that Gwenaël Rihet punches any police officer. The video is available at <http://www.dailymotion.com/gwencannes>.

Despite the claims of the police witnesses, the prosecutor did not bring any charges against Gwenaël Rihet.

Following the closure of the investigation of Gwenaël Rihet's complaint by the public prosecutor, on 28 January 2005 Gwenaël Rihet presented a civil party complaint, which required an investigation to be opened by an investigating judge. On 28 June 2005 Gwenaël Rihet was interviewed by the investigating judge, who questioned him on whether he had punched P.G., but not on the complaint he had made of ill-treatment. Nine months later, on 5 April 2006, Gwenaël Rihet was called for a second interview with the investigating judge. The judge referred to the still images taken from the CCTV camera footage and warned Gwenaël Rihet repeatedly that he could be charged with defamation. Gwenaël Rihet's lawyer subsequently submitted a formal request to the investigating judge for particular investigatory measures to be undertaken, including a joint hearing with Gwenaël Rihet and the accused officer, and for the judge to watch the two minute journalist's video.

On 16 May 2005, a hearing took place with Gwenaël Rihet and P.G. By this point, the original, full video footage from the CCTV camera had been lost. The judge watched the two minute journalist's video and asked Gwenaël Rihet if he really wanted to pursue his complaint (implying that the incident was not serious enough to constitute an assault). Gwenaël Rihet stated that he wanted the investigation to continue and submitted a request directly to the Court of Appeal in Aix-en-Provence for further investigatory acts to be conducted. On 9 November 2006 this request was rejected.

In the meantime, the investigating judge was transferred and a new judge took over the case. On the request of Gwenaël Rihet, the new judge ordered two non-police witnesses to be interviewed, but instead of interviewing them herself they were interviewed by police officers. Neither witness was capable of remembering the incident in detail (now three years after the event) although one stated that if he had been questioned earlier he believed he would have been able to identify the accused officer.

On 2 March 2007 the investigating judge told Gwenaël Rihet's lawyer that she intended to close the investigation, whilst admitting she had not watched the two minute journalist's video (which clearly records the whole incident). He immediately submitted a formal request for her to watch the video which, on 26 March, she rejected, stating that a description of the video was included in the file. However, this description in fact relates to the CCTV footage and not to the footage filmed by the journalist.

On 10 September 2007 the investigating judge closed the investigation into Gwenaël Rihet's complaint. Gwenaël Rihet appealed against this decision to the Court of Appeal in Aix-en-Provence but on 14 February 2008 the Court of Appeal upheld the original decision. Gwenaël Rihet has now taken an appeal to the Court of Cassation, which was still pending at the time of publication of this report.

It is evident that law enforcement officials are sometimes required to use force in the course of their work. However, controversy may arise as to the degree of force used and its proportionality to the situation at hand. For an investigation into allegations of excessive use

of force, ill-treatment or unlawful killing to be effective and adequate, it is essential for prosecutorial authorities to be able to determine clearly whether the force used in specific incidents is necessary, proportionate, and therefore lawful. However, in the absence of detailed and specific regulations on the use of force and particular restraint techniques it can be difficult for prosecutors and judges to make such decisions. Amnesty International has noted in the cases which it has examined that where the necessity or proportionality of force used by law enforcement officials is disputed the prosecutor's interpretation of these criteria often gives the benefit of the doubt to the law enforcement officials.

### **Regulations on the use of force**

The UN Code of Conduct for Law Enforcement Officials states that force may only be used "when strictly necessary and to the extent required for the performance of their duty" and in accordance with the principles of proportionality - that is to say, the force used is not authorised if it is unnecessary or "disproportionate to the legitimate objective to be achieved" (Article 3 and commentary). The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials further specifies that "[law enforcement officials] may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result" (Article 4) and that, when the use of force is unavoidable, law enforcement officials shall "Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved" (Article 5a).

The 1986 French Code of Ethics of the National Police also requires that the use of force by police officers must be "strictly necessary and proportionate" (Article 9). Article 10 of the Code prohibits law enforcement officials from inflicting "any violence or inhuman or degrading treatment" against detainees.

The case of Salif Kamaté illustrates the controversy that may arise through differing views on the legitimacy of force used on a particular occasion.

### **THE CASE OF SALIF KAMATÉ**

On 26 May 2007, Salif Kamaté, an irregular migrant from Mali, was due to be forcibly expelled from France. After they boarded Air France flight AF796 from Paris to Bamako at Charles de Gaulle airport, a struggle broke out between Salif Kamaté and the three police officers accompanying him. During the struggle, Salif Kamaté bit one of the police officers and was subsequently charged with assaulting a police officer.

According to Salif Kamaté, he had boarded the plane peacefully and taken his seat. He asked for his handcuffs to be removed, and one of the police officers agreed to do so if he took a "medicine". The police officer gave Salif Kamaté a pill and a glass of water and then removed his handcuffs. Salif Kamaté did not know what the pill was.

After taking the pill Salif Kamaté says he began to feel nauseous and asked for a doctor. This request was refused. Salif Kamaté then stood up to get the attention of the airline staff to ask for a doctor. It was at this point that the police officers tried to force Salif Kamaté back into his seat and the struggle began. Salif Kamaté stated that two police officers hit him while another tried to tie his legs. One officer held him by the neck in a stranglehold.

Numerous passengers protested at the incident, telling the police officers present that the treatment of Salif Kamaté was unacceptable. One witness, M.D., thought that the incident was a fight between passengers,

and called for them to stop. He stated that he saw Salif Kamaté being strangled by one police officer while another held him by the legs and hit him in the stomach. Another witness made a similar statement. Both witnesses commented on the extreme level of violence and the prolonged nature of the struggle.

After several minutes, Salif Kamaté, who suffers from asthma and diabetes, began to foam at the mouth, his eyes rolled back in his head, and he lost consciousness. He was carried off the plane by the police officers and an emergency medical team attended to him outside the plane.

After Salif Kamaté had been disembarked, more police officers entered the plane and told the witness M.D. to leave the plane. He was taken to the police station and says he was told he could be charged with “inciting rebellion”, obstructing a police operation, and obstructing the departure of an aircraft. However, after approximately four hours he was released without charge. He believes that the wide publicity given to the incident, which appeared in the media almost immediately, was what motivated his rapid release from custody.

On 29 June 2007 the Criminal Court of Bobigny acquitted Salif Kamaté of assaulting a police officer, on the grounds that the force used by the police officers to restrain Salif Kamaté was excessive and went beyond approved professional techniques for use in such situations, thus constituting an assault against him. Consequently, Salif Kamaté had acted in legitimate self defence when he bit the police officer who was strangling him.

There was no evidence other than Salif Kamaté’s own testimony to indicate that he had been given a tranquiliser pill by one of the police officers, which would have been a serious breach of regulations.

