

**FRANCE:
PRELIMINARY
BRIEFING TO
COMMITTEE
AGAINST
TORTURE**

NOVEMBER 2009

**AMNESTY
INTERNATIONAL**



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CONTENTS

INTRODUCTION	1
TORTURE IN THE CRIMINAL CODE	2
NON-REFOULEMENT.....	3
LACK OF SUSPENSIVE RIGHT OF APPEAL FOR ASYLUM-SEEKERS	5
REFOULEMENT AT THE BORDER	5
REFOULEMENT FROM NATIONAL TERRITORY	5
UNIVERSAL JURISDICTION	7
RIGHTS IN POLICE CUSTODY	8
RIGHT TO REMEDY AND DUTY TO INVESTIGATE COMPLAINTS.....	9
CAUSES OF IMPUNITY	11
INDEPENDENCE AND IMPARTIALITY?	11
EFFECTIVE INVESTIGATION?.....	12
PROMPT?.....	15
PUBLIC?	17
VICTIM INVOLVEMENT?	18
REPRISALS AGAINST COMPLAINANTS.....	18
INDEPENDENT POLICE OVERSIGHT BODIES	20
LACK OF DIRECT ACCESS	22
UNDER-RESOURCING.....	23
INADEQUATE PUBLIC PROFILE.....	23
NO POWERS OF ENFORCEMENT	23
CHARGES OF “FALSE ACCUSATION”	24

CONDITIONS IN MIGRATION DETENTION CENTRES	25
OPTIONAL PROTOCOL	26

FRANCE: PRELIMINARY BRIEFING TO THE UN COMMITTEE AGAINST TORTURE, NOVEMBER 2009.

INTRODUCTION

Amnesty International submits this briefing for consideration by the Committee against Torture (the Committee) at its preliminary meeting in advance of its examination in April 2010 of France's sixth periodic report on the measures taken by France to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).¹ This briefing summarises some of Amnesty International's main concerns about France's failure to implement its obligations under the Convention.

For many years Amnesty International and a range of UN and Council of Europe human rights bodies have expressed serious concerns regarding continuing allegations of human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment and unnecessary and excessive use of force, committed by law enforcement officials 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. In April 2009, Amnesty International published a follow-up report, *Public Outrage: Police officers above the law in France* (AI index: EUR21/003/2009) which detailed further cases of human rights violations allegedly committed by law enforcement

officials and highlighted the continuing failure to ensure all such incidents are investigated in line with international standards.

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*² (insulting a law enforcement official) or *rebellion*³ (violently resisting a law enforcement official in the course of his/her duties).

Amnesty International is also concerned that French legislation fails to provide adequate protection against torture and other ill-treatment on a variety of levels including the lack of a definition of torture in line with Article 1(1) of the Convention, the lack of an explicit prohibition of the admissibility statements obtained under torture in line with Article 15 of the Convention, and restrictions on access to a lawyer (particularly for individuals charged with terrorism-related offences) which may increase the risk to detainees of suffering ill-treatment while in custody.

Amnesty International also views with concern actions by the French authorities to deport or otherwise forcibly transfer individuals from French territory or jurisdiction to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment in violation Article 3 of the Convention and, in one case, against the express request of the Committee against Torture. The lack of a suspensive right of appeal for some categories of asylum-seekers leaves many individuals at risk of return, before their appeal has been heard, to a country where they may suffer serious violations of the Convention. Along with other human rights organisations, Amnesty International has also raised concerns about the living conditions in administrative detention centres for migrants and asylum-seekers.

TORTURE IN THE CRIMINAL CODE

Articles 1 and 4.

In its 2006 concluding observations on France's third periodic report, the Committee recommended that France "consider incorporating into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention, so as to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence in the broad sense committed by non-State actors".⁴ It also recommended that torture be made an imprescriptible offence.

This recommendation has still not been implemented and the French Penal Code continues to lack a definition of torture which fully incorporates the definition of torture as set out in Article 1 of the Convention.

NON-REFOULEMENT

Article 3

In its 2006 concluding observations, the Committee called on the French authorities to “take all necessary measures to guarantee that no person is expelled who is in danger of being subjected to torture if returned to a third State”.⁵ In May 2007, the Committee issued a decision on the case of Adel Tebourski, finding that France had not acted in good faith when it expelled Adel Tebourski and that his expulsion constituted a violation of Articles 3 and 22 of the Convention against Torture – that is, respectively, the obligation of non-refoulement and the obligation on states who have recognized a right of individual complaint to the Committee to respect that right.⁶ However, Amnesty International is deeply concerned at continuing incidents of individuals being forcibly deported from France to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment, particularly in the case of detainees held in relation to terrorism offences.

Houssine Tarkhani – Tunisia

(See AI Index: MDE 30/004/2007)

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

According to information received by Amnesty International, Houssine Tarkhani was arrested at the French-German border on 5 May, as an irregular migrant, and held in a local administrative detention facility (*local de rétention administrative*) in Metz, pending the execution of a prefectural removal order (*arrêté préfectoral de reconduite à la frontière*). On 6 May Houssine Tarkhani was brought before a judge (*juge des libertés et de la détention*), who authorized his detention for a further 15 days, and informed him that he was being investigated by the French police on suspicion of providing logistical support to a network which assists individuals to travel to Iraq to take part in the armed conflict there – an allegation which he denied. The same day, having discovered the nature of the suspicions against him, Houssine Tarkhani made a claim for asylum. On 7 May he was taken to the regional administrative detention centre (*centre de rétention administrative, CRA*) at Mesnil-Amelot, to be detained while his asylum claim was processed.

On 10 May Houssine Tarkhani was taken from the CRA by officers from the French security services (*Direction de Surveillance du Territoire*) to be questioned by a judge in relation to suspected terrorism-related activities. He was questioned in particular about his relationship with Mohamed Msahel, a Tunisian national imprisoned in Morocco on terrorism charges, with whom Houssine Tarkhani had become acquainted when they attended the same mosque in Milan. At no stage was Houssine Tarkhani charged with any terrorism-related criminal offence.

