

FRANCE

AN EFFECTIVE MANDATE FOR THE DEFENDER OF RIGHTS

AMNESTY
INTERNATIONAL



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

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2009 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2009

Index: EUR 21/002/2009
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable.

CONTENTS

BACKGROUND	5
CONTINUED REPORTS OF ILL-TREATMENT IN FRANCE	6
INDEPENDENT INVESTIGATIONS – AN INTERNATIONAL OBLIGATION	7
WHAT ARE THE WEAKNESSES OF THE CNDS?	8
Lack of direct access	9
Under-resourcing	9
Inadequate public profile.....	10
No powers of enforcement	11
Charges of “false accusation”	13
RECOMMENDATIONS	15
ENDNOTES.....	17

BACKGROUND

For a number of years, Amnesty International has been raising concerns regarding allegations of human rights violations (including torture, ill-treatment and unlawful killings) by law enforcement officials in France, and the lack of effective redress for victims of such acts. Amnesty International is concerned that the procedures for investigating such allegations and bringing those responsible to justice are failing to live up to international and European human rights standards.

Until now, the only independent body in France mandated to investigate complaints against law enforcement officials was the National Commission on Ethics in Security (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 UN 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 which will be debated in parliament in the first half of 2009. On 29 May 2008 the Minister of Justice issued a statement explaining that the role of the Defender of Rights would incorporate that of some existing independent administrative authorities, such as the CNDS.¹ It might also eventually include the office of the Inspector General of Detention Centres, which is the newly-created body set up under the requirements of the Optional Protocol to the Convention against Torture (OPCAT) as a “national preventive mechanism”. It is mandated to conduct inspection visits to places of detention and make recommendations on its findings to the authorities, but does not examine individual complaints.

Amnesty International is 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. This paper investigates these issues and concludes with recommendations for reform.

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.

CONTINUED REPORTS OF ILL-TREATMENT IN FRANCE

Amnesty International has longstanding concerns regarding allegations of human rights violations by law enforcement officials in France, including 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 2005 the organization 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.

Since its creation in 2000, the CNDS has regularly reported on human rights violations by law enforcement officials, in addition to other breaches of professional ethics. In 2006 the CNDS published a review of its first six years in function which revealed persistent complaints relating to excessive or inappropriate use of force, leading, in some cases, to permanent injury or death.²

Expert international human rights bodies, including the Council of Europe Committee for the Prevention of Torture (CPT)³ and the Council of Europe Commissioner for Human Rights, have also expressed concern at ongoing allegations of ill-treatment by law enforcement officials in France.⁴

The UN Committee against Torture, during its periodic examination of France in 2006, also commented on “the number and seriousness of the allegations it has received regarding the ill-treatment by law enforcement officers of detainees and other persons with whom they come in contact”.⁵

In judgements in 2006 and 2007, the European Court of Human Rights found France in violation of Article 2 of the European Convention on Human Rights (right to life) as a consequence of unlawful killings by law enforcement officials and the failure of the authorities to conduct an effective investigation into these deaths.⁶ The Court had made a similar finding in 1999 in the case of *Selmouni v. France*, where it found a violation of the prohibition of torture as well as the right to a fair trial (Articles 3 and 6).

In 2008 the Human Rights Committee noted that France “has failed to investigate and appropriately punish” ill-treatment by law enforcement officials.⁷

INDEPENDENT INVESTIGATIONS – AN INTERNATIONAL OBLIGATION

Human rights treaties to which France is a party, including the European Convention for the Protection of Human Rights and the International Covenant on Civil and Political Rights, oblige France to ensure that law enforcement officials respect the right to life and the prohibition against torture and other ill-treatment.⁸ They also require that the French authorities conduct prompt, thorough, independent and impartial investigations wherever there is cause to believe these rights may have been violated. The duty to investigate such allegations has repeatedly been reiterated by the European Court of Human Rights.⁹

Furthermore, the UN Convention against Torture (Article 12), to which France is a party, requires that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture [or other cruel, inhuman or degrading treatment] has been committed in any territory under its jurisdiction”.

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”.¹⁰ 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. Instead of the police itself doing the investigation, the Prosecutor might have a specialized team for the review of such cases. Another model is that a general or special police ombudsman are entrusted the investigations. A further possibility would be police complaints commissions with participation of members of civil society”.¹¹ 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”.¹² 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.¹³

WHAT ARE THE WEAKNESSES OF THE CNDS?