However, the public prosecutor appealed against the decision to acquit Salif Kamaté and on 18 March 2008 the Court of Appeal in Paris convicted him of assault. He was sentenced to five months’ imprisonment and a fine payable directly to the police officer of 1,200 euros. Salif Kamaté’s lawyer told Amnesty International that she was unaware of his current location as he had disappeared to avoid going to prison. She said that in June 2007 she had submitted a complaint of ill-treatment on his behalf to the IGS, but had never received a response.

Amnesty International is also deeply concerned that specific control and restraint techniques used by law enforcement officials in France represent a serious danger to detainees and have resulted in unlawful killings. In the 2005 report, *France: The search for justice*, Amnesty International reported on three cases in which detainees died after being subjected to methods of restraint which may have caused positional asphyxia. One of these cases was that of Mohamed Saoud, who died on 20 November 1998 after a violent arrest.<sup>35</sup> According to expert medical reports, Mohamed Saoud died from cardio-respiratory failure, caused by slow asphyxiation. This was the result of the restraint technique used on Mohamed Saoud, during which two police officers held him by the (handcuffed) wrists and ankles and another knelt on his back while pressing his hands against Mohamed Saoud’s shoulders, as he lay on his stomach on the ground. Mohamed Saoud was held in this position for approximately 30 minutes.

On 9 October 2007 the European Court of Human Rights issued its judgment in the case.<sup>36</sup> The Court found that although the force initially used by the officers to arrest Mohamed Saoud was proportionate to the level of violence and resistance he offered, the failure by these officers to relax the restraint on Mohamed Saoud after successfully restraining him, or

to provide him with any form of medical attention in the 30 minutes prior to his death, was a breach of their duty and constituted a violation of the right to life guaranteed under Article 2 of the European Convention on Human Rights.

Noting the particular dangerousness of this type of restraint technique, the Court strongly criticized the failure of the French authorities to issue detailed instructions relating to its use. Following up on this ruling in 2008, the Court noted with regret the fact that the French authorities had still not issued any specific instructions to law enforcement officials on the use of this immobilization procedure.<sup>37</sup> Less than a year after this ruling, in May 2008, Abdelhakim Ajimi died after being subjected to the same technique.

## THE CASE OF ABDELHAKIM AJIMI

On 9 May 2008 Abdelhakim Ajimi died in Grasse after being restrained by police officers during arrest. It would appear that the restraint technique used on him was the same as that which caused the death of Mohamed Saoud in 1997.

On the afternoon of 9 May Abdelhakim Ajimi went to his bank, Crédit Agricole, and tried to withdraw money. When he was turned down, witnesses say he grew angry and aggressive and the bank manager called the police. Abdelhakim Ajimi left the bank but a unit of police officers stopped him



Abdelhakim Ajimi. © Private.

close to his home, on Boulevard Victor-Hugo, and tried to arrest him. It is alleged that he violently resisted arrest and struggled with the police officers. In the struggle, a shop window was broken and one of the police officers suffered a fractured collarbone.

According to reports in the media, numerous witnesses to the incident said that they were alarmed by the manner in which the police officers were treating Abdelhakim Ajimi, stating that the force they used against him appeared excessive. After he had been handcuffed, witnesses report that he was held face-down on the ground for a prolonged period of time by three police officers. One witness alleges that one of the police officers punched Abdelhakim Ajimi twice while he was being held on the ground. Another officer knelt on his back while a third held him in a stranglehold with his arm. Witnesses state that Abdelhakim Ajimi's face turned purple and it was clear that he could not breathe.

Rescue services arrived at the scene and the injured police officer was taken to hospital. Witnesses allege that the police officers told the paramedics not to attend to Abdelhakim Ajimi as they had the situation under control. Abdelhakim Ajimi was taken by police car to the police station where he was declared dead at 4.30pm. According to police testimony, Abdelhakim Ajimi was alive but in a poor condition upon arrival at the police station. They claim that they tried to revive him but their efforts, and those of the paramedics called to the police station, failed to have any effect. However, several witnesses to his arrest have stated that they believe he was already dead when he was put into the police car.

Two days after the incident the Prefect of Alpes-Maritimes made a statement on the case to the media, stating



that “There is currently no reason to question the actions of the police officers.” Nevertheless, on 13 May, the public prosecutor in Grasse opened an investigation into “involuntary homicide”. According to media reports the original autopsy report was inconclusive, indicating both possible signs of asphyxia and a possible heart condition. At the end of November an expert medical report was submitted to the investigating judge, which concluded that his death had been caused by “mechanical asphyxiation” as a result of the prolonged pressure on his chest as he was restrained on the ground and the stranglehold on his neck.

The two police officers suspected of being responsible for Abdelhakim Ajimi’s death were summoned for a hearing with the investigating judge on 16 December but at the time of printing of this report they have not been charged with any offence. Their lawyer has argued that their actions were in line with the training they had been given and official techniques. All of the officers involved remain on active duty in Grasse while the investigation continues.

## PROMPT?

Amnesty International has noted that in many cases of alleged human rights violations, including those highlighted in this report, criminal proceedings are slow to advance. Continued delays can give victims and their families the impression that the law enforcement agencies and judicial authorities are reluctant to investigate the case, and thus call into question their impartiality. In the case of Gwenaël Rihet (above) the repeated attempts by the prosecutor and investigating judges to close the investigation have prolonged the case for almost five years at the time of printing.

Amnesty International notes that in several of the cases examined in this report, investigations have been delayed due to files and evidence being lost or going missing. The case of Abou Bakari illustrates this point starkly.

### THE CASE OF ABOU BAKARI TANDIA



Demonstration calling for investigation into the death of Abou Bakari Tandia, 24 January 2009. © Amnesty International.

Abou Bakari Tandia, an irregular migrant of Malian origin who had been living in France for 13 years, died after falling into a coma in custody at the national police station in Courbevoie in December 2004. More than

four years later his cause of death has still not been established.

Abou Bakari Tandia was stopped in the street by police officers on the evening of 5 December 2004 at around 8pm and taken to the police station for an identity check. He fell into a coma in his cell and at around midnight the emergency medical services took him to the Salpêtrière hospital in Paris and then on to the Louis Mourier de Colombes hospital. Abou Bakari Tandia remained in hospital in a coma until he died, on 24 January 2005.

Abou Bakari Tandia's family were not notified of his arrest and admission to hospital until 9 December. Together with a representative of the Malian consulate they visited the hospital but were not allowed to see Abou Bakari Tandia for another three days as the two police officers guarding his room told the family he was still in police custody. Abou Bakari Tandia's family state that throughout the period he was in hospital they were kept uninformed and treated in a hostile manner by the police and medical staff. When Abou Bakari Tandia died and the family asked what had caused his death, the medical staff allegedly said "Ask the police". The autopsy report stated his death was the result of multiple organ failure, but did not indicate how this was caused.

When Abou Bakari Tandia's family were finally allowed to see him in hospital, when he was already brain dead, they noted that his body was swollen and he had a large round wound on his chest which did not appear in any of his medical reports. They also noted that he had no visible head injuries, despite the fact the police claimed he had fallen into a coma after deliberately banging his head against the wall in his cell. Neither the

autopsy report nor any of the medical reports from either of the two hospitals he was admitted to recorded any evidence of a head injury.



