

# AMNESTY INTERNATIONAL

## Public Statement

AI Index: EUR 21/011/2005 (Public)

News Service No: 302

10 November 2005

### France: Breaches of the law cannot be solved by breaking the law

On 9 November, following the serious unrest in many cities and towns throughout France, the French Government declared a state of emergency in Paris and other cities, under a law that was passed in 1955 and only applied once since then, which allows the *Préfets* (high-level civil servants who represent the state at the local level) to *'take those measures provided by article 5 of the law which are needed for the maintenance of public order'*. The measures include the establishment of a curfew within limited areas and times and can allow law enforcement officials to carry out searches without warrants, close public meeting places of any kind, or place people under 'house arrest'.

On the same day, the Minister of Interior announced that he had ordered the *Préfets* to proceed with the immediate expulsion of people convicted of criminal acts during the riots, whether they have an irregular or regular administrative status, including those who hold residence permits.

Amnesty International is concerned that this expulsion procedure will be seen as a form of punishment, and that those threatened with expulsion may be denied access to a fair and public hearing before an independent and impartial tribunal to present their case against the executive decision. Amnesty International considers this executive order to be discriminatory as it exclusively targets foreign nationals. Amnesty International is also concerned with the impact that the expulsions might have on members of their families. The right to private and family life is protected by Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Amnesty International calls on the French government not to expel anyone to another country where they might be at risk of torture or ill-treatment. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits States Parties from expelling, returning or extraditing a person to another State *'where there are substantial grounds for believing that he would be in danger of being subjected to torture.'*

Amnesty International is also concerned that the measures taken by the Ministry of Interior might put people who are recognized as refugees at risk of expulsion or others who are in the process of applying for asylum. Article 33 of the Convention relating to the Status of Refugees (Refugee Convention) of 1951 prohibits the expulsion or return (*'refoulement'*) of a refugee where his or her *'life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'*. France is a State Party to the Refugee Convention and as such is bound by the obligation not to subject refugees to expulsion or *'refoulement'*.

While recognizing the duty of the French state to protect its population from violent criminal acts, Amnesty International is concerned that some of the measures may lead to human rights violations and calls on the authorities to ensure that all the measures taken for this purpose are necessary and proportionate. According to the UN Human Rights Committee, the restriction of specific human rights

safeguards must be necessary; they must be *'strictly required by the exigencies of the situation'*. Any measure taken to restrict a human rights safeguard during an emergency must also be proportionate. The principle of proportionality means that measures must not be excessive in comparison with the threat, and must correspond with a genuine threat, or existing practice which leads to criminal acts, rather than a perceived threat, or generalized fear.

International human rights law also provides due process guarantees regarding expulsions. Article 13 of the International Covenant on Civil and Political Rights (ICCPR) requires that any decision to expel an alien from the territory of a State Party to the ICCPR be made *'in accordance with law'*. Unless there are compelling national security reasons, the person to be expelled must be allowed to give reasons against his or her expulsion, to be represented, and to have his or her case reviewed by a *'competent authority'*.

The organization urges that individuals arrested and tried in connection with the unrest are ensured all the procedural rights in accordance with national law and international human rights standards. Amnesty International also urges the authorities to investigate thoroughly and independently all allegations of excessive use of force as well as racist abuses by law enforcement officials.

The organization further urges the government to ensure that official statements and security measures taken do not target communities of French nationals of North African and sub-Saharan extraction or migrants as a whole. Such statements could also lead to members of these communities being attacked by private individuals.

Amnesty International has in the past expressed concern to the government authorities about reports of racist and discriminatory treatment of ethnic minorities. In particular, in its April 2005 report *France: the Search for Justice - The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment, (AI Index: EUR 21/001/2005)*, the organization highlighted that most of the cases of alleged ill-treatment by law enforcement officials involved persons of non-European ethnic origin who were often of North African or sub-Saharan extraction.

The number of complaints of ill-treatment has increased in recent years. A rise in such incidents, especially in the context of police identity checks or in police custody, has also been detected. Identity checks often degenerate into violence and, in many cases, this is the result of aggressive or insulting conduct of law enforcement officials.

The report also highlighted evidence of the widespread failure of the judicial system to prosecute and punish human rights violations carried out by law enforcement officials. This pattern of impunity contributes to a lack of public confidence that law enforcement officials operate under the rule of law and are held accountable for their actions.

Amnesty International reiterates its recommendations to the government and other relevant authorities, made in April, to:

- Review procedures, guidelines and their implementation in relation to identity checks in order to ensure that they are not carried out in a discriminatory manner;
- Enforce and monitor the implementation of the existing legislation prohibiting racist abuse;
- Ensure proper implementation of the provisions on racist motivation as an aggravating circumstance in specified offences;
- Sign and ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which sets out a general prohibition of discrimination, including discrimination by any public authority;
- Sign and ratify the Framework Convention for the Protection of National Minorities.

## **Background**

On 8 November the Prime Minister responded to serious unrest in France by acknowledging that serious measures aimed at ending social exclusion in disadvantaged areas were needed.

The unrest was sparked off by the disputed death of two boys allegedly fleeing a police identity

check, on 27 October in Clichy-sous-Bois, near Paris.

Riots have taken place mainly in districts heavily populated with communities of French nationals of North African and sub-Saharan extraction as well as migrants, to voice their frustration with the French government about, among others, discriminatory practices and consequent lack of job opportunities and social inequalities affecting these areas as well as their anger towards the often racist and aggressive conduct of law enforcement officials.

Violence spread across the country affecting towns and major cities including Toulouse, Marseille, Nice, Rouen, Strasbourg, Lille, Dijon and Avignon. A resident of Seine-Saint-Denis Jean-Jacques Le Chenadec, 61, died of injuries he received in an assault on 4 November; more than 30 law enforcement officials were injured and damages to buildings and vehicles were reported. As of 9 November over 1,124 people have been taken into police custody, including minors.