On 11 May Houssine Tarkhani was returned to the CRA at Mesnil-Amelot. On 15 May he was interviewed by officials from the Office for the Protection of Refugees and Stateless Persons (*Office Français de Protection des Réfugiés et Apatrides, OFPRA*). On 25 May he was told that his asylum application, which had been assessed under the accelerated procedure (*procédure prioritaire*), had been rejected. An appeal against this

decision was lodged with the Refugee Appeals Commission. Nonetheless he was, on 3 June, forcibly returned to Tunisia.

Amnesty International has since learnt that Houssine Tarkhani was detained by officers of the Tunisian state security on his arrival in Tunisia. According to information available to the organization he was, on arrest, taken to the State Security Department of the Ministry of Interior in Tunis, where he was reportedly tortured and threatened with death. He was then held in incommunicado detention for a period of nine days – longer than is permitted by Tunisian law – without being allowed to contact his family. He was later charged with a number of broadly-defined offences under Tunisian counter-terrorism legislation.

On 11 August 2008, the Tunis Court of First Instance sentenced Houssine Tarkhani to five years' imprisonment but granted him provisional release pending his appeal. On 17 February 2009 the Tunis Court of Appeal heard his appeal, but Houssine Tarkhani did not attend the hearing. The court upheld in absentia the sentence imposed on him by the Tunis Court of First Instance. At the end of July 2009, the court's decision had not yet been formally notified to Houssine Tarkhani, and he remained at liberty.

Amnesty International is concerned that Houssine Tarkhani was returned to Tunisia before the National Asylum Court was able to determine an appeal which he had made against the decision to refuse his claim for asylum in France, and despite warnings was refoiled to a state where he was reportedly tortured, in violation of Article 3 of the Convention.

Rabah Kadri – Algeria

(See AI Index: MDE 28/003/2008)

Rabah Kadri was forcibly returned to Algeria on 14 April 2008.

On 16 December 2004 Rabah Kadri was convicted by the Paris Criminal Court of involvement in a terrorist plot to bomb the Strasbourg Christmas market. He was sentenced to six years' imprisonment, followed by a permanent ban from French territory (*interdiction définitive du territoire français*). On 14 April 2008 Rabah Kadri was released from Val de Reuil prison where he had served his sentence but immediately taken into police custody. He was transferred first to Marignane airport and then to Marseille sea port where he was forcibly boarded onto a boat for Algeria, *La Méditerranée*.

Upon his arrival in Algiers on 16 April, Rabah Kadri was detained by plain clothes security officers and held incommunicado for 12 days. He did not know where he was detained. He is believed to have been in the custody of the Algerian Department for Information and Security (*Département du renseignement et de la sécurité, DRS*) in one of the unofficial detention centres operated by the intelligence agency in Algiers. His family had no news of him. He was released without charge on 27 April.

Amnesty International was able to speak with Rabah Kadri after his release. He said that he had been interrogated about the activities which had led to his conviction and prison sentence in France. He also said that he had signed a statement saying that he was treated well in detention before his release. Amnesty International notes that, in its experience, the fact that someone has just been released from DRS custody will weigh heavily on their mind when they speak about their treatment in detention, in case this exposes them to

possible retribution.

Kamel Daoudi – Algeria

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

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

Amnesty International is concerned that, given the risks of torture and other ill-treatment Kamel Daoudi would face if returned to Algeria, the attempts by the French authorities to forcibly expel him are in violation of Article 3 of the Convention.

LACK OF SUSPENSIVE RIGHT OF APPEAL FOR ASYLUM-SEEKERS

REFOULEMENT AT THE BORDER

On 26 April 2007 the European Court of Human Rights found that France had violated the principle of non-refoulement and the right to an effective national remedy by ruling to return Asebeha Gebremedhin, an Eritrean asylum-seeker, to Eritrea from the French border in 2005 before his asylum appeal had been heard. The Court underscored the obligation under the European Convention on Human Rights for states to provide a right of appeal with suspensive effect before returning someone to a country where they may be at risk of torture or other serious ill-treatment.⁷ Following this ruling, a new immigration and asylum law introduced in November 2007 created a suspensive right of appeal but includes substantial restrictions, including a 48-hour time limit on lodging an appeal and the possibility for the judge to reject the appeal without interviewing the asylum-seeker in person if s/he considers the appeal to be "manifestly ill-founded".

REFOULEMENT FROM NATIONAL TERRITORY

Under the standard asylum procedure, an applicant is issued with a temporary residence permit from the competent local authority (*préfecture*) and given 21 days to submit their applications to OFPRA and their applications must be completed in French.

There is an “accelerated” asylum procedure (*procédure prioritaire*) for several categories of asylum-seekers, with reduced procedural protection. These categories include individuals whose applications are considered abusive or fraudulent, individuals considered a risk to national security or public order, individuals who have previously been notified of an expulsion order, and nationals of countries pre-determined by the French authorities as “safe” countries of origin. Since February 2008, 15 countries are considered “safe” countries of origin: Benin, Bosnia, Cape Verde, Croatia, Georgia, Ghana, India, Mali, Mauritius Islands, Mongolia, Senegal, Ukraine, Madagascar, Tanzania and the former Yugoslav Republic of Macedonia. Asylum-seekers whose claims are examined under the accelerated procedure are not granted a residence permit, do not receive any support from the state and only have 15 days to submit their application, which must be in French. OFPRA then has 15 days to examine the applications, and any appeals to the National Asylum Court do not have a suspensive effect, leaving the asylum-seeker at risk of forced return to their country of origin before a final decision has been made on their case.

