

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

13 July 2023 EUR 21/6999/2023

# FRANCE: AUTHORITIES MUST DELIVER JUSTICE FOR UNLAWFUL KILLING OF 17-YEAR-OLD NAHEL M

## MEANINGFUL POLICING REFORM AND OVERDUE RECKONING WITH SYSTEMIC RACISM IN LAW ENFORCEMENT URGENTLY NEEDED IN RESPONSE TO PUBLIC ANGER

On the morning of Tuesday, 27 June 2023, at approximately 08h16, a French police officer shot and killed a 17-year-old child named Nahel M during a traffic stop in Nanterre, a suburb of Paris. At the time of the shooting, there was also a 17-year-old boy in the front passenger seat and a 14-year-old boy in the back seat. Based on the publicly available footage that Amnesty International has reviewed, the shooting appears to have been an unlawful use of lethal force that arbitrarily deprived Nahel M of his right to life and recklessly endangered the lives of the two passengers and potentially any bystanders.

It was reported on 29 June that the police officer who fired the fatal shot is under formal investigation by the Inspection Générale de la Police Nationale (IGPN, the National Police internal inspectorate) for “voluntary manslaughter by a public official” and remains in custody.<sup>1</sup> The public prosecutor has also opened an investigation, conducted by the Nanterre Commissariat and Sûreté territoriale des Hauts-de-Seine, to determine if the now deceased Nahel M was guilty of allegedly failing to obey an instruction from a responsible agent to stop a vehicle during a roadside check,<sup>2</sup> known as a “refus d’obtempérer”.<sup>3</sup>

Nahel M was at least the 15<sup>th</sup> person since the beginning of 2022 to be killed in a vehicle by police. According to Reuters news agency, the majority of these victims were Black or Arab men. Nahel M himself was a French citizen of Algerian origins.

Amnesty International believes that Nahel M’s unlawful killing did not happen in a vacuum