

# FRANCE

## Excessive force:

### A summary of Amnesty International's concerns about shootings and ill-treatment

On 5 May 1998 the United Nations (UN) Committee against Torture will examine the French Government's second periodic report, intended to provide information on new measures and developments in the implementation of the UN Convention against Torture in the country since 1989. Amnesty International takes this opportunity to comment on some of its concerns relating to use of excessive force leading to ill-treatment, shootings and killings by law enforcement and prison officers in France.

Amnesty International welcomes the fact that the most recent Penal Code, which came into force on 1 March 1994, establishes the offence of torture as a distinct crime (and not as a mere aggravating circumstance). Article 222-1 provides for a penalty of 15 years' imprisonment for those committing acts of torture or barbarity, and Article 222-3 refers specifically to the commission of acts of torture by public officials. However, the recognition of torture as a distinct offence, and the increased scope of the prohibitions and penalties, are unlikely to be sufficient on their own to end or significantly reduce torture or ill-treatment; since 1994 shootings, killings and alleged ill-treatment by law enforcement officers from all police forces<sup>1</sup> have remained the main focus of Amnesty International's concerns. The organization has also repeatedly expressed concern about the associated problems of lengthy delays in judicial inquiries and of effective impunity, and remains concerned by reports of ill-treatment by prison officers.

As a result of the parliamentary elections of May and June 1997 the leader of the Socialist Party, Lionel Jospin, became Prime Minister of a broad left coalition government. The new government has embarked upon a wide-ranging reform of the justice administration, still in its embryonic stages, and on 14 January 1998, shortly after reports of new fatal shootings by police officers, a draft law was introduced to create an institution that would oversee the working and implementation of codes of practice governing the different security forces. The draft law on the *Conseil supérieur de la déontologie de la sécurité* (CSDS), which is expected to be given wide powers to investigate and make recommendations both in general and in specific cases concerning the ethical conduct of the various police forces and *gendarmerie nationale*, as well as private security forces, is due to go through its first reading by the National Assembly at the end of April 1998. However, the CSDS will have no powers in the area of prison administration.

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<sup>1</sup>These include the *Gendarmerie nationale*, the *Police nationale*, specialized units such as the *Brigade anticriminalité* (BAC), the *Direction centrale du contrôle de l'immigration et de la lutte contre l'emploi des clandestins* (DICCILEC), the *Unité de surveillance des transports en commun* (USTC), and the *Compagnie républicaine de sécurité* (CRS).

In July 1997 the UN Human Rights Committee recommended that the French Government "establish an independent mechanism to monitor detention centers and to receive and deal with individual complaints of ill-treatment by law enforcement officials". Amnesty International welcomes the establishment of the CSDS as a step towards recognition, prevention and elimination of human rights violations by law enforcement officials, but at the same time it regrets that its mandate will not cover the monitoring of prisons and detention centres administered by prison staff.

This summary deals exclusively with Amnesty International's concerns with regard to shootings, killings, torture and ill-treatment by law enforcement and prison officers. It does not cover the subjects of immigration or extradition; nor does it comment on its concern with the practice of administrative detention in France (in the sense of *assignation à résidence*), or with the special legal regime governing terrorist crimes and offences, which includes the establishment of special courts sitting without juries. A package of documents published by Amnesty International on its concerns in France over the last few years has been sent to members of the UN Committee against Torture. These are listed in appendix one.

## **A. Shootings and killings by law enforcement officers**

In October 1994 Amnesty International published a report entitled *France: Shootings, killings and alleged ill-treatment by law enforcement officers* (AI Index: EUR 21/02/94). The document examined a number of reports in the 18 months up to June 1994 of shootings, killings and ill-treatment of detainees by law enforcement officers. A high proportion of the victims were of non-European ethnic origin, mostly from the Maghreb, the Middle East and Central and West Africa. Amnesty International drew attention to a "*disturbing pattern suggested by events in recent years in France whereby excessive force leading to ill-treatment, shootings and killings has been used against people who are largely young and often of non-ethnic European origin*". It concluded that officers used force recklessly and without due respect for law, and identified a number of serious problems in the practice of law enforcement - including prosecutorial inertia, lack of access to or transparency of inquiries, delays in investigation and prosecution, lack of sufficiently serious observance of the legal provisions relating to legitimate defence (see below), and lack of training of law enforcement officers. The report contained seven specific recommendations for the reform of the system of training and monitoring of law enforcement officers as well as for the reform of the existing practices of prosecutors and courts in cases where excessive use of force by officers had resulted in injury or death.