Abou Bakari Tandia in hospital following his detention. © Private.

On the night Abou Bakari Tandia was arrested and admitted to hospital the Nanterre public prosecutor was alerted to his condition and visited him. In March 2005 the public prosecutor closed the investigation into his death without further action, having found no evidence in the IGS

report into the incident to support a prosecution. In April, Abou Bakari Tandia's family made a complaint of "torture and ill-treatment resulting in death", the case was reopened, and an investigating judge was appointed in June. Around this time Abou Bakari Tandia's family was informed that the CCTV camera in his cell was not working on the night of his arrest because a detainee had pulled out its cables.

There was little progress in the case after this point until more than two years later, when in November 2007 Abou Bakari Tandia's family appointed a new lawyer. This lawyer subsequently made a number of formal requests for investigatory acts to the investigating judge and prosecutor which resulted in substantial new evidence being uncovered.

In April 2008 the family's lawyer made a formal demand for Abou Bakari Tandia's clothes to be produced in evidence. Abou Bakari Tandia was admitted to hospital naked, and his family state they have never received all of his clothes and personal possessions back from the police station. When they asked for his clothes at the police station the day after his death they were told that there were none. The original IGS investigators apparently did not make any requests for his clothes. Following the lawyer's request, a pair of trousers and a sleeveless jacket were produced by the police station. Given that Abou Bakari Tandia was detained in the street in December his family believe that he must have been wearing some kind of shirt or pullover which has never been found. Such an item would presumably show marks of the injury to Abou Bakari Tandia's chest and could indicate how the injury was caused.

In late 2008 a new IGS investigation requested by the family's lawyer revealed that there was no police record of the CCTV camera in Abou Bakari Tandia's cell being broken, that no technician had been alerted to repair it, and that due to its location in the cell it was impossible for anyone to reach it to pull out its cables. The family's lawyer has now presented charges of false testimony against the police officer who claimed that a detainee had vandalised the camera.

Immediately after Abou Bakari Tandia's death the IGS requested his medical reports from the hospital, but was told they had been lost. It was not until January 2009, after the family's lawyer submitted a formal complaint of "destruction of evidence" that the hospital produced the medical reports, revealing that they had found the misplaced file two months after Abou Bakari Tandia's death but nobody had contacted the investigating court to advise them. Similarly, in August 2008 copies of an X-ray and some medical notes were given to the investigating judge by the prosecutor, who stated that they had been accidentally filed in the wrong dossier for the past three and a half years. These medical documents are now being examined by expert forensic doctors to try to determine Abou Bakari Tandia's cause of death. Their conclusions are expected in May.

At a press conference on 24 January 2009, Abou Bakari Tandia's uncle repeated his calls for a full investigation. He rejected again the police claims that Abou Bakari Tandia's coma was caused by self-inflicted injuries, stating "If they told us it was an accident, or there had been violence, we'd understand. We're human. But not if they say he banged his head against the wall. It doesn't make any sense. We just want to know what happened so we can grieve."

The case of Philippe shows how even cases which appear straightforward can be slow to resolve.

## THE CASE OF PHILIPPE

Following a peaceful demonstration in the 6th district of Paris on the evening of 9 May 2007, Philippe<sup>38</sup> and a number of other individuals present were detained by police for an identity check. They were taken in a police van to the police station in Rue de Clignancourt (18th district). Philippe said that upon arrival at the police station, the individuals on board remained locked inside the van for several hours. He said that it was suffocatingly hot inside the van, there was no ventilation, and that the requests of those detained in the van for air and water were refused. He also claims that pepper-spray was sprayed into the van from outside.

After waiting approximately three hours in the van, Philippe and the others were taken inside the police station and searched. Philippe states that one of the officers spoke to him in a threatening and degrading manner. He says he was then taken to a cell where he waited another two hours before being called to give his identity details, and was then immediately released.

Philippe left the police station and found that a number of the individuals who had been detained in the van with him were waiting outside for everybody to be released. Some police officers came out of the police station and told them to disperse. Along with others, Philippe began to walk away peacefully. Suddenly, he heard somebody shouting "Charge!" behind him. He saw approximately 10 police officers running down the street behind those who were walking away.

Philippe continued to walk away but as he did so he says he was hit on the legs by a police officer with a truncheon and fell to the ground. He says that as he lay on the ground, he was beaten again on the back and head. He claims that another police officer picked him up roughly from the ground and shouted at him to "Get lost!". Philippe went immediately to the Laribosière Hospital, where he received treatment, including 10 stitches to the head.

On 10 May 2007 he made a complaint to the IGS which subsequently passed its findings on to the prosecutor and in February 2008 an investigating judge was appointed to the case. The investigation is still ongoing and Philippe is a civil party to the case.



Injury to Philippe's head, requiring stitches. © Private, 2007.



Injury to Philippe's back. © Private, 2007.

## PUBLIC?

In order to improve transparency and public confidence, in its 2005 report *France: The search for justice* Amnesty International recommended that the French authorities collect and publish regular and comprehensive statistics on complaints about serious misconduct, including torture and other ill-treatment, excessive use of force, and unlawful killings by law enforcement officials. This information should include the number and nature of complaints and the outcome of criminal and/or disciplinary investigations. At present, no such information is publicly available. The UN Human Rights Committee noted this lack of information on ill-treatment and sanctions in its July 2008 Concluding Observations.<sup>39</sup>

The CPT has recommended that internal investigations departments should be “properly publicised” and that it should be possible for individuals “to lodge complaints directly [with them]”.<sup>40</sup> The UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials states that: “Particular provisions shall be made... for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public”.<sup>41</sup> In contrast, however, there is very little information publicly available concerning the IGPN, IGS and IGN, or how to contact them. Furthermore, although individuals can submit a complaint personally to the IGS concerning the conduct of national police force officers based in Paris,<sup>42</sup> there is no right to address the IGPN directly with a complaint concerning a national police officer based outside of Paris. Anyone wishing to make a complaint to the IGPN must do so via a prosecutor. This lack of direct access alienates complainants from the investigation procedure, and leads to inconsistencies between the rights of complainants in Paris and the rest of the country.

Although the internal inspectorates produce annual reports which are submitted to parliament, these are not made publicly available in full. The public therefore has very limited access to detailed information on the number and nature of cases of misconduct investigated internally, and on their outcomes. Amnesty International considers that the lack of public transparency regarding the number, conduct and outcome of internal investigations may contribute to a public impression that law enforcement officials may commit acts of misconduct - including human rights violations - with impunity, as there is no public evidence of misconduct being investigated and sanctioned.