For migrants held in a detention centre and awaiting expulsion, the time for submitting an asylum application has been limited to five days. In 2000, the European Court of Human Rights condemned Turkey for a similar procedure, noting that “the applicant’s failure to comply with the five-day registration requirement...denied...any scrutiny of the factual basis of her fears about being removed” to the country of origin. For the European Court, “the automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the [European] Convention”.⁸

Amnesty International has called on the authorities to ensure that all asylum-seekers receive a full and fair individualized determination of their claim, including a right of appeal by an independent body with suspensive effect and that applicants for international protection have adequate time and facilities to benefit effectively from these procedures.

Asylum-seekers are not legally entitled to the assistance of an interpreter free of charge. This is of particular concern for asylum-seekers in detention, given the reduced period of time within which they must complete their asylum applications, which must be in French. Amnesty International, along with two national NGOs, Cimade and GISTI, petitioned the Supreme Court for Administrative Justice (*Conseil d’Etat*) to overturn this decree. However, on 12 June 2006, the Court ruled that asylum-seekers would have to pay for their own interpreters, overturning its previous decision that a person requesting the assistance of an interpreter “should not have to pay”.⁹

Amnesty International is concerned that restricting the right to seek asylum by administrative measures such as strict time limits is against the spirit of Article 3 of the Convention and that without the safeguards of access to an interpreter, a lawyer and adequate time and notification about procedures in a language one understands, it is difficult to assess adequately whether or not a person is at risk of return to either persecution or torture or other ill-treatment.

UNIVERSAL JURISDICTION

Articles 7, 8, 9

France ratified the Rome Statute of the International Criminal Court in 2000 but has encountered severe delays in adapting it into national legislation, which has still not come into force. There appears to have been a particular reluctance regarding the transposition of principles of universal jurisdiction into national law.

In its concluding observations following consideration of France's third periodic report in November 2005, the Committee expressed a number of concerns at the draft bill on adapting French legislation to the Rome Statute of the International Criminal Court. Amnesty International considers that the current draft legislation under debate in France concerning universal jurisdiction for genocide, crimes against humanity and war crimes fails to address the concerns of the Committee in this regard.

A new draft law was proposed in 2006 which did not include any measures to extend French national courts' competencies to try crimes of genocide, crimes against humanity or war crimes committed in foreign territory. As part of a coalition of 44 organisations, Amnesty International France proposed several amendments to the draft law, some of which were taken up by the Senate. In the text adopted on 11 June 2008, the Senate recognised the necessity and duty for France to put on trial individuals suspected of crimes of universal jurisdiction, but four major restrictions were placed on the courts' competencies.

Under the draft legislation (article 689-11 of the Criminal Procedural Act), individuals suspected of crimes falling under the Rome Statute can only be prosecuted in France if they are habitually resident in French territory. This provision is not in line with the Committee's concluding observations following consideration of France's third periodic report in November 2005, when the Committee recommended that France should "remain committed to prosecuting and trying alleged perpetrators of acts of torture who are present in any territory under its jurisdiction, regardless of their nationality"¹⁰ in line with Article 5.2 of the Convention which calls on states to establish jurisdiction over offences "where the alleged offender *is present* in any territory under its jurisdiction" (emphasis added).

Furthermore, the draft legislation only allows national courts to prosecute genocide, crimes against humanity and war crimes if these acts are also criminal offences in the country where they were allegedly committed. This essentially undermines the principles behind the concept of universal jurisdiction as protecting internationally recognised values by ensuring the prosecution of persons suspected of crimes under international law, irrespective of legislation which individual states may enact to grant such persons impunity.

In contrast to standard criminal procedure in France, the draft law gives the public prosecutor the exclusive right to pursue prosecutions of these crimes of universal jurisdiction. Consequently, victims are unable to pursue private prosecutions if the public prosecutor does not take up a case. This provision was explicitly criticised by the Committee in its concluding observations in November 2005, when the Committee recommended that France

should “effectively guarantee the right of victims to an effective remedy, particularly by means of their right to initiate a public prosecution by suing for damages in criminal proceedings and by any other means that would enable the State party to comply more effectively with its obligations under articles 5, 6, 7 and 13 of the Convention”.¹¹ The provision was withdrawn from the draft law after it was criticised by the National Consultative Committee on Human Rights, but subsequently re-included by the Senate.

Finally, the law reverses the principle of complementarity embedded in the Rome Statute of the International Criminal Court, authorising criminal proceedings to take place in France only where the International Criminal Court has expressly declared its own incompetence in the matter. This is in contradiction of the Rome Statute (articles 17 and 18) which provides that the International Criminal Court can only take up a case when national courts have not done so.

The draft law was passed to the National Assembly on 11 June 2008 for consideration but has still not been timetabled for debate. On 8 July 2009 the Foreign Affairs Commission of the National Assembly voted unanimously to remove the four restrictions adopted by the Senate.

RIGHTS IN POLICE CUSTODY

Article 11

Under French criminal procedural legislation, detainees in police custody must be informed at once, in a language they understand, of their rights, the provisions relating to police custody, the reasons for their arrest, and any charge against them. Detainees have the right to inform relatives, partners or employers that they are being held in custody within a period of three hours at the most, unless this is held to jeopardize the inquiry; they also have the right to be examined by a doctor and access to a lawyer from the outset of detention.

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

However, there exists a separate custody regime for persons suspected of various crimes considered to be particularly serious. The 2004 law extended the types of serious crimes governed by that regime, initially comprising only terrorism or drug trafficking related offences, to include other serious ‘organised’ crimes. In addition, law number 2004-204 delayed access to a lawyer for individuals suspected of serious organised crimes to one 30 minute meeting 48 hours after arrest and then once again after 72 hours.

Under a law passed in January 2006, individuals detained on suspicion of having committed a terrorism-related offence do not have access to a lawyer until after 72 hours in detention,

then again once after 96 hours, and once after 120 hours. Individuals detained on suspicion of terrorism-related offences may be held in police custody for up to six days before being brought before a judge. Amnesty International is concerned that this legislation, along with the 2004 law, violates the right of detainees to effective assistance of legal counsel. Such delay in access to counsel can facilitate torture or other ill-treatment. This legislation was criticised by the Human Rights Committee in its concluding observations on France's fourth periodic report.¹²

In its December 2007 report relating to its visit to France in September-October 2006, the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CPT) reiterated its concern about this legislation, stressing that all detainees should have access to a lawyer from the outset of police custody, and also be granted the right for a lawyer to be present during police questioning.