On 2-3 April 1996 an Amnesty International delegation met with French Government representatives to follow up the recommendations made by the report (hereafter referred to as the 1994 report). The delegation reiterated its concerns about the excessive length of investigation and prosecution procedures relating to human rights abuses and also expressed its

"extreme concern" about the continued use by military officers of the *gendarmerie* of special powers regarding the use of firearms (see under point D, below).

The organization noted the government's willingness for dialogue. The French authorities assured the delegation that police training methods would be improved and that the justice system would be made more efficient. However, after publication of the report the organization received further allegations which showed a continuation of the pattern of shootings and killings of unarmed people by officers using firearms in a reckless and, more often than not, illegal manner, and which confirmed that its concerns remained as pertinent as before.

In July 1997 the UN Human Rights Committee examined the French Government's third periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR). The Committee was "seriously concerned" by the number and gravity of the allegations it had received of ill-treatment by law enforcement officers of detainees and others, including unnecessary use of firearms resulting in a number of deaths. It underlined that the risk of such ill-treatment was "much greater in the case of foreigners and immigrants". The Committee also expressed its concern about the special powers of the National Gendarmerie and urged modification or repeal of the 1943 decree (see under point D, below).

### **A.1. Recent instances of reckless use of firearms, shootings and killings**

The following list is not comprehensive. The five cases outlined are only some of those that have come to the attention of Amnesty International since 1994. They are described in greater detail in the accompanying documentation (see appendix) and therefore only briefly mentioned in this summary:

- (i) *August 1995*: Eight-year-old **Todor Bogdanovif**, a Romani child from Serbia, was shot dead by border police<sup>2</sup> near Sospel (Alpes-Maritimes). The decision of the investigating judge that there were no grounds for prosecuting one of the officers was overturned in December 1997 by the Court of Appeal of Aix-en-Provence and the case was referred back to the Court of Assizes on a manslaughter charge. Todor Bogdanovif, one of a convoy of Roma fleeing from Novi Pazar in the Federal Republic of Yugoslavia, was sleeping in the back of a car which attempted to pass a roadblock. He was shot from the back. In 1997 experts on the UN Human Rights Committee had specifically expressed concern at the death of the child. (See also point A.2 below).

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<sup>2</sup>Police belonging to the DICILEC (formerly *Police de l'air et des frontières*). This is the same police force that was sent to New Caledonia to deal with the problem of the Chinese boat people (see point A.3.).

- (ii) *August 1995: **Sid Ahmed Amiri***, a French and Algerian national, was detained in Marseilles by three officers of a transport police unit. He claimed he was driven to an isolated quarry, beaten, kicked and threatened with a gun. He tried unsuccessfully to seize the weapon, and then to escape. He was handcuffed and shut in one of the metal containers in the quarry. He stated that the officers then fired three shots at the container before taking his wallet and leaving him there. He was later taken to hospital for treatment to an open fracture of his nose and injuries to legs and shoulders. The officers were subsequently suspended and charged with illegal detention, premeditated assault and theft. In June 1997 they were sentenced to 18 months' imprisonment, of which 15 were suspended, and to five years' disqualification from serving in the police force.
  
- iii) *January 1996: **Etienne Leborgne***, a Paris driver born in Guadeloupe, was stopped by police officers at Roissy airport for a time-clock check. He tried to escape the police check and in the process injured one of the officers. Three days later a team of plain clothes police officers stopped him in his taxi. Two shots were fired, shattering the windows. One of the officers then went up to the taxi and shot Etienne Leborgne through the head at close range. A judicial inquiry was opened and his mother lodged a judicial complaint against the police, alleging murder and complicity to commit murder.
  
- (iv) *December 1997: **Fabrice Fernandez*** was shot dead while handcuffed and under interrogation at a Lyons police station, following a street incident in which a shotgun had been fired in the air. While Fabrice Fernandez was under interrogation an officer handling the confiscated gun shot him in the jaw, killing him instantly. The officer was immediately suspended from duty, detained and charged with manslaughter. The charge was then increased to murder by the investigating judge. The officer, reported to have already been disciplined once for assault, was subsequently expelled from the police force.
  