In response to requests from Amnesty International, the Ministry of Justice provided statistics on the number of convictions of public officials (including law enforcement officials but also all other civil servants, as no disaggregated data are available) for “violence” between 2003 and 2006. There were 430 convictions in total for this period.<sup>43</sup> However, the statistics provided did not indicate how many criminal complaints were made or investigations initiated, so it is not possible to ascertain what percentage of complaints go to trial and are acquitted, or are closed before reaching trial stage. In a subsequent letter, the Ministry of Justice informed Amnesty International that this information fell under the competency of the Ministry of Interior.

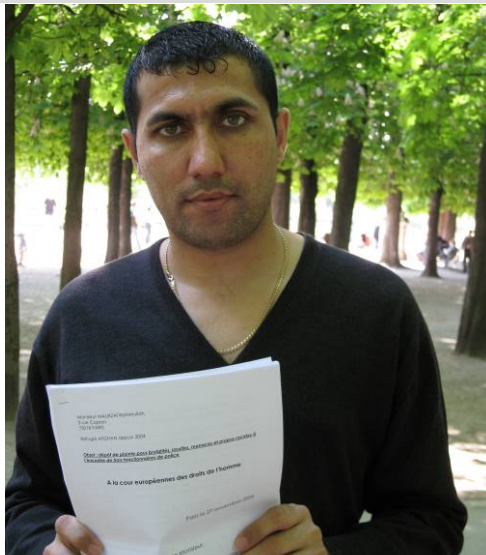
Making available regular and comprehensive statistics on complaints about misconduct, including the number and nature of complaints, steps taken in response to each complaint, and the outcome of internal investigations would contribute to greater transparency and improve public confidence in the complaints handling procedure. In interviews with Amnesty International, representatives of the IGPN and IGS said they would support proposals to make their annual reports publicly available in full, but that the Ministry of Interior (which would have to authorise such a decision) had shown no willingness to do so. Amnesty International wrote to the Minister of Interior in June 2008 asking for a copy of the most recent annual reports of the IGPN and IGS and enquiring as to whether there were any plans to make such reports public in future, but to date has received no response.

## VICTIM INVOLVEMENT?

Although representatives of the IGS assured Amnesty International that all complainants received acknowledgement of their complaint, they also stated that no information on the investigation and its findings was ever transmitted to complainants as this would breach judicial procedures on secrecy. Such information is provided only to the prosecutor, even if it is the alleged victim who initially requested the opening of an internal investigation. Complainants are therefore unable to have access to the findings of the IGS investigation unless they become a civil party to the criminal case. This further alienates them from the procedure and contributes to a lack of transparency in the system.

### THE CASE OF MAULAWI

Maulawi<sup>44</sup> is an Afghan refugee living in Paris with his younger brother and sister. He told Amnesty International that on 27 July 2006 he was ill-treated by law enforcement officials after being stopped and fined on the Metro for travelling without a valid ticket.



Maulawi. © Amnesty International, 2008.

Maulawi told Amnesty International that as he left the Metro station Saint-Lazare with his 10 year old brother W<sup>45</sup>, the Metro agent who had fined him earlier followed him, accompanied by three police officers. Maulawi said that the officers treated him in a violent and aggressive manner, accusing him of making an obscene gesture at them, and handcuffed him. A witness to this scene says he saw police officers holding Maulawi on the ground and a police officer punch him in the mouth. Another witness states that she saw Maulawi bleeding from the mouth as he was held on the ground. As a result of his experience of imprisonment by the Taliban in Afghanistan, Maulawi says that he suffers from some health problems, and at this point he suffered a blackout due to stress.

Maulawi says the officers then took him to a small, windowless room inside the Metro station where he says two of the officers racially insulted him, and kicked and punched him in the genitals, arms, left leg and neck. He says they threatened to return him to Afghanistan or send him to prison, and to send his brother to a children's home.

He was then transferred with his brother to the police station at Gare du Nord train station. Upon arrival at the police station he says he asked to speak to a family member and a lawyer but a police officer told him "Shut up you fucking terrorist, you've got no right to speak to anyone". He was told he had been arrested for *outrage* and *rebellion*. Maulawi says he was then separated from his brother and put in a cell with four other detainees. His brother was taken away to a children's home, where he remained until 8 August when he was returned to Maulawi's custody. Since the date of the incident W has been regularly assessed by a

psychologist, who has noted that he suffers ongoing fear and anxiety caused by the event.

At around 1am on 28 July, Maulawi was taken for an examination at the Hôtel Dieu hospital. The doctor's report from this examination recorded injuries consistent with Maulawi's allegations of ill-treatment, and he was signed off work for three days. In subsequent medical examinations he was repeatedly signed off work until January 2007.

Later that morning, Maulawi was questioned by a police officer about the incident leading to his arrest. He told Amnesty International that the officer repeatedly interrupted him, telling him that he was lying. He also said that each time he asked to see a lawyer he was told that this would extend his detention in custody. Maulawi told Amnesty International that the police officer told him just to agree with what he wrote in the statement, that "even if you're telling the truth, nobody will believe you" and that if he made a complaint the officers would "cause problems" for him. Maulawi refused to sign the statement. Following further questioning he was released from custody at 8pm that day, charged with *outrage* and *rebellion*.

On 15 December 2006 Maulawi made a complaint of ill-treatment to the IGS but he told Amnesty International he has never received a response. Maulawi told Amnesty International that he had asked his lawyer to submit a criminal complaint against the police but the lawyer had advised him against it, saying he was unlikely to win.

Maulawi was convicted by the 29th Chamber of the Criminal Court of Paris for *outrage* and *rebellion* on 18 October 2006. He was given a one month suspended sentence and fine. To Maulawi's knowledge, there has never been any disciplinary or criminal investigation into the complaint he made.

## 5. REPRISALS AGAINST COMPLAINANTS

In recent years Amnesty International has received a significant and increasing number of complaints from individuals who claim that they have been subject to retaliatory arrest, detention or unjustified criminal charges of *outrage* or *rebellion*.<sup>46</sup> Such retaliatory action or charges typically take place either following a violent incident in which the individual has made a complaint of ill-treatment against the officers involved, or when passersby attempt to intervene – verbally or physically – when they witness law enforcement officials apparently ill-treating a third party. The latter is frequently the case during police operations to forcibly expel irregular migrants or rejected asylum-seekers from France.

Amnesty International recognizes that acts of *outrage* or *rebellion* are criminal offences and legitimately prosecutable. However, the organization is concerned by evidence that indicates that these charges are often brought against individuals as a tactic to undermine their own complaint of ill-treatment against law enforcement officials. This trend was confirmed to Amnesty International delegates by the CNDS, representatives of the IGPN and IGS, and other non-governmental organizations (NGOs). The 2005 report of the IGPN noted the tendency of some law enforcement officials to resort “perhaps too systematically to allegations of *outrage* and *rebellion*”.<sup>47</sup> In these cases, Amnesty International has noted once again that prosecutorial authorities frequently take decisions based primarily on the testimony of law enforcement officials, without seeking further evidence.