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

On 1 June 2008 the law of 5 March 2007 came into force, making compulsory the video- and audio-recording of interrogations by investigating judges and police for crimes (but not misdemeanours). There is no legal obligation for such recordings to be submitted to the investigation files, although the prosecutor and/or defence may request that this is done. Such measures have repeatedly been recommended by expert human rights bodies, including the Committee, as an important means of protecting detainees from torture and other ill-treatment. However, Amnesty International is concerned that the procedures introduced in France as of 1 June specifically exclude detainees held on charges relating to terrorism or organised crime from these measures and do not include video surveillance cameras in all custody areas of police stations where detainees may be present (such as corridors). Consequently, while this measure is generally welcome, its implementation is likely to have a limited impact only and detainees remain at risk of ill-treatment. According to Article 16 of this law, the government must conduct a review of its implementation in 2010.

RIGHT TO REMEDY AND DUTY TO INVESTIGATE COMPLAINTS

Articles 12, 13 and 14.

Amnesty International has longstanding and continuing concerns regarding allegations of human rights violations, including violations of the Convention, by law enforcement officials in France, and the failure to bring those responsible for such acts to justice through prompt and impartial investigations. Amnesty International's research reveals that the procedures for investigating such allegations are still failing to live up to the standards required by

international law.¹³

Furthermore, Amnesty International is concerned at what appears to be an increasing trend for individuals who protest or attempt to intervene when they suffer or witness apparent ill-treatment by law enforcement officials to find themselves subjected to criminal charges of *outrage*¹⁴ (insulting a law enforcement official) or *rebellion*¹⁵ (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 or witnessed 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 violations of the Convention, and consequently exacerbate the existing climate of impunity.

The French independent police oversight body, the National Commission on Ethics and Security (*Commission Nationale de Déontologie de la Sécurité*, 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 unnecessary or excessive use of force leading, in some cases, to permanent injury or death.¹⁶ Such incidents continue to be reported in its subsequent annual reports.

The CPT 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 Paris¹⁷, 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.¹⁸

Similarly, in 2008 the Human Rights Committee 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”.¹⁹

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 either French citizens from an ethnic minority or foreign nationals. In several of the cases examined by Amnesty International, 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 French law enforcement agencies.

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. 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.

Amnesty International is concerned that this procedure does not comply with the requirement of impartial investigation under Article 12 of the Convention. 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”.²⁰

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”.²¹

The importance to the fairness and integrity of a criminal justice system of a prosecutor's independence and impartiality, both *de jure* and *de facto*, 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 because they considered the likelihood of success to be minimal.

Each of the law enforcement agencies in France has its own internal inspectorate responsible for investigating possible misconduct by law enforcement officials within their force, ranging from minor disciplinary matters to incidents of suspected torture or unlawful killing. 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).

Amnesty International notes that according to the limited information made available, the IGPN examined 663 complaints of “violence” in 2005²² leading to just 96 disciplinary measures for “proven acts of violence” of which only 16 resulted in dismissal.²³ In 2006, the IGPN received 639 allegations of violence; 114 disciplinary measures were taken against officers for proven acts of violence, with just eight resulting in dismissal “or a similar penalty” for the officers involved.²⁴

Amnesty International recognises 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 were 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”.²⁵

The absence of a thorough and impartial internal investigation into alleged ill-treatment or other human rights violations 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 Articles 12 and 13 of the Convention to ensure a prompt and impartial investigation into all reasonable complaints or information on torture and other ill-treatment.

EFFECTIVE INVESTIGATION?

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. Amnesty International is concerned that this falls far short of the requirements of Article 12, as set out by the Committee:

(i) Under article 12 of the Convention, prosecutors and judges should investigate allegations of torture whenever they come to their attention, whether or not the victim has filed a formal complaint. In particular, every investigating judge, on learning from a detainee's statement that he or she has been subjected to torture, should initiate promptly an effective investigation into the matter;

(j) In the light of what appears to be a culture of impunity, investigation of cases of torture should be prompt, impartial and effective. It should include a medical examination carried out in accordance with the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(k) Law enforcement personnel should have at their disposal all modern methods and equipment, as well as the professional training necessary to conduct effective and fair criminal investigations;²⁶

The CPT has similarly defined the requirement of "adequacy" (or "thoroughness") for such investigations as requiring "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".²⁷ 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.

Although the presumption of innocence of the accused must prevail in all 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. Examples of such cases are included in Amnesty International's report *Public Outrage: Police officers above the law in France* (AI index: EUR21/003/2009).

Law enforcement officials may sometimes be required to use force, as a last resort, in the course of their work. For an investigation into allegations of unnecessary or excessive use of force constituting torture or other ill-treatment 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, appropriate, 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 appropriateness 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.

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.²⁸ 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.²⁹ 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 dangers emanating from 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.³⁰ Less than a year after the Saoud ruling, 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. The information currently available indicates 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 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 an injury to his 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. Witnesses report that after he had been handcuffed he was held face-down on the ground for a long 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.

Paramedics 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.

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 while he was restrained on the ground and the stranglehold on his neck.

In March 2009 five police officers involved in the incident were charged with “non-assistance to a person in danger”. However, as of October 2009 the investigating judge has refused all calls by the prosecutor and Abdelhakim Ajimi’s family to bring charges against the two police officers suspected of being responsible for Abdelhakim Ajimi’s death. Their lawyer has argued that their actions were in line with the training they had been given and that they had used official techniques. Hakim Ajimi’s family told Amnesty International that the investigating judges have refused their request to organise a hearing with the police officers and other witnesses, to hold a reconstruction of the incident (a request also made by one of the accused police officers), and to listen to the records of the police and ambulance radio transmissions at the time of the incident. Abdelhakim Ajimi’s family has appealed to the Court of Appeal in Aix-en-Provence.