- (v) *December 1997: Sixteen-year-old **Abdelkader Bouziane*** was shot dead in a suburb of Paris, in disputed circumstances, after he had reportedly tried to drive through a police roadblock. Abdelkader Bouziane was driving his car without a driving licence and had been pursued by police officers from Dammarie-en-Lys in the direction of Chailly and Fontainebleau (Seine-et-Marne). According to police, his car was fired on by two officers acting in "legitimate defence" (see A.2 below) after they feared it would run them down. They maintained that the fatal bullet had ricocheted against the side of the driver's window before entering his neck. Abdelkader Bouziane's passenger, however, stated that the car had come to a stop before any shots were fired. A ballistics report prepared by two experts for the investigating judge in charge of the judicial inquiry confirmed that the two officers had each fired two bullets, but reportedly found that the fatal bullet, like the other three, had been fired after the car had passed, and therefore

from behind. If so, this would invalidate the argument that the police officers had fired in legitimate defence.

## **A.2. Law on "legitimate defence"**

Under Article 122-5 of the French Penal Code it is legitimate to act to defend oneself or others against an unjustified attack if the action is both necessary for legitimate defence and simultaneous with the attack, and as long as there is no disproportion between the means of defence used and the gravity of the attack.<sup>3</sup> Amnesty International's 1994 report concluded that police officers were using excessive and unlawful force, resulting in violation of the right to life and the prohibition of torture and cruel, inhuman or degrading treatment. It therefore recommended that: "... the Minister of Justice should emphasize the gravity of these offences by directing Prosecutors to pay closer attention to the provisions of the law on legitimate defence and in particular to apply more strictly the need to observe the principle of proportionality when examining the lawfulness of acts of force by officers".

This recommendation remains directly relevant today. For example, the Amnesty International document *Concerns in Europe: July-December 1997* (AI Index: EUR 01/01/98) detailed a case (Todor Bogdanovif) in which the organization expressed the view that the decision by the investigating judge that there were no grounds for prosecution of the police officer, because he had acted in legitimate defence, contradicted, *inter alia*, the police rules regarding use of firearms and the Penal Code provisions on the limits of legitimate self-defence. This view appeared to be upheld by the Court of Appeal of Aix-en-Provence when, in overturning the judge's ruling, it argued that the criteria of proportionality and simultaneity had not been met. The case remains before the Court of Assizes.

Another example is the case of Mourad Thier, killed in 1993 (see Amnesty International's 1994 report and subsequent documents). The police officer who shot him in the back claimed that he had acted in legitimate self-defence. Amnesty International questioned whether the legal criteria for legitimate self-defence were applicable. In October 1997, after continual delays and procedural irregularities, the court found the officer guilty of manslaughter and he was sentenced to a five-year suspended prison term. However, in a number of other

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<sup>3</sup>Art. 122-5 - "*N'est pas pénalement responsable la personne qui, devant une atteinte injustifiée envers elle-même ou autrui, accomplit, dans le même temps, un acte commandé par la nécessité de la légitime défense d'elle-même ou d'autrui, sauf s'il y a disproportion entre les moyens de défense employés et la gravité d l'atteinte.*" Art. 122-7 further refers to the state of necessity and establishes three criteria which, if met, mean there is no penal responsibility: the existence of an actual or imminent danger threatening a person or property; the need to break the law in order to safeguard the person or property; the existence of proportion between the means used and the seriousness of the threat.

similar cases known to Amnesty International, in which the grounds for a plea of legitimate defence do not appear to be soundly based, prosecutions have failed and the cases have been dropped (see, for example, under point D, below).

### **A.3. New Caledonia: Refugees severely injured by rubber bullets**

On 4 November 1997, after surviving 50 days and three storms at sea, a boat carrying 39 Chinese refugees landed in the French overseas territory of New Caledonia. A few days later another boat, carrying 71 people, including 20 children, arrived in Nouméa, New Caledonia. The 110 "boat people" were detained, under a decree of 1937 governing the admission of French people and foreigners to New Caledonia, first in a former clinic and subsequently in a military hangar at the airport of Tontouta. On 12 January 1998 the "boat people" submitted a request to the High Commissioner for the Republic in New Caledonia to be recognized as refugees, but they remained in detention until March 1998.