The National Commission on Ethics in Security (CNDS) was created in 2000, with a mission to supervise the ethical conduct of all law enforcement personnel.¹⁴ 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 2007.¹⁵ Between 2001 and 2008 it received over 600 individual complaints in total.¹⁶ 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 UN Committee against torture¹⁷ 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”.¹⁸

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 against Torture, 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 intermediary¹⁹ 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 Committee against Torture²⁰ and the Council of Europe Commissioner for Human Rights²¹ have both called on the French authorities to grant the CNDS the power to receive cases directly from individual complainants, 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 “irreceivable”.²² 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 receivability (one year from the date of the incident to the date the complaint is received by the CNDS from the competent intermediary).

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 452,827 euros²³ and received 40 complaints.²⁴ In 2007 the CNDS received 144 complaints²⁵ (an increase of 260 per cent since 2001) with a budget of 760,400 euros²⁶ (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. At the end of 2007 the CNDS had just five full-time and two part-time staff members.²⁷ 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 2006²⁸ (relating to national police, the 'gendarmerie', prison staff, municipal police, transport police and customs officers), the internal affairs department of the national police (Inspection Générale de la Police Nationale, IGPN and Inspection Générale de Services, IGS) received 1,519 complaints relating to national police officers alone.²⁹

One reason for the lack 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.³⁰

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 work.

THE CASE OF MAULAWI

Maulawi³¹ is an Afghan refugee living in Paris with his younger brother and sister. He told Amnesty International that on 27 July 2006 he was ill-treated by law enforcement officials after being stopped on the Metro for travelling without a valid ticket.

Maulawi told Amnesty International that as left the Metro station with his 10 year-old brother W³², the officers who had stopped them earlier followed them and handcuffed him. A witness to this scene says he saw police officers holding Maulawi on the ground and a police officer punch him in the mouth. Another witness states that she saw Maulawi bleeding from the mouth as he was held on the ground.

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

He was then transferred with his brother to the police station at Gare du Nord train station, where he states he was also insulted by a police officer and refused permission to speak to a family member or a lawyer. He was charged with insulting and obstructing a police officer.

His brother was taken away to a children's home. Since the date of the incident W has been regularly assessed by a psychologist, who has noted that he suffers ongoing fear and anxiety caused by the event.

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

In the morning of 28 July, Maulawi was questioned by a police officer about the incident leading to his arrest. He told Amnesty International that each time he asked to see a lawyer he was told that this would extend his detention in custody. Maulawi was released from police custody at 8pm that day.

On 15 December 2006 Maulawi made a complaint to the internal affairs department of the national police in Paris (IGS) but he told Amnesty International he has never received a response. Maulawi told Amnesty International that he had asked his lawyer to submit a criminal complaint against the police but the lawyer had advised him against it, saying he was unlikely to win.

Although Maulawi speaks fluent French and has lived in France since 2003, he had never heard of the CNDS. When Amnesty International explained its role to him he said that he would have submitted a complaint if he had known of this possibility. By this point, however, it was more than a year after the incident and therefore too late.

Maulawi was convicted by the 29th Chamber of the Criminal Court of Paris for insulting and obstructing a police officer on 18 October 2006. An appeal is currently pending.

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 CASE OF PHILIPPE

Following a peaceful demonstration in the 6th district of Paris on the evening of 9 May 2007, Philippe³³ and a number of other individuals present were detained by police for an identity check. They were taken by bus to the police station in Rue de Clignancourt (18th district). Philippe said that upon arrival at the police station, the individuals on board remained locked inside the bus for several hours. He said that it was suffocatingly hot inside the bus, there was no ventilation, and that the requests of those detained on the bus for air and water were refused. He also claims that pepper-spray was sprayed into the bus from outside.

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

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

Philippe continued to walk away but as he did so he says he was hit on the legs by a police officer with a

truncheon and fell to the ground. He says that as he lay on the ground, he was beaten again on the back and head. He claims that another police officer picked him up roughly from the ground and shouted at him to “Get lost!”. Philippe went immediately to the Laribosière Hospital, where he received treatment, including 10 stitches to the head.

On 10 May 2007 he made a complaint to the internal affairs department of the national police in Paris (IGS) which subsequently passed its findings on to the prosecutor and in February 2008 an investigating judge was appointed to the case. The investigation is ongoing and Philippe is a civil party to the case.

Both Philippe and his lawyer told Amnesty International that they were fully aware of the CNDS but did not intend to submit his case to them. They said that as the CNDS had no power to impose sanctions or provide reparation, there was no point asking it to investigate the case. Philippe said the investigations of the CNDS were “simply academic”.