All of the officers involved remain on active duty in Grasse while the investigation continues.

Amnesty International considers that, regardless of the circumstances surrounding the initial use of force while effecting arrest, once an individual is subdued and under the control of law enforcement officials, any additional use of force is prohibited and may constitute torture or other ill-treatment.

PROMPT?

Amnesty International has noted that in many cases of alleged violations of the Covenant by law enforcement officials, including those alluded to in this briefing, 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. The case of Abou Bakari illustrates this point starkly.

THE CASE OF ABOU BAKARI TANDIA

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. Almost five years later the cause of his 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.

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 were subsequently examined by specialists from the Paris Institute of Legal Medicine to try to establish Abou Bakari Tandia's cause of death. Their report, dated 15 July 2009, stated that "There is no indication, in any of the files, of a traumatic head or cranio-facial injury caused by a direct blow against a hard surface", that in any case, the size of his cell meant that it was not possible that he could have run against the wall hard enough to have caused his brain injury himself, and that the testimony of the police officer who claimed to have seen Abou Bakari Tandia throw himself against the wall was not compatible with the medical evidence. The report concluded that Abou Bakari Tandia's brain injury was caused by him being violently shaken.

PUBLIC?

Amnesty International has repeatedly recommended to the French authorities that they should 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.

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]".³¹ 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".³² 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,³³ 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.

In June 2009 the outgoing Minister of Interior announced that from this year the annual reports of the police forces' internal inspectorates would be made publicly available. Previously, the public had very limited access to detailed information on the number and nature of cases of misconduct investigated internally or their outcomes, which heightened perceptions of impunity and unfairness in the treatment of complaints against police officers. Amnesty International strongly welcomes this announcement by the Ministry of Interior. However, at the time this briefing was submitted the organization has not seen this

commitment put into action as there is no evidence of the reports being available in a public forum. In response to Amnesty International's request for a copy of this year's annual report, the organization received a two page flyer containing summarised statistics of the IGPN's activities in 2008, which contained no information on individual cases.

In response to requests from Amnesty International in 2008, 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.³⁴ However, the statistics provided did not indicate the number of criminal complaints made or investigations initiated, so it is not possible to ascertain what percentage of complaints go to trial and are acquitted, and what percentage are closed before reaching trial stage.

Making available regular, disaggregated and comprehensive statistics, including the number and nature of complaints against law enforcement officials and the results of criminal investigations into such complaints would contribute to greater transparency and improve public confidence in the complaints handling procedure.

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 confidentiality. 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.

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 unfounded criminal charges of *outrage* or *rebellion*.³⁵ Such retaliatory action or charges typically take place either following a violent incident regarding 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. 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*".³⁶ 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.

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”.³⁷ Consequently, these allegations “are constantly increasing” regardless of the damaging effect they may have on the individual accused.

In light of the above, Amnesty International considers it to be 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/witness and law enforcement official, both should be investigated thoroughly - neither complaint should be allowed to impede the full investigation of the other. Ideally, such complaints 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”.³⁸

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 Article 13 of the Convention. 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.

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”.³⁹ 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).

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.

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 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. In its response to similar concerns from the CNDS in respect of another case,⁴⁰ 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.⁴¹

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.

INDEPENDENT POLICE OVERSIGHT BODIES

Until now, the only independent body in France mandated to investigate complaints against law enforcement officials was the CNDS. The CNDS was created in 2000 with a mandate to investigate complaints about individual cases of apparent misconduct by law enforcement officials, with powers to recommend disciplinary sanctions and/or criminal investigation in cases where it deemed appropriate. The work of the CNDS was welcomed by the Committee against Torture and by the Council of Europe Commissioner for Human Rights, and it has played a valuable role in providing impartial and independent investigation of complaints against law enforcement officials. However, its limited mandate, powers and resources have, since its creation, raised concerns about its capacity to function effectively. Many of these

concerns are shared by Amnesty International, the Committee against Torture, the Council of Europe Commissioner for Human Rights, and the CNDS itself.

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 would be to ensure that the administrative bodies of the state and other public institutions respect the rights and freedoms of individuals. Any individual who considers that their rights have been infringed will be able to make a complaint to the Defender of Rights, who will also be able to take action on its own initiative. The Defender of Rights is to be named by the President of the Republic for a non-renewable six-year term, and will be responsible to the president and parliament.

Specific details of the mandate, powers and working methods of the Defender of Rights will be determined in subsidiary legislation, presented in draft to the Council of Ministers on 9 September. This draft proposed that the Defender of Rights incorporate the mandates of the National Ombudsperson, the Children's Ombudsperson and the CNDS. Current representatives of the CNDS have stated that they were not consulted about this proposal and have serious concerns about its potential negative impact. Amnesty International is also concerned that the merging of the CNDS into a larger body may lead to a loss of specialisation, expertise, and resources for the work currently carried out by the CNDS, and may even restrict its capacities, thus impacting negatively on the effective independent oversight of the law enforcement agencies. Conversely, the current reforms could be used to ensure that investigations of alleged human rights violations by law enforcement officials are brought into line with international standards, by ensuring that the Defender of Rights not only maintains at minimum the mandate and powers of the CNDS but also expands on these to correct the weaknesses which have hampered the work of the CNDS.

In order to be effective, Amnesty International considers that the body mandated to investigate complaints against law enforcement officials must be empowered to investigate all allegations of human rights violations, and should replace the functions of the law enforcement agencies' internal inspectorates in such cases. Such a mechanism should have powers to order disciplinary proceedings to be instigated and, where it considers appropriate, to submit cases directly to the prosecutorial authorities for criminal charges to be brought. It also requires adequate staff and financial resources to carry out its mandate effectively, as well as a suitably high public profile, and should be directly accessible to complainants.