On 19 March 1998 about 100 officers of the immigration police force, the DICCILEC (see footnote above), arrived in New Caledonia from Paris to oversee the forcible return of the refugees to China on a Chinese charter plane, while large numbers of *gendarmes mobiles* were also activated. Hearing of their imminent deportation, 60 boat people, including women, children and a baby, sought refuge on the roof of the hangar, where they remained for two days in a desperate attempt to bring about a change of heart by the French authorities. A number of their supporters and members of various non- governmental organizations held peaceful demonstrations at the airport to protest at the return of the refugees to China. On 22 March, the *gendarmes* launched an attempt to dislodge the detainees with tear gas, to which the detainees apparently responded by throwing stones and other projectiles. The *gendarmes* then opened fire with rubber bullets.

Nine of the refugees, all men, were injured and taken for treatment to the Gaston Bourret hospital in Nouméa. Two sustained serious injuries and required intensive surgery. One of the two most seriously injured, evacuated by helicopter, was reportedly hit in the face by a bullet of about a centimetre in diameter. The second man underwent life-saving surgery to remove a bullet that had reportedly lodged in the thorax, close to the heart. Seven others were reported to have been less seriously injured, receiving bullet injuries in the arms, chest, legs and back. Several hours later the French Government decided to suspend deportation of the boat people for three months and to release them from the detention centre.

International standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, require that law enforcement officials avoid the use of force in the dispersal of assemblies or, where that is not practicable, restrict such force to the minimum extent necessary. They also require that the use of force be in proportion to the seriousness of the offence; and that the deployment of weapons be evaluated in order to

minimize the risk of endangering uninvolved persons. In this case, Amnesty International is concerned at reports about the injuries, some very serious, inflicted on nine of the 60 detainees assembled on the roof of the hangar and believes that the use of rubber bullets may have been disproportionate and inappropriate. It should, moreover, be taken into account that among the detainees on the roof were young children and a baby, and that these were inevitably endangered by the decision to fire the bullets.

## **B. Ill-treatment by law enforcement officers**

In its Concluding Observations on France's third periodic report the UN Human Rights Committee stated that it was "seriously concerned by the number and serious nature of the allegations it has received of ill-treatment by law enforcement officers of detainees and other persons who come into abrasive contact with them ... the risk of such ill-treatment being much greater in the case of foreigners and immigrants". This finding bears out the concern expressed by Amnesty International's 1994 report (see point A above).

The 1994 report cited a number of illustrative cases of alleged ill-treatment by law enforcement officers, many of whom were young men of non-European ethnic origin. Since 1994 Amnesty International has continued to receive cases of such ill-treatment, including several allegations of rape by police officers. Details of many of these cases are provided in the documentation listed in the appendix. The following list gives only an outline and, again, is purely illustrative, and not comprehensive:

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**B.1. Recent cases of ill-treatment, or alleged ill-treatment, by law enforcement officers**

- (i) *August 1995: Sid Ahmed Amiri* alleged that, apart from being threatened by a police officer with a gun and being fired at while shut in a metal container during a period of illegal detention, he was hit several times with a truncheon while in the police car, and after being taken out of the car, again beaten with a truncheon, punched and kicked. His money was also stolen. He was taken to hospital for treatment to an open fracture of his nose and injuries to his legs and shoulders. The police officers were subsequently convicted [see point A.1. (ii) above].
- (ii) *September 1995: Sixteen trade unionists* detained in Papeete, the Tahitian capital of the French overseas territory of French Polynesia, in connection with the disturbances that followed the resumption of nuclear testing by France on Mururoa atoll, and with a judicial inquiry into the serious rioting, looting and arson that followed, claimed they were kicked and punched, stacked face down in a military lorry, and forced to kneel in the parking area of the barracks with their hands still handcuffed behind their backs and their faces to the ground for approximately 45 minutes. One was reportedly knocked unconscious with a truncheon blow to the head and taken to hospital suffering from progressive paralysis of the left side. Judicial and administrative inquiries were opened into the incidents and into the trade unionists' complaints.
- (iii) *April 1996: Sixteen-year-old Abdelkrim Boumlik*, of Moroccan origin, who had been riding a motorcycle without a helmet, which is contrary to French law, claimed he was chased, kicked, punched, beaten with a truncheon and subjected to racial abuse by two police officers, who then attempted to throw him in a lake. He and the 15-year-old friend who had been riding with him, were then handcuffed and ordered to kneel on the floor of the officers' car where they were racially abused and threatened. A medical certificate from the local hospital recorded injuries consistent with his allegations. Abdelkrim Boumlik lodged a formal complaint.
- (iv) *June 1997: Four Bordeaux police officers* were detained while under investigation for allegedly abusing their authority by rape and complicity in rape. A woman involved in a traffic incident lodged a formal complaint with the police complaints body, the *Inspection générale de la police nationale* (IGPN), in which she claimed that she was told by a police officer that no charges would be brought against her if she agreed to sleep with him and his colleagues. Several days after the incident he reportedly called at her home, hit her with a truncheon and raped her, reappearing several days later with his colleagues to carry out a gang rape.