### THE CASE OF FATIMATA M'BAYE

Fatimata M'Baye is a lawyer, president of the Mauritanian Association for Human Rights (l'Association mauritanienne des droits de l'Homme, AMDH) and vice-president of the NGO International Federation for Human Rights (Fédération internationale des droits de l'homme, FIDH). On 11 March 2008 she was arrested and held in police custody for 24 hours after protesting at what she considered to be ill-treatment by police officers of a Mauritanian migrant being forcibly expelled on the flight she was travelling on. During the period she spent in custody she states that she was subjected to degrading treatment.

On 11 March 2008 Fatimata M'Baye boarded Air France flight 765 at Charles de Gaulle airport, Paris, bound for Nouakchott, Mauritania. She noticed several police officers on board but did not consider it unusual until she and the other passengers heard sounds of a man in distress from the back of the plane, who shouted “Help me! Untie me! They're going to kill me!”. She says she saw a young man who had his arms strapped to his body with a belt, and was being forcibly restrained by border control police officers who were trying to silence him. Fatimata M'Baye and another passenger, a doctor, called on the police officers to untie him and protested that they were treating him in an inhuman and degrading manner.

The flight captain told the police officers to untie the young man as this was forbidden during flights. They refused to do so, so he ordered them to disembark. The passengers applauded this action. A few minutes later approximately 20 more police officers boarded the plane and one told Fatimata M'Baye and the doctor to



disembark. Fatimata M'Baye said she would not leave the plane until she was told on what grounds she was being ordered to do so. She says the police officer told her “we have ways to make you do so”, and in response to what she perceived as a threat of physical violence, she disembarked.

Fatimata M'Baye was taken into police custody at the airport, where she was stripsearched. At around 6pm she was told that she had been arrested for “opposing a forcible expulsion” and would be held in custody for 48 hours. At 11.30pm she was taken to a detention cell in a different part of the airport. She was stripsearched again and, while naked, told to “spread her legs” so the officers could check that she was “not hiding anything”. She was deeply humiliated by this procedure which appeared entirely unnecessary as she had already been searched when she entered custody. She protested to the two police officers present and the search was finally halted.

Fatimata M'Baye remained in custody overnight and the public prosecutor was informed of her detention. However, she was released the following day at approximately 3pm and the public prosecutor did not pursue any charges against her. The doctor who had also protested about the treatment of the migrant being forcibly expelled, and had likewise been detained, was also released around the same time. He states he was never informed of the reason for his detention.

No further information is available on the fate of the young man being expelled. According to Fatimata M'Baye's understanding, he was returned to Mauritania on the next flight.

Amnesty International is concerned that the pressure on law enforcement officials to meet pre-set targets for arrests and prosecutions may also contribute to the increasing number of charges of *outrage* and *rebellion*. One former police officer noted that bringing such charges is an easy way for law enforcement officials to meet such targets because in these incidents it is “a fact which is noted, investigated and examined, possibly a detention, and very often even a conviction, at least a fine”.<sup>48</sup> Consequently, these allegations “are constantly increasing” regardless of the damaging effect they may have on the individual accused.

In light of the above, it is essential that prosecutorial authorities carefully scrutinize charges of *outrage* or *rebellion*, particularly if they are filed after complaints of ill-treatment or other misconduct have been made. When complaints are filed by both detainee or witnesses and law enforcement official, both should be investigated thoroughly - neither complaint should be allowed to impede the full investigation of the other. Ideally, such charges should be joined into a single investigation to allow all evidence and both accusations to be examined simultaneously, thoroughly and impartially. The CPT has recommended that in situations where detainees or witnesses make complaints against law enforcement officials and are simultaneously the subject of charges arising from the same incident, “steps should be taken to ensure that the equitable nature of proceedings is manifest” and “any use of force in the context of detention should, therefore, be subject to serious scrutiny and should not be treated summarily”.<sup>49</sup>

## THE CASE OF LAMBA SOUKOUNA

Lamba Soukouna told Amnesty International that on the evening of 8 May 2008 he was ill-treated by police officers outside his home in the Parisian suburb of Villepinte (Seine-Saint-Denis). Lamba Soukouna suffers from sickle cell disease, a serious genetic illness, and as a result of the incident he was hospitalised for three days.

Lamba Soukouna told Amnesty International that just before midnight on 8 May he was entering his apartment building, talking to a friend on the phone, when he noticed a group of police officers in riot gear outside the opposite building. Suddenly he heard a commotion and turned to see the police officers charging at a group of young people outside, who dispersed in all directions. Lamba Soukouna turned back into the entrance of his apartment building to go upstairs, still talking on the phone, but as he did so he says two groups of police officers ran into his building. One officer grabbed him from behind and pushed him against the wall. Lamba Soukouna says he was shocked by this sudden aggression and told the police officer to take it easy. He says the police officer told him to shut up and hit him on the forehead with the butt of his rubber bullet gun. Lamba Soukouna says he fell to the ground and passed out for a few seconds. When he came round he felt blood running down his forehead and shouted at the police officers "What did you do that for? What did I do?" A neighbour arrived and told the police officers that Lamba Soukouna suffered from a serious illness and they



Lamba Soukouna. © Amnesty International, 2009.

should be gentle with him, but according to Lamba Soukouna one of the officers replied "We don't give a shit about your illness" and the officers began kicking him in the back and ribs as he lay on the ground.

Lamba Soukouna told Amnesty International that several neighbours and relatives saw what was happening and helped him to get up off the ground. They helped him upstairs to his apartment where he explained to his parents what had happened. Despite the fact he was bleeding heavily and wanted to get medical treatment, they decided to go first to the gendarmerie police station to report the incident, as they wanted the gendarmes to witness his injuries first hand.

With two friends and his brother, Lamba Soukouna set off in a friend's car to report the incident. On the way to the gendarmerie station they drove past the scene of a car accident, where a number of police officers were present.

Lamba Soukouna recognized some of the officers as those who had assaulted him, and he got out of the car to try to identify them more clearly. A police officer from another police force present (Aulnay), noting Lamba Soukouna's injuries and state of distress, asked him about what had happened. When the paramedics arrived to deal with the car accident a few moments later, this police officer told Lamba Soukouna to go over to them and get his forehead treated.

As Lamba Soukouna walked towards the ambulance he says one of the officers from the group that had assaulted him grabbed him around the neck, dragged him several metres and forced him into the police van, where he was handcuffed. Lamba Soukouna's brother, worried by the aggression shown towards him, asked the police why they were treating Lamba Soukouna that way and where they were taking him. They told him "to the hospital", but in fact they took him to the police station at Villepinte.

Upon arrival at the police station, Lamba Soukouna says he was handcuffed to a bench. He told Amnesty International that nobody answered him when he asked why he had been arrested, except one officer who said "Dunno". Lamba Soukouna says he repeatedly asked for his medication, which was necessary to control his chronic illness, but it was not given to him. He was finally taken to Bondy Hospital at around 2am, where he saw the police officers from the Aulnay police force again. They recognized Lamba Soukouna and one of them told the officers now accompanying him that Lamba Soukouna had told them he had been beaten up by the

Villepinte officers, and that they themselves had seen how violently he was detained at the scene of the car accident.