A number of international expert bodies have recommended that states create specialised bodies for investigating such allegations which are independent from the law enforcement agencies and prosecutorial authorities. The UN Special Rapporteur on torture has stated that "Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement".⁴² The Council of Europe Commissioner for Human Rights has suggested that in order for investigations into serious human rights violations by law enforcement officials to be credible "it is necessary that those conducting the inquiry have no relationship to the law enforcement staff implicated in the case."⁴³ In May 2008 the Commissioner held an expert workshop on "Police complaints mechanisms: ensuring independence and effectiveness". Whilst highlighting that the purpose of such mechanisms is not to stigmatize law enforcement agencies, he also noted that "in a democratic society there must be accountability and effective investigation of complaints in order for trust and

confidence to exist between the police and public".⁴⁴ The CPT has also stated that it "strongly encourages the creation of a fully-fledged independent investigation body" which would have powers to order disciplinary proceedings be instigated.⁴⁵

The CNDS investigates complaints about individual cases of apparent misconduct by law enforcement officials, and can recommend disciplinary sanctions and/or pass cases on for criminal investigation if it uncovers evidence of possible criminal conduct. Its findings on each case are published in an annual report, transmitted to parliament and the president. The report is available publicly, in full, on the CNDS website. The CNDS can also make recommendations on general policy and practical issues relating to "ethics", including proposals for legislative or regulatory reforms.

As the CNDS became more established and better known, the number of complaints it received annually increased. In 2001 it received just 19 complaints, compared to 144 in 2007.⁴⁶ Between 2001 and 2008 it received over 600 individual complaints in total.⁴⁷ It has dealt with numerous cases of excessive use of force, ill-treatment, and deaths in custody or during arrest, and commented on the high number of incidents in which the victim was from an ethnic minority, raising concerns about possible systemic racism within the law enforcement agencies.

The creation of the CNDS was welcomed by the Committee⁴⁸ and by the Council of Europe Commissioner for Human Rights. The latter stated that "the CNDS plays a key role as an independent body and must be protected and supported at all costs", and noted that it was generally held in "very high esteem".⁴⁹

The CNDS has undoubtedly made a positive contribution to the independent and impartial oversight of the law enforcement agencies in France. It has also played a valuable role as an independent investigator of allegations of ill-treatment and other human rights violations by law enforcement officials. However, since its creation there have been a number of concerns regarding its capacity to function effectively. Many of these concerns are shared by Amnesty International, the Committee, the Council of Europe Commissioner for Human Rights, and the CNDS itself.

LACK OF DIRECT ACCESS

Any person who has been the victim of, or witness to, misconduct by law enforcement officials may make a complaint to the CNDS. However, they are not able to submit such a complaint directly, but rather must send their complaint to a member of parliament or other intermediary⁵⁰ to forward to the CNDS. This intermediary has the power to decide whether or not to send on the complaint. The CNDS sends its conclusions on an individual case back to the intermediary, who is then responsible for forwarding it to the complainant.

The Committee⁵¹ and the Council of Europe Commissioner for Human Rights⁵² have both called on the French authorities to grant the CNDS the power to receive complainants directly from individuals, thus ensuring victims have unimpeded access to realising their right to an independent examination of their complaint. The current system grants crucial decision-making powers to intermediaries with no expert knowledge of the subject and with no accountability for their decisions. Furthermore, a lack of awareness of this technicality by the public means that many individuals send their complaints directly to the CNDS, only for

these complaints to be declared “inadmissible”.⁵³ By the time the complainant is made aware of the correct procedure for submitting the complaint, has sent their complaint to the appropriate intermediary, and the intermediary has sent it on to the CNDS, it is possible that the complaint will have exceeded the maximum time limit for admissibility (one year from the date of the incident to the date the complaint is received by the CNDS from the competent intermediary).

In 2009 representatives of the CNDS told Amnesty International that they did not support the proposal to create direct access for complainants, on the grounds that if the filtering function performed by the intermediary were removed it could overwhelm their resources. Whilst recognising the legitimacy of this concern, Amnesty International believes that it should be addressed by increasing the resources of the CNDS rather than limiting its powers.

UNDER-RESOURCING

Whilst the number of complaints dealt with by the CNDS has increased year on year, its budget and resources have not increased in equal measure. In 2002 the CNDS had a budget of €452,827⁵⁴ and received 40 complaints.⁵⁵ In 2007 the CNDS received 144 complaints⁵⁶ (an increase of 260 per cent since 2001) with a budget of €760,400⁵⁷ (an increase of just 68 per cent in the same time period). In 2005 its budget was briefly frozen, but subsequently restored following widespread criticism from parliamentarians and civil society. According to the yearly reports published by the CNDS this under-resourcing is creating an increasing backlog of cases, thus diminishing the promptness with which the CNDS can conclude its investigations, thereby also negatively impacting on its compliance with international standards. In 2001 the CNDS received 19 complaints and examined 12 of those complaints in the same year. In 2007, just 38 of the total of 144 cases received were examined in the same year.

INADEQUATE PUBLIC PROFILE

Although the number of complaints received by the CNDS has increased yearly, this figure still represents a very small proportion of the complaints registered against law enforcement officials in total. Whereas the CNDS received 140 complaints in 2006⁵⁸ (relating to national police, the gendarmerie, prison staff, municipal police, transport police and customs officers), the IGPN and IGS received 1,519 complaints relating to national police officers alone.⁵⁹

One reason for the low rate of complaints transmitted to the CNDS could be its limited public profile. During research in 2008 Amnesty International found that a significant number of victims and lawyers interviewed were unaware of the CNDS or did not fully comprehend its role. In its 2006 review report, the CNDS noted that many law enforcement officials also lacked an understanding of its role and functions.⁶⁰

In order for an independent complaints mechanism such as the CNDS to be as effective as possible, it is obvious that its existence, role and working methods must be well known to the public, as well as law enforcement officials. The limited budget of the CNDS clearly prohibits extensive publicity or outreach work.