The CNDS has substantial powers of investigation and can demand public authorities and private individuals to 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.³⁴

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 once, it has publicly complained that it often faces difficulties in making its recommendations heard by the relevant authorities.³⁵

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”.³⁶

THE CASE OF MARIA

Maria³⁷ told Amnesty International that she had been assaulted and verbally abused by an officer of the Paris Regional Transport Agency (RATP) on 22 June 2005 following a dispute over the validity of her bus ticket. She

was removed from the bus with her six year old son and taken to the police station at Ivry-sur-Seine, charged with assaulting the RATP agent. She claims that at the police station a police officer and another RATP agent verbally abused her in front of her son, and that her son was treated in an aggressive manner.

After remaining in custody overnight, Maria was released on 23 June charged with assaulting the RATP agent who she claims assaulted her. During her detention in police custody, Maria was examined by a doctor, whose report noted numerous minor injuries to the shoulder, wrist, arm, hip and back, and signed her off work for six days.

Maria presented a criminal complaint of assault by the RATP officer on 27 June 2005 but it was closed by the prosecutor without investigation. On 25 October 2006 she was convicted of assault. She received a one month suspended prison term and was ordered to pay 500 euros in compensation to the RATP agent, whose medical report had noted a 1cm bruise on his chest and signed him off work for one day.

Maria submitted a complaint to the CNDS via her member of parliament in February 2006. On 18 December 2006, the CNDS made a report on its investigation of the case. It found that “The conditions of the exchange with the RATP agent, the verbal aggression, the brutality, the order to seize the child and retain him, are abnormal, unacceptable”. It reported its findings to the Ministry of Interior, Ministry of Transport and the president of the RATP. The RATP agent in question had in fact been dismissed from his post on 2 August 2005 following an incident involving another passenger of non-French origin.

Evidently, the criminal investigation of the allegations presented by Maria and the charges against her were conducted in isolation from the CNDS investigation. Consequently, the findings of the CNDS were unable to have any effect on the prosecutor’s decision to close the investigation into Maria’s complaint, or on her conviction for assaulting the RATP agent.

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 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”.³⁸ 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.

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 false accusation and moral harm against P.D. The prosecutor began an investigation and on 13 March 2007 the prosecutor closed the investigation against P.D. without charge after P.D. agreed to write a letter of apology to the police officers and pay them each 100 euros in compensation.

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

The CNDS expressed serious concern that the two police officers involved had claimed that the hearing before the CNDS was, in itself, "moral harm". The CNDS passed on its conclusions in this case to the Ministry of Interior (which subsequently opened a disciplinary investigation into the allegation against the two officers). The CNDS also wrote to the Ministry of Justice, expressing its concern at the action by the public prosecutor against P.D., which took place before the CNDS had reached its conclusion on the case (and, it should be noted, this conclusion upheld P.D.'s allegations). The CNDS noted in its letter the increasing number of complaints of false accusation or moral harm made by law enforcement officials summoned by the CNDS, and the serious damage this could have on the functioning of the CNDS if the trend continues. At the time of publication, no response had been received from the Ministry of Justice but in its response to similar concerns from the CNDS in respect of another case, case 2006-14, 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.³⁹

RECOMMENDATIONS

Amnesty International is calling for the creation of an independent investigatory body to examine complaints against law enforcement officials, which should have greater powers and resources than those currently enjoyed by the CNDS. The existence of a body with these powers is crucial to ensure that all allegations of serious human rights violations, including unlawful killings, torture and other ill-treatment, are investigated in line with international standards. This body could be an enhanced version of the CNDS, or it could be a specialised department within the office of the Defender of Rights.

In either case, in order to be effective Amnesty International considers it essential that such a body comply with the following criteria:

- Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, killings (including fatal shootings), torture, ill-treatment, racism and other cruel, inhuman or degrading treatment.
- Have the capacity to receive, register and investigate complaints filed directly by any individual, and to investigate incidents on its own initiative, absent any specific complaint.
- Have all necessary powers, authority and resources to conduct investigations into alleged human rights violations by law enforcement officials, including:
 - the power and resources to immediately examine the scene of the incident;
 - the power to summon witnesses and to order the production of evidence and documents – the use of these powers must never result in criminal charges of “false accusation” or “moral harm” against complainants;
 - the power to monitor police investigations in the course of any criminal investigation into a case referred for prosecution by the independent body;
 - the power to supervise or direct the investigations of the IGPN, IGS or IGN when considered necessary, and the power to replace the investigative functions of the IGPN, IGS or IGN in cases of serious human rights violations.
- Be adequately staffed and headed by professionals of acknowledged competency, impartiality, expertise, independence and probity, who are not members of the law enforcement agencies or the public prosecution. It should have at its disposal its own corps of independent expert investigators to investigate complaints.