Lamba Soukouna was treated for the injury on his forehead, which required several stitches, and was signed off work for six days. He was then returned to the police station at Villepinte at approximately 3.30am. At this point he had been in police custody for three hours, but had not been notified of the reason for his arrest or any charges against him. Shortly after arriving back at the police station, Lamba Soukouna says he was charged with *outrage* and *rebellion*. He was taken for questioning along with the police officer who Lamba Soukouna says had assaulted him. During the questioning the police officer claimed Lamba Soukouna had insulted him and tried to head butt him and that he had therefore hit Lamba Soukouna with his gun in self defence. He also claimed that Lamba Soukouna had tried to run away and encouraged other young people present to attack the police officer.

Lamba Soukouna denied all of these allegations and gave his version of events. He pointed out that due to his chronic illness and two previous operations on his hips he is totally unable to run and therefore could not have tried to flee as the officer claimed. Amnesty International has seen medical records for Lamba Soukouna that confirm his grave state of health and register him as 80 per cent disabled. The organization has also seen the medical reports and photographs of the injuries he received on 8 May 2008, which are consistent with his allegations.

Following this questioning, Lamba Soukouna again asked for his medication but says he was returned to the police cells without any response to his requests. He says he repeatedly asked for his medication but it was not given to him. He consequently suffered a violent fit at 5am during which time he had difficulty breathing and suffered extreme pain. He says he waited 30 minutes before a police officer told him an ambulance was on its way to assist him. When the ambulance arrived the paramedics recognised Lamba Soukouna immediately as they worked at the hospital where he is regularly an inpatient. They took him straight to the emergency ward of the Robert Ballanger hospital, where the doctor on duty also recognised Lamba Soukouna and told the police officers escorting him that he could not return to custody due to the grave state of his health. Lamba Soukouna remained in hospital for three days.



Injury to Lamba Soukouna's head. © Private, 2008.

Lamba Soukouna made a complaint to the IGS regarding the incident. Both his complaint and the charges against him are still under investigation.

Amnesty International considers that the retaliatory use of charges of *outrage* or *rebellion* could constitute pressure on individuals not to pursue complaints when they consider themselves to have been victims of misconduct by law enforcement officials, including ill-treatment or excessive use of force. Furthermore, Amnesty International notes that the failure of the authorities to address the pattern of retaliatory, unfounded charges violates France's obligations under the UN Convention Against Torture, which requires that "Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given" (Article 13). In a number of cases reported to Amnesty International individuals who had suffered ill-

treatment by law enforcement officials stated that they would not pursue a complaint as they were afraid of possible reprisals.

Amnesty International shares the concern of the CNDS regarding charges of defamation brought by law enforcement officials against individuals who make complaints of ill-treatment or excessive use of force. The CPT has explicitly cited “the potential negative effects of a possibility for ... officials to bring proceedings for defamation against a person who wrongly accuses them of ill-treatment”.<sup>50</sup> Amnesty International notes that in some cases in France individuals who have made complaints about ill-treatment or excessive use of force have been prosecuted for defamation against the police officers involved before there had even been a ruling on their own complaint, i.e. before the veracity of their claim had even been established (see CNDS case 2006-29 below). In its 2007 report the CNDS reiterated its extreme concern about this practice, noting its fear that this could develop into “unacceptable pressure, deliberately exercised against genuine witnesses and victims of ethical misconduct by law enforcement officials”.<sup>51</sup> The CNDS has raised its concerns about this issue with the Ministry of Interior and the Ministry of Justice but to Amnesty International’s knowledge no measures have been taken to remedy it.

## CNDS CASE 2006-29

On 20 March 2006, P.D. made a complaint to the CNDS via his member of parliament in relation to an incident that had taken place at Toulouse-Blagnac airport on 15 March. He stated that he had seen a man lying on the ground with his hands handcuffed behind his back, being kicked by a police officer. Another police officer was also present and did not intervene. The man in question, F.A., was a Turkish national being forcibly expelled from France.

The CNDS called the two officers implicated to a hearing on 5 December 2006. Two days later, on 7 December 2006, the two police officers involved made a complaint to the public prosecutor of defamation and moral harm against P.D. The prosecutor began an investigation and on 13 March 2007 the prosecutor closed the investigation against P.D. without charge after P.D. agreed to write a letter of apology to the police officers and pay them each 100 euros in compensation.

On 8 October 2007 the CNDS issued its opinion on the case, noting that the detailed and consistent testimony of P.D., a total stranger to all parties concerned, was supported by F.A.’s own testimony and the results of medical examinations conducted the day of the incident at Purpan Hospital. It concluded that F.A. had indeed been a victim of ill-treatment, in violation of the European Convention on Human Rights and the National Police Force Code of Ethics.

The CNDS expressed serious concern that the two police officers involved had claimed that the hearing before the CNDS was, in itself, “moral harm”. The CNDS passed on its conclusions in this case to the Ministry of Interior (which subsequently opened a disciplinary investigation into the allegation against the two officers). The CNDS also wrote to the Ministry of Justice, expressing its concern at the action by the public prosecutor against P.D., which took place before the CNDS had reached its conclusion on the case (and, it should be noted, this conclusion upheld P.D.’s allegations). The CNDS noted in its letter the increasing number of complaints of false accusation or moral harm made by law enforcement officials summoned by the CNDS, and the serious damage this could have on the functioning of the CNDS were the trend to continue. At the time of publication, no response had been received from the Ministry of Justice but in its response to similar concerns from the CNDS in respect of another case,<sup>52</sup> the Ministry of Justice stated that it was legitimate for prosecutors

to pursue charges of false accusation against individuals who had complained to the CNDS even if no decision had yet been reached on the veracity of those claims.<sup>53</sup>

In protest at the lack of effective response from the relevant government bodies, including the total absence of any disciplinary sanction of the police officers involved, the CNDS took the highly unusual step of publishing its findings in this case in the official Bulletin of State on 18 January 2009.<sup>54</sup>

Amnesty International considers it extremely worrying that individuals have been subjected to charges of defamation or moral harm simply for exercising their legitimate right to pursue a complaint of ill-treatment through the courts or the CNDS and regardless of the outcome of their complaint. Amnesty International considers that a system for investigating complaints against law enforcement officials which is not only widely perceived as biased and unfair, but in which potential complainants fear retribution if they seek to pursue a complaint, does not fulfil international standards for an effective investigation and right to a remedy.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Unlawful killings, torture and other ill-treatment are all violations of human rights prohibited under international law in all circumstances. Allegations of such human rights violations must be promptly, impartially, independently and effectively investigated and those responsible should be brought to justice – on both the disciplinary and criminal level – in full and fair proceedings. Any sanctions imposed should appropriately reflect the gravity of the crime. Effective internal and criminal investigations are also an important means of identifying systemic failings which facilitate misconduct, which may subsequently be rectified. Victims of human rights violations committed by law enforcement officials should be accorded prompt and adequate reparation from the state, including restitution, fair and adequate financial compensation, appropriate medical care and rehabilitation, and guarantees of non-repetition.