NO POWERS OF ENFORCEMENT

Some victims of police ill-treatment and their lawyers, interviewed by Amnesty International

in 2008, were aware of the CNDS but chose not to submit a complaint to it because they did not believe it was worthwhile. Whilst complainants believed that the CNDS conducted thorough and impartial investigations, they considered it a waste of time because the CNDS has no power to instigate sanctions when it finds evidence of misconduct.

The CNDS has substantial powers of investigation; it can demand that public authorities and private individuals provide it with information, and can order them to appear in person for a hearing. Failure to appear at such a hearing constitutes a criminal offence. CNDS delegations can also conduct on-site visits to the location of the incident under investigation if necessary. A representative of the CNDS told Amnesty International that responses to their requests for information from law enforcement agencies were often very delayed and incomplete, which results in delays and obstructions to the investigations of the CNDS.⁶¹

When the CNDS considers that professional misconduct has occurred, it reports this to the disciplinary authority of the relevant security force along with any recommendations it may have concerning proposed remedies in an individual case. The disciplinary authority is under an obligation to report to the CNDS on what action is taken. Similarly, when the CNDS uncovers evidence of possible professional misconduct constituting criminal acts, it must report these immediately to the public prosecutor for further investigation and possible sanction. The prosecutor must inform the CNDS of the action subsequently taken.

Despite having the competency to investigate independently allegations of misconduct, including incidents of serious human rights violations, and make recommendations for action on the findings, these recommendations have no binding power. Whilst it can make recommendations for disciplinary sanctions or criminal prosecutions to take place, if these recommendations are ignored by the authority to which they are addressed the CNDS' only power is to publish a special report on the matter in the official State Bulletin (*Journal officiel de la République française*). Although the CNDS has only made use of this power three times, it has publicly complained that it often faces difficulties in making its recommendations heard by the relevant authorities.⁶²

This limited scope of action was recognised by the Council of Europe Commissioner for Human Rights as problematic, and he called for “a reform of the functioning of the CNDS in order to extend its powers... with a suitable increase in budget”.⁶³

CHARGES OF “FALSE ACCUSATION”

Another concern regarding the ability of the CNDS to function effectively is the increasing incidence of law enforcement officials bringing charges of “false accusation” against individuals who make a complaint against them (see CNDS case 2006-29 above), claiming that the mere fact of having been called for a hearing constitutes “moral harm”. 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”.⁶⁴ 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. It is clearly impossible for an investigatory body such as the CNDS to function effectively if complainants fear criminal prosecution simply for seeking to use its services.

Amnesty International's research has highlighted the existence of significant weaknesses in the current system of investigating allegations of human rights violations in general, and violations of the Convention in particular, by law enforcement officials in France. Neither the criminal justice system, the internal police inspectorates, nor the CNDS fully satisfies the Convention's requirements of prompt and impartial investigations. Amnesty International considers that reform of the current system is essential and 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.

For further information on this topic, see the following Amnesty International reports:

- *Public Outrage: Police officers above the law in France* (Index: EUR 21/003/2009)
- *France: An effective mandate for the Defender of Rights* (Index: EUR 21/002/2009)
- *France: The search for justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment* (Index: EUR 21/001/2005)

CONDITIONS IN MIGRATION DETENTION CENTRES

Article 16

In December 2008 Amnesty International received an anonymous letter containing photographs and video footage from inside the Pamandzi migration detention centre in Mayotte (French overseas territory). The material revealed severe overcrowding and extremely poor hygiene and medical facilities.

In its opinion n°2007-135/2007-136 of 14 April 2008, the CNDS described the detention centre as follows:

“It consists of three large rooms for the detainees, without beds, people lie on the ground on shabby mats which occasionally lie on top of damaged bare concrete floor. The bathrooms consist of four showers and six toilets shared between men and women; their state is pitiable.” According to the head of the detention centre, quoted by the CNDS, “the theoretical capacity of 60 places is regularly surpassed ... reaching 220 people; this situation is unmanageable for the staff and detainees.” According to the CNDS, the centre has been in need of rebuilding since 1999.

The NGO Cimade described the conditions in its 2007 annual report:

The Migration Detention Centre consists of three rooms: one around 60m² is for women, another reserved for men is around 50m², we were told that the third room, which was empty at the time of our visit, was for “regroupment” before departures. In the middle of the detention centre there is a custody cell. There are no beds, people sleep directly on the floor. No toiletries or bedding, as required by the internal regulations, are distributed to the detainees. There is no space reserved for families or for children (no changing table, no babies’ beds, no toys). And this despite the fact, we repeat, the shocking number of very young children held in detention.

Following his visit to France from 21 – 23 May 2008, the Council of Europe Commissioner for Human Rights called on the French authorities to ensure “that human rights and human dignity be respected in all migration detention centres and that the living conditions of foreigners detained in Mayotte be immediately improved.”⁶⁵

The Children’s Ombudsman, in a report following a visit to Mayotte in October 2008, insisted on the urgency of the work needed and recalled that children, who have not committed any offence, should not be held in detention.⁶⁶

In December 2008 Amnesty International called on the French government to take urgent action to improve conditions in the Pamandzi migration detention centre in Mayotte. In a letter to Amnesty International dated 16 March 2009, the Minister of Immigration, Integration, National Identity and Development stated that improvements to the centre were underway and there were plans to build a new migration detention centre in Mayotte with a capacity of 140 places. In a press conference on 3 September 2009 the Minister stated that a budget of €20 million had been obtained for the creation of this centre, but no timeline was given for its construction.

OPTIONAL PROTOCOL

On 11 June 2008, the Council of Ministers named Jean- Marie Delarue as Inspector General of Detention Centres (Contrôleur Général des Lieux de Privation de Liberté), and as a National Preventive Mechanism under the Optional Protocol to the Convention. The Inspector General is mandated to visit all places of detention on French territory, including prisons, migration detention centres, border detention facilities and secure psychiatric hospital wards. However, the law does not grant the Inspector General the power to visit places of detention under French jurisdiction that are not on French territory, and allows detention centre authorities to refuse and/or postpone visits on numerous grounds.