- Have the power to refer a case directly to the prosecuting authorities for criminal prosecution where appropriate and the power to appeal any decision made by the prosecution authorities to a court (including decisions to suspend or close investigations, and decisions on sentencing).
- Have the power to order disciplinary proceedings to be instigated and the power to require the disciplinary body to report back to the complaints body on the result of disciplinary proceedings.
- Have the power to make binding decisions that apologies should be granted or criticisms made, and the power to recommend adequate compensation be paid to victims.
- Be made widely known, including through publicity in police stations.

ENDNOTES

1 Other independent administrative bodies which are considered likely to merge with the Defender of Rights are the National Ombudsman (Médiateur de la République) and the High Authority for Equality and against Discrimination (Haute autorité de lutte contre les discriminations et pour l'égalité, HALDE).

2 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p2 -3.

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

4 See 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, para16; 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, paras 174-183.

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

6 See *Taïs v. France*, 1 June 2006 and *Saoud v. France*, 9 October 2007.

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

8 European Convention on Human Rights, Articles 2 and 3; International Covenant on Civil and Political Rights, Articles 6 and 7.

9 See for example, *McCann and others v UK* (27 September 1995), *Jordan v UK* (4 May 2001), *Taïs v France* (1 June 2006), *Selmouni v France* (28 July 1999), *Assenov and Others v. Bulgaria* (28 October 1998).

10 E/CN.4/2001/66, para 1310.

11 "There must be no impunity for police violence" 3 December 2007.

http://www.coe.int/t/commissioner/Viewpoints/071203_en.asp

12 Report of Expert Workshop "Police complaints mechanisms: ensuring independence and effectiveness" Strasbourg 26-27 May 2008, CommDH(2008)16, p1.

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

14 Law 2000-494 of 6 June 2000, modified by Law 2003-239 of 18 March 2003.

15 Commission Nationale de Déontologie de la Sécurité, Rapport 2007, p38 (hereafter: CNDS Report 2007)

16 CNDS Report 2007, p38.

17 Concluding Observations of the Committee against Torture: France, 3 April 2006. CAT/C/FRA/CO/3, para 22.

18 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.

19 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).

20 Concluding Observations of the Committee against Torture: France, 3 April 2006. CAT/C/FRA/CO/3, para 22.

21 Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the Effective Respect for Human Rights in France following his visit from 5 to 21 September 2005, para 182.

22 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).

23 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p16.

24 CNDS Report 2007 p.38.

25 CNDS Report 2007 p.38.

26 CNDS Report 2007 p.37.

27 CNDS Report 2007 p.37.

28 CNDS Report 2007, p.38.

29 Rapport 2006 de l'Inspection générale de la police nationale, Mars 2007.

30 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p10.

31 Name changed to protect privacy.

32 Full name withheld to protect privacy.

33 Full name withheld to protect privacy.

34 Interview with Amnesty International, 7 May 2008.

35 Bilan des six premières années d'activités 2001-2006, Pierre Truche, p10.

36 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, paras 182, 183.

37 Name changed to protect privacy.

38 CNDS Report 2007, p.32.

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



WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE AND
FREEDOM FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my Visa Mastercard

number

expiry date

signature

www.amnesty.org

**I WANT
TO HELP**

Please return this form to the Amnesty International office in your country.
For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites

If there is not an Amnesty International office in your country, please return this form to:
Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom



FRANCE

AN EFFECTIVE MANDATE FOR THE DEFENDER OF RIGHTS

Allegations of unlawful killings, excessive use of force, torture and other ill-treatment by law enforcement officers continue in France. The procedures for investigating such allegations are failing to live up to international and European human rights standards.

Until now, the only independent body in France mandated to investigate complaints against law enforcement officials was the National Commission on Ethics in Security (CNDS), but on 23 July 2008 a new institution, the Defender of Rights, was created by parliament. Its role will be to ensure that state bodies and other public institutions respect the rights and freedoms of individuals and it will incorporate the mandate of the CNDS. This new body provides a crucial opportunity for change.

Legislation is currently being drafted on the specific details of the mandate, powers and working methods of the Defender of Rights. It is crucial that this body brings investigations of human rights violations by law enforcement officials into line with international standards.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

Index: EUR 21/002/2009
January 2009

AMNESTY
INTERNATIONAL