- (v) *October 1997*: Egyptian architect **Ahmed Hamed**, while on a visit to France, was reportedly assaulted by four plainclothes police officers in a case of mistaken identity. He was approached by the officers in a launderette and forcibly taken to a waiting car. Resisting what he believed to be a kidnapping, he was beaten and kicked violently on the right leg. The blow fractured the tibia. However, he was only examined by a doctor some 10 hours after arrest. No charges were brought against him. Upon release he was admitted to the Foch Hospital in Paris to undergo surgery.
- (vi) *December 1997*: **Djamel Bouchareb**, the 19-year-old friend and passenger of Abdelkader Bouziane (see above) alleged that he had been ill-treated by police officers in the moments following the death of Bouziane. Djamel Bouchareb, who lodged a judicial complaint against the police, reportedly stated that he had been hit and kicked and his head beaten against the pavement. He was taken to hospital for treatment after intervention at the scene by a doctor. An eye-witness was recently reported in the French press as saying that he had told police that he saw Djamel Bouchareb being beaten and kicked in the head by police officers. A judicial inquiry has been opened.
- (vii) *March 1998*: Cartoonist **Claude Serre**, 60 years old and in poor health, was reportedly lurching in a friend's restaurant in Paris when he became involved in an altercation with police officers about parking problems. He claimed that he was handcuffed, pushed into a police van and ill-treated. A medical report, apparently later confirmed by a specialist's report, referred to a sprained wrist and to a number of bruises and stated that Claude Serre would be unfit to work for 10 days. Claude Serre, whose cartoons include satirical scenes of police violence, has lodged a formal complaint alleging police assault with the court of Bobigny (Seine-Saint-Denis).

## ***B.2. Police torture in incommunicado detention***

On 25 March 1998 the European Commission on Human Rights published a report which accepted that **Ahmed Selmouni** was tortured by police officers while being held in incommunicado detention (*garde à vue*) in 1991. The Commission transmitted the case to the European Court of Human Rights, which is due to judge the case before the end of the year.

According to the Commission's report Ahmed Selmouni, who has both Dutch and Moroccan nationality, was held under *garde à vue* at Bobigny (Seine-Saint-Denis) for the maximum four-day period allowed by law, in connection with drug trafficking offences, for which he was later convicted. He maintains that, as a result of torture, he has virtually lost the sight of one eye, on which he has undergone three operations.

After the *garde à vue* had been lifted and he had been placed in preventive detention, he complained to the police complaints body, the IGPN, that he had been kicked and punched,

beaten with a truncheon and baseball bat; forced to kneel and then lifted to his feet by his hair; forced to run along a corridor while police officers tripped him; humiliated in front of a young woman; exposed to a police officer's penis and told to suck it before being urinated on; threatened with a blow torch and a syringe, and finally raped by one officer with a small black truncheon.

While still held under *garde à vue* a doctor examined Ahmed Selmouni and found evidence of injuries, notably under the eyes, and on the arms, back, chest and thigh. A prison doctor at Fleury-Mérogis, examining him after he had been placed in preventive detention, found numerous haematoma on the torso and thighs and around the eyes. A third, forensic doctor examined him a few days later on the instructions of the investigating judge and found evidence of injuries all over the body. He referred to numerous haematoma, excoriations and scarring consistent with the detainee's allegations.