Amnesty International's research has highlighted the existence of significant weaknesses and failings in the current system of investigating allegations of human rights violations by law enforcement officials in France. Neither the criminal justice system, the internal police inspectorates, nor the CNDS fully satisfies the requirements of international law and standards for prompt, impartial, independent and effective investigations. Consequently, Amnesty International continues to call on the French authorities to take steps to reform the current systems. Amnesty International considers that the creation of an independent police complaints commission, with greater powers and resources than those enjoyed by the CNDS, is a crucial component of such a reform.

Amnesty International wishes to draw attention once again to its concern that although the victims of ill-treatment and other human rights violations include both men and women and a variety of age groups, the vast majority of complaints that have come to the organization's attention concern French citizens from an ethnic minority or foreign nationals. In several of the cases highlighted in this report, racist abuse was an explicit element. This trend has also been noted with concern by UN human rights bodies and the CNDS, and gives rise to concerns of possible institutionalized racism within the French law enforcement agencies.

The many recommendations made by Amnesty International in its 2005 report *France: The search for justice* are still relevant today. In order to focus attention here on the principle issues addressed in the current report, what follows is a list of Amnesty International's recommendations on specific areas for most urgent reform.

### RECOMMENDATIONS

#### **Amnesty International calls on the French government to:**

- Create an independent investigatory body to examine complaints against law enforcement officials. This body could be an enhanced version of the CNDS, or it could be a specialised department within the office of the Defender of Rights. In either case, in order to

be effective Amnesty International considers it essential that such a body comply with the following criteria:

- Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, killings (including fatal shootings), torture, racism and other cruel, inhuman or degrading treatment.
  
- Have the capacity to receive, register and investigate complaints filed directly by any individual, and to investigate incidents on its own initiative, absent any specific complaint.
  
- Have all necessary powers, authority and resources to conduct investigations into alleged human rights violations by law enforcement officials, including:
  - the power and resources to immediately examine the scene of the incident;
  - the power to summon witnesses and to order the production of evidence and documents – the use of these powers must never result in criminal charges of “false accusation” or “moral harm” against complainants;
  - the power to monitor police investigations in the course of any criminal investigation into a case referred for prosecution by the independent body;
  - the power to supervise or direct the investigations of the IGPN, IGS or IGN when considered necessary, and the power to replace the investigative functions of the IGPN, IGS or IGN in cases of serious human rights violations.
  
- Be adequately staffed and headed by professionals of acknowledged competency, impartiality, expertise, independence and probity, who are not members of the law enforcement agencies or the public prosecution. It should have at its disposal its own corps of independent expert investigators to investigate complaints.
  
- Have the power to refer a case directly to the prosecuting authorities for criminal prosecution where appropriate and the power to appeal any decision made by the prosecution authorities to a court (including decisions to suspend or close investigations, and decisions on sentencing).
  
- Have the power to order disciplinary proceedings to be instigated and the power to require the disciplinary body to report back to the complaints body on the result of disciplinary proceedings.
  
- Have the power to make binding decisions that apologies should be granted or criticisms made, and the power to recommend adequate compensation be paid to victims.
  
- Be made widely known, including through publicity in police stations.

**Amnesty International calls on the Minister of Interior to:**

- Refrain from making public statements indicating views of the veracity of a complaint against a law enforcement official while the investigation and any prosecution or disciplinary proceedings are pending, in order to avoid any perception of bias.
- Collect and publish regular, uniform and comprehensive statistics on complaints about misconduct, including human rights violations, by law enforcement officials. These figures should include: information on the number of complaints of ill-treatment, the steps taken in response to each complaint, the outcome of any criminal and disciplinary investigations, statistics on allegations of racist abuse, and statistics on the national and ethnic origin of complainants.
- Prohibit the use of dangerous restraint techniques and develop and effectively implement, through initial and ongoing training, protocols and guidelines on the appropriate use of force and restraint techniques which are fully consistent with international human rights standards including the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the UN Convention Against Torture, 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.
- Authorize and ensure the publication in full of all annual reports of the internal inspectorates of the law enforcement agencies (IGS, IGPN and IGN). These should be made readily available to the public, for example, via the web page of the Ministry of Interior.

**Amnesty International calls on the public prosecutor and investigating judges to:**

- Conduct prompt, thorough and impartial investigations wherever there is reasonable ground to believe that law enforcement officials may have committed a human rights violation.
- Ensure that where complaints are filed by a detainee alleging human rights violations by law enforcement officials and simultaneously by law enforcement officials alleging *outrage* or *rebellion*, neither complaint is used to undermine the investigation of the other. Complainants should receive protection from any form of intimidation or reprisal.
- Refrain from making public statements indicating views of the veracity of a complaint against a law enforcement official while the investigation and any prosecution proceedings are pending, in order to avoid any perception of bias.
- Ensure proper implementation of the provisions on racist motivation as an aggravating factor in specified offences.

**Amnesty International calls on the law enforcement agencies to:**

- Ensure that information on internal investigation procedures, including how to make a complaint about police misconduct, is readily available to the public (including at police stations, town halls, and on the internet).
- Develop training and sensitization on intercultural relations for law enforcement officials.
- Ensure that appropriate disciplinary measures are taken against law enforcement officials who make unfounded retaliatory arrests or bring false charges against individuals who have made a complaint about police misconduct.



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1 Cited in Liberation - Marseille edition, 16 December 2008. [www.libemarseille.fr/henry/2008/12/boubaker-ajimi.html](http://www.libemarseille.fr/henry/2008/12/boubaker-ajimi.html)

2 In this report, the term "law enforcement officials" is used in accordance with the definition of the UN Basic Principles on the Use of Force and Firearms to denote "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention" including officers of the national police, the gendarmerie and the municipal police.

3 See Amnesty International's public statement "France: Breaches of the law cannot be solved by breaking the law" (AI Index: EUR 21/011/2005).

4 Penal Code Article 433-5, punishable by up to six months' imprisonment and 7,500 euros fine. Punishable by up to one year's imprisonment and 15,000 euros fine if committed in a group.

5 Penal Code Article 433-6, punishable by up to one year's imprisonment and 15,000 euros fine. Punishable by up to two year's imprisonment and 30,000 euros fine if committed in a group. Sanctions increase further if a weapon is used.

6 European Court of Human Rights Chamber Judgement, Taïs v. France (39922/03), 1 June 2006, para.106.

7 The National Commission on Ethics in Security (CNDS) was created in 2000, with a mandate to investigate complaints about individual cases of apparent misconduct by law enforcement officials, and powers to recommend disciplinary sanctions and/or criminal investigation in cases where it deemed appropriate. On 21 July 2008, parliament adopted Law 2008-724 on Modernisation of the Institutions of the Fifth Republic. Article 41 of this law creates a new institution, the Defender of Rights, whose role will incorporate the mandate of the CNDS. Specific details of the mandate, powers and working methods of the Defender of Rights are being determined in subsidiary legislation which will be debated in parliament in the first half of 2009. The future of the CNDS is uncertain. See the Amnesty International report France: An effective mandate for the Defender of Rights (EUR 21/006/2008) for further information.