Between June and December 2008, the Inspector General visited 52 detention centres. In April 2009 the Inspector General’s first activity report was published and presented to parliament and the president.

Amnesty International welcomes the creation of the mandate of the Inspector General of

Detention Centres and has called on the French government to ensure that it continues to receive adequate funding and resources, that its independence is maintained, and that it fully accords with the requirements of the Optional Protocol.

France ratified the Optional Protocol on 11 November 2008.

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- 1 UN Doc. CAT/C/FRA/4-6, 23 July 2009.
 - 2 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.
 - 3 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.
 - 4 Conclusions and recommendations of the Committee against Torture: France, 3 April 2006, CAT/C/FRA/CO/3, para 5.
 - 5 Conclusions and recommendations of the Committee against Torture: France, 3 April 2006, CAT/C/FRA/CO/3, para 10.
 - 6 See Committee against Torture, Communication No. 300/2006 Adel Tebourski v France, decision of 11 May 2007, UN Doc. CAT/C/38/D/300/2006, para 1.2.
 - 7 Case of Gebremedhin [Gaberamadhien] v. France (Application no. 25389/05), Judgment of 26 April 2007.
 - 8 Case of *Jabari v. Turkey* (Application no. 40035/98), Judgment of 11 July 2000, para. 40.
 - 9 CE 26 January 2000, FTDA, Amnesty International, Gisti, n° 201020 and 202537, circular of 28 June 1998 regarding territorial asylum.
 - 10 Conclusions and recommendations of the Committee against Torture: France, 3 April 2006, CAT/C/FRA/CO/3, para 13.
 - 11 Conclusions and recommendations of the Committee against Torture: France, 3 April 2006, CAT/C/FRA/CO/3, para 13.
 - 12 Conclusions and recommendations of the Human Rights Committee: France, UN Doc. CCPR/C/FRA/CO/4, 31 July 2008, para 14.
 - 13 See Amnesty International reports France: The search for justice (AI index: EUR21/001/2005) and Public Outrage: Police officers above the law in France (AI index: EUR21/003/2009).
 - 14 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.
 - 15 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.
 - 16 CNDS, Bilan des six premières années d'activités 2001-2006 par Pierre Truche, p. 2-3.
 - 17 The Hôtel Dieu hospital is where many detainees are taken for medical check-ups during police custody in Paris.
 - 18 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, CPT/Inf (2007) 44, 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.

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

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

21 Report of the Special Rapporteur on torture, UN Doc. E/CN.4/2001/66, 25 January 2001, para 1310.

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

23 Fourth Periodic Report of France to the Human Rights Committee, (2007). UN Doc. CCPR/C/FRA/4, 8 July 2007, para 128.

24 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, UN Doc CCPR/C/FRA/Q/4/Add.1, 23 June 2008, para 75.

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

26 Summary account of the results of the proceedings concerning the inquiry on Serbia and Montenegro, Report of the Committee against Torture, UN Doc. A/59/44 (2003-4), para. 213.

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

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

29 Saoud v. France, application number 9375/02, Judgment of 9 October 2007.

30 Ibid., paras. 102-3.

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

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

33 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).

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

35 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.

36 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.

37 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>.

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- 38 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.
- 39 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 39.
- 40 CNDS case 2006-14.
- 41 Letter from Ministry of Justice to President of the CNDS, 31 October 2006, cited in the CNDS annual report 2006, p.503.
- 42 E/CN.4/2001/66, para 1310.
- 43 "There must be no impunity for police violence" 3 December 2007.
http://www.coe.int/t/commissioner/Viewpoints/071203_en.asp
- 44 Report of Expert Workshop "Police complaints mechanisms: ensuring independence and effectiveness" Strasbourg 26-27 May 2008, CommDH(2008)16, p1.
- 45 "Combating impunity" extract from the 14th General Report, CPT/Inf (2004) 28, para 38.
- 46 Commission Nationale de Déontologie de la Sécurité, Rapport 2007, p38 (hereafter: CNDS Report 2007)
- 47 CNDS Report 2007, p38.
- 48 Conclusions and Recommendations of the Committee against Torture: France, UN Doc. CAT/C/FRA/CO/3, 3 April 2006, para 22.
- 49 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 181.
- 50 These include the Prime Minister, the National Ombudsman (Médiateur de la République), President of the High Commission against Discrimination and for Equality (Haute Autorité de lutte contre les discriminations et pour l'égalité, HALDE), the Children's Ombudsman (Défenseur des enfants), and the Inspector General of Detention Centres (Contrôleur générale des lieux de privation de liberté).
- 51 Concluding Observations of the Committee against Torture: France, UN Doc. CAT/C/FRA/CO/3, 3 April 2006. para 22.
- 52 Council of Europe, 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, CommDH(2006)2, 15 February 2006, para 182.
- 53 In 2006 (most recent year for which such figures were available), a total of 140 complaints were registered by the CNDS. Over 60 more were sent directly by individuals and were therefore excluded (CNDS Report 2007, p38; Bilan des six premières années d'activités 2001-2006, Pierre Truche, p16).
- 54 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p16.
- 55 CNDS Report 2007 p.38.
- 56 CNDS Report 2007 p.38.
- 57 CNDS Report 2007 p.37.
- 58 CNDS Report 2007, p.38.

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- 59 Rapport 2006 de l'Inspection générale de la police nationale, Mars 2007.
- 60 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p10.
- 61 Interview with Amnesty International, 7 May 2008.
- 62 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p10.
- 63 Council of Europe, 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, CommDH(2006)2, 15 February 2006, 15 February 2006, paras 182, 183.
- 64 CNDS Report 2007, p.32.
- 65 Council of Europe. CommDH(2008)34 Memorandum by Thomas Hammerberg Council of Europe Commissioner for Human Rights following his visit to France from 21 – 23 May 2008.
- 66 Regard de la Défenseure des enfants sur la situation des mineurs à Mayotte, Annexe au Rapport 2008.