The Commission found that the injuries inflicted on Ahmed Selmouni were in violation of Article 3<sup>4</sup> of the European Convention on Human Rights, on account of their "... *intensité et la multiplicité des coups portés au requérant, provoquant de véritables lésions ainsi que de vives souffrances physiques et morales, de nature à créer des sentiments de peur, d'angoisse et d'infériorité propres à humilier, avilir et briser éventuellement la résistance physique et morale du requérant*"<sup>5</sup> and had been inflicted in order to obtain a confession or information. The Commission added that the ill-treatment had been so serious and cruel that it could only be described as torture ("*Ce traitement, infligé par un ou plusieurs fonctionnaires de l'Etat (...) était d'une nature tellement grave et cruelle que l'on ne peut le qualifier de torture*").

The Commission also found France to be in violation of Article 6 of the European Convention regarding fair trial within a reasonable time. (See point D, below).

In its Concluding Observations of July 1997 on the third periodic report of the French Government, the UN Human Rights Committee had expressed concern at the continued application of measures which provide, *inter alia*, for prolonged detention in police custody for

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<sup>4</sup>"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

<sup>5</sup>"...intensity and multiplicity of blows administered to the plaintiff, creating real injuries, as well as acute physical and moral suffering, giving rise to feelings of fear, anguish and inferiority designed to humiliate, degrade and break down his physical resistance" [unofficial translation].

up to four days ...<sup>6</sup>. Amnesty International has frequently expressed the view that prolonged detention in police custody can facilitate ill-treatment and torture.

## **C. Ill-treatment by prison officers**

Between 1989 and 1998 Amnesty International has been concerned about a number of reports of ill-treatment of detainees by prison officers (*surveillants*), as well as about the difficulties in identifying prison officers accused by detainees of such ill-treatment. The organization notes that penitentiary administration will not come under the mandate of the CSDS, the new body that is being set up to safeguard and uphold respect for ethical standards among the different law enforcement agencies. Nevertheless, in 1997 the UN Human Rights Committee had advised the French Government to "establish an independent mechanism to monitor detention centers ..".

The following are just two examples of Amnesty International's concerns in this area, taken from opposite ends of the period under review - 1989 and 1997/8:

### **C.1. Allegations of ill-treatment at Clairvaux Prison**

In June 1989 Amnesty International wrote to the Minister of Justice in connection with reports it had received on the treatment of prisoners held in Clairvaux prison (Aube), following the attack by three prisoners on a prison guard during an afternoon exercise period. Over 80 prisoners were in the yard at the time. It was alleged that after police had returned the last remaining 30 prisoners to the main prison building a number of them were beaten by prison guards. According to allegations some prisoners were made to pass a line-up of about 30 prison guards who beat them with their fists and with truncheons. One prisoner was reported to have been thrown down a flight of stairs and another prisoner to have had a key inserted in his rectum in the course of a body search. A medical certificate relating to one of the prisoners stated, *inter alia*, that a wound near his left hip needed three stitches, and noted a wound on his left ear, bruising on his right cheekbone and nose and a possible cracked rib.

The Minister of Justice told Amnesty International that the inquiries carried out by the authorities had found it was necessary to use force to return the prisoners to their cells and to make some submit to weapons searches. The Minister stated that: "at the same time and for a few moments acts of violence were indeed committed against eight detainees, beyond the necessary use of force". An administrative inquiry carried out at the prison confirmed the

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<sup>6</sup>According to French law, extension of the maximum period of 24 hours in police custody may be extended by the prosecutor for a further 24 hours. After this first extension a further prolongation of 48 hours may be authorized in cases of drug trafficking and acts of terrorism. In such cases the detainee may see a lawyer after being held by police for 72 hours.

existence of injuries recorded on the medical certificates but was not able to identify the perpetrators of the ill-treatment. A judicial inquiry also failed to identify the persons responsible for the ill-treatment

## **C.2. Allegations of ill-treatment at Grasse Prison**

In March 1998 Amnesty International wrote to the Minister of Justice with regard to reports that on the night of 31 December 1997 and 1 January 1998 eight detainees, including three minors, were ill-treated by seven prison guards at the *Maison d'arrêt* of Grasse (Alpes-Maritimes). Medical examinations reportedly confirmed allegations made by the prisoners that they had been beaten. An administrative inquiry into the allegations was entrusted to the *Inspection générale des services pénitentiaires* and a judicial inquiry to ascertain responsibility for the beatings was also reportedly opened after the prison director contacted the public prosecutor. The prison guards were reportedly placed in custody. Amnesty International welcomed the news that inquiries had been opened into the beatings, and urged that the Minister of Justice do all in her power to ensure that they were carried out thoroughly, promptly and impartially. It also requested information about the eventual outcome of the inquiries. No reply had been received at the time of writing.