8 CNDS, Bilan des six premières années d'activités 2001-2006 par Pierre Truche, p. 2-3.

9 The body of independent experts mandated to monitor the implementation of the UN Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment.

10 Concluding Observations of the Committee against Torture: France, 3 April 2006. CAT/C/FRA/CO/3, para 15.

11 The European Committee for the Prevention of Torture (CPT) is comprised of legal, medical and law enforcement experts. It conducts periodic and ad hoc visits to all places where individuals are deprived of their liberty in states which are party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Upon authorisation of the state concerned it publishes the reports of its visits which contain its observations and recommendations aimed at eradicating torture and other ill-treatment. It also publishes annual general reports which include thematic and general recommendations aimed at preventing torture and other ill-treatment.

12 The Hôtel Dieu hospital is where many detainees are taken for medical check-ups during police custody in Paris.

13 Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 27 septembre au 9 octobre 2006, para.16. The five per cent figure was also quoted by the same hospital during a previous visit of the CPT in 2000, indicating that the number of allegations of ill-treatment has remained constant over time.

14 The body of independent experts mandated to monitor the implementation of the UN Convention on the Elimination of All Forms of

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Racial Discrimination.

15 Concluding Observations of the Committee on the Elimination of Racial Discrimination: France, 18 April 2005. CERD/C/FRA/CO/16, para 19.

16 The body of independent experts mandated to monitor the implementation of the International Covenant on Civil and Political Rights.

17 Concluding Observations of the Human Rights Committee: France, 22 July 2008. CCPR/C/FRA/CO/4, para 19.

18 CNDS Report 2004, "Étude sur la part des discriminations dans les manquements à la déontologie", pp.491 – 523.

19 CNDS Report 2004, "Étude sur la part des discriminations dans les manquements à la déontologie", p. 494.

20 CNDS Report 2004, "Étude sur la part des discriminations dans les manquements à la déontologie", pp.507.

21 Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the Effective Respect for Human Rights in France following his visit from 5 to 21 September 2005, para 180.

22 General Comment 20 on Article 7 of the International Covenant on Civil and Political Rights, adopted by the Human Rights Committee at its 44th session in 1992.

23 UN Human Rights Committee, Hugo Rodríguez v. Uruguay, 19 July 1994, para 123.

24 European Court of Human Rights Chamber Judgements *Taïs v. France* (2006); *Finucane v United Kingdom* (2003), *Assenov and Others v Bulgaria* (1998), *Selmouni v France* (1999). See also the Report of Expert Workshop "Police complaints mechanisms: ensuring independence and effectiveness" Strasbourg 26-27 May 2008, CommDH(2008)16, p.1.

25 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 31.

26 Full name withheld to protect privacy.

27 The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 2.

28 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 32.

29 Report of the Special Rapporteur on torture, E/CN.4/2001/66, para 1310.

30 Comments by the Government of France on the conclusions and recommendations of the Committee against Torture, 18 April 2007. CAT/C/FRA/CO/3/Add.1, para 14.

31 Fourth Periodic Report of France to the Human Rights Committee, (2007). CCPR/C/FRA/4, para 128.

32 Replies of the Government of France to the list of Issues to be taken up with the Consideration of the Fourth Periodic Report of France to the Human Rights Committee, CCPR/C/FRA/Q/4/Add.1, 23 June 2008, para 75.

33 Names changed to protect privacy.

34 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 33.

35 See the case of Mohamed Ali Saoud, *France: The search for justice* (AI Index: EUR 21/001/2005).

36 Saoud v. France, application number 9375/02.

37 Notes of the Agenda of the Committee of Ministers, Saoud v. France (updated 3 June 2008). Available at:  
[http://www.coe.int/t/e/human\\_rights/execution/03\\_cases/France\\_en.pdf](http://www.coe.int/t/e/human_rights/execution/03_cases/France_en.pdf)

38 Full name withheld to protect privacy.

39 Concluding Observations of the Human Rights Committee: France, 22 July 2008. CCPR/C/FRA/CO/4, para 19.

40 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 38.

41 UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, para B.4.

42 According to the French newspaper *Le Monde*, 6,939 individuals made a complaint in person to the IGS in 2007 (Police: moins de bavures, plus de petites violences, 13 June 2008).

43 Letter from the Ministry of Justice dated 10 July 2008.

44 Name changed to protect privacy.

45 Full name withheld to protect privacy.

46 The Ministry of Justice confirmed to Amnesty International in a letter dated 1 December 2008 that the number of convictions for outrage had remained stable between 2003 to 2005, but increased from 11,642 in 2005 to 12,834 in 2007. Convictions for rebellion were also stable between 2003 to 2005 but increased from 3,033 in 2005 to 3,380 in 2007.

47 Cited in *Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 27 septembre au 9 octobre 2006*, para 17.

48 *Témoignage d'un ex-officier de police: la politique sécuritaire mise à nue*, available at <http://www.raidh.org/Temoignage-d-un-ex-officier-de.html>.

49 Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture (CPT) from 12 to 19 December 2005. CPT/Inf(2007)30, para 54.

50 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 39.

51 CNDS Report 2007, p.32.

52 CNDS case 2006-14.

53 Letter from Ministry of Justice to President of the CNDS, 31 October 2006, cited in the CNDS annual report 2006, p.503.

54 The CNDS can make recommendations for disciplinary sanctions or criminal prosecutions to take place in cases where they consider misconduct has occurred but if these recommendations are ignored by the authority to which they are addressed the CNDS' only remaining power is to publish a special report on the matter in the official State Bulletin. To Amnesty International's knowledge Case 2006-29 is only the third time that the CNDS has made use of this power, although it has publicly complained that it often faces difficulties in making its recommendations heard by the relevant authorities.



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## PUBLIC OUTRAGE

### POLICE OFFICERS ABOVE THE LAW IN FRANCE

Racist abuse, excessive use of force, beatings, and unlawful killings – these are the allegations of human rights violations committed by some French police officers.

This report reveals a system which fosters impunity for those police officers accused of such acts. Internal investigations by the law enforcement agencies are not sufficiently independent and impartial. The existing police complaints commission lacks powers to enforce its recommendations. Many judges and prosecutors fail to conduct effective investigations into criminal complaints brought against the police. Often, victims who try to complain find themselves subjected to retaliatory charges of insulting a police officer (*Outrage*). As a result, victims of serious human rights violations are left without justice.

The police do a difficult job, and more and more is being demanded of them. But the current system erodes public trust and allows the criminal actions of a minority of police officers to damage the reputation of the law enforcement agencies as a whole. It's time for justice for all.

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