## **D. Issues of concern associated with cases of shootings, killings and ill-treatment**

### **D.1. Lengthy delays in judicial inquiries**

International law emphasizes the need for prompt action in investigating complaints and possible human rights violations, and requires that judicial proceedings should not last for an unreasonable time. Most recently, the UN Human Rights Committee expressed concern at the "delays and unreasonably lengthy proceedings in investigation and prosecution of alleged human rights violations involving law enforcement officers". Amnesty International's 1994 report cited cases and evidence supplied by magistrates themselves, indicating that excessive delays in investigation and prosecution remain a problem. In 1996 Amnesty International observed that in over half the 11 cases of killings included in its 1994 report, which occurred between June 1993 and June 1994, investigations and judicial proceedings had still not been concluded, even after a delay of two to three years. For instance, in the case of Mourad Tchier (see above), characterized by procedural irregularities and continual delays, a reconstruction of the facts by the magistrate was only held two years after his death. The 1996 Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (UN Doc. E/CN.4/1996/4) described his concern about the increasing use of excessive force by law enforcement officers in the case of *inter alia* Mourad Tchier and regretted that France had failed so far to reply to his inquiries.

Cases in which lengthy delays have been observed feature regularly in Amnesty International reports.

However, the case of Ahmed Selmouni (see above) provides a particularly striking illustration. In its report the European Commission on Human Rights found France to be in breach of Article 6 of the European Convention on Human Rights regarding fair trial within a reasonable time. According to the Commission, the criteria for assessing a reasonable time involve: (a) the complexity of a case; (b) the conduct of the parties in the case; and (c) the conduct of the authorities in the matter. The Commission found that although an inquiry had opened into Ahmed Selmouni's allegations in March 1993, *after the plaintiff had become a civil party to the case*<sup>7</sup>, police officers had not been examined by an investigating judge until 1997 and that the judicial investigation was still underway more than four years and eight months after it had been initiated, despite the fact that the case, though extremely serious, was not a particularly complex one. The Commission added that, given the gravity of the allegations, and the length of time since the events had occurred, the authorities had failed to show the diligence required in the interests of a prompt investigation.

## **D.2. Effective impunity**

The problems of prosecutorial inertia and unreasonable delays in investigations and prosecutions are part of the wider problem of effective impunity. Judicial inquiries involving law enforcement or prison officers frequently conclude that there are no grounds for prosecution (*non-lieu*), or prison sentences passed by courts are suspended or reduced on appeal and rarely result in actual terms of imprisonment. While Amnesty International is not in a position to confirm or reject the accuracy of all the allegations made by individuals which it has received, it remains concerned that inquiries which demonstrate well-founded evidence of use of excessive force by law enforcement or prison officers have either closed with a decision of *non-lieu* (for example, Franck Moret, Ibrahim Sy, Joël Nebor and Frédéric Adom - see the 1994 report; or Todor Bogdanovif, where the *non-lieu* decision was later overturned, but where the outcome is still uncertain); or for other reasons, such as failure to identify the officers concerned (for example, the case of proven ill-treatment at Clairvaux prison). The cases of Mourad Tchier and Sid Ahmed Amiri (see above), where convictions eventually resulted from the inquiries, illustrate effective impunity in terms of the sentences passed, which do not appear to reflect the gravity of the crimes committed. In a further case, that of Rachid Ardjouni (see 1994 report and

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<sup>7</sup> Currently the burden of ensuring that thorough judicial investigations are opened falls too frequently on victims and their families. In many cases, the injured parties are obliged to make a complaint as a civil party in order to ensure that a thorough investigation takes place, and that they have access to its results and that their right to be heard is respected. In its 1994 report Amnesty International recommended that the Minister of Justice direct the departments of public prosecutors to play a more active role by requesting judicial investigations *on their own authority*.

subsequent documents), the Court of Appeal reduced a 24-month prison sentence with 16 months suspended to a confirmed period of six months' imprisonment, expected to be served in semi-liberty. In a final and surprising decision it also overturned the Correctional Court's sentence that the convictions for killing Rachid Ardjouni should be entered on the officer's criminal record. This allowed the officer to continue to serve as a police officer carrying arms.

### **D.3. Powers of the National Gendarmerie**

Amnesty International has expressed its extreme concern over the continued use by military officers of the *gendarmerie* of special powers regarding the use of firearms. These powers, granted by a decree of 1903, modified by a decree and law of 1943 under the Vichy Government, enable the *gendarmerie* legally to use their firearms in a far greater number of circumstances than the civilian police forces. The difference in powers between the civil and military applies even when both bodies are fulfilling a similar law enforcement function.

It is clear that international law considers that, even though officers of the *gendarmerie* are military, when they are fulfilling a law enforcement function they should conform to the same UN standards as other civilian law enforcement bodies. This is not the case in France.

In 1997 the UN Human Rights Committee stated that it was "concerned that the powers of the *gendarmerie nationale*, which is basically a military corps, when operating in a civilian public order situation, are wider than that of the police. The Committee recommends that the State party consider repealing or modifying Decree dated 22 July 1943 so as to reduce the powers of the *gendarmerie* when it comes to the use of firearms in public order situations, with a view to harmonizing them with those of the police".

### **D.4. Training**

One of the recommendations of Amnesty International's 1994 report was that: "the Ministers of Interior and Defence immediately initiate a review of training courses in order to improve the professional competence of officers in neutralizing assailants using minimum force", and that the ministers responsible for the professional education of magistrates, advocates and law enforcement officers ... should be made aware of the relevant provisions of the international human rights instruments".

In its second periodic report to the UN Committee against Torture the French Government has stated that the rules prohibiting the use of torture are included in training courses, that the Code of Ethics governing the police is widely circulated and commented upon and taught in police training colleges, and that human rights is also a component in the training provided for prison staff. However, the recent killings of Fabrice Fernandez and Abdelkader

Bouziane (above) prompted the Interior Minister to remark that further training for police officers was needed, and re-ignited debate in the French press and in law enforcement circles about the continuing inadequacies of training programs; the disparity between theory and practice in the number of hours available to officers for training purposes; the regional variations in availability of training and varying levels of training available to different police forces and units; the lack of "hands-on" training in use of various weapons, including the pump-action shotgun; and general problems in attitude, which raise questions as to the extent of human rights education on offer.

## **E. Conclusions**

In a recent letter to Amnesty International on the case of the Romani child Todor Bogdanovif, killed in 1995, the French ambassador in Lisbon, Portugal, stated that the French Government had closely examined the 1997 recommendations of the UN Human Rights Committee and that, as a consequence, a number of reforms were being carried out in the areas of immigration, asylum and the administration of justice. As stated above, Amnesty International welcomes the reforms currently being introduced, as it also welcomes the measures taken to set up a new body to oversee the professional codes and working practices of the different security forces and to intervene in specific cases that are brought to its attention. However, the number of reports and allegations that it has received since 1994 on the use of excessive force and of ill-treatment by law enforcement and prison officers, as well as the associated problems of delays and inertia in investigation and prosecution and lack of adequate training, have led Amnesty International to the conclusion that its concerns remain much the same as they were then and require urgent attention by the new French Government.

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## APPENDIX ONE

A selection of external documents published by Amnesty International on its concerns in France over the last few years.

- C External report - *France: Shootings, killings and alleged ill-treatment by law enforcement officers* (AI Index: EUR 21/02/94) - October 1994;
- C Extract on France - *Amnesty International Concerns in Europe: January - June 1995* (AI Index: EUR 01/02/95);
- C Chapter on France - *Amnesty International Report 1995*;
- C Extract on France - *Amnesty International Concerns in Europe: July - December 1995* (AI Index: EUR 01/01/96);
- C News service item - *France: An open dialogue with the French Government on the persistence of certain violations perpetrated by law enforcement officers* (AI Index: EUR 21/01/96) - 4 April 1996;
- C Extract on France - *Amnesty International Concerns in Europe: January - June 1996* (AI Index: EUR 01/02/96);
- C Chapter on France - *Amnesty International Report 1996*;
- C Extract on France - *Amnesty International Concerns in Europe: July - December 1996* (AI Index: EUR 01/01/97);
- C Extract on France - *Amnesty International Concerns in Europe: January - June 1997* (AI Index: EUR 01/06/97);
- C Chapter on France - *Amnesty International Report 1997*;
- C Extract on France - *Amnesty International Concerns in Europe: July - December 1997* (AI Index: EUR 01/01/98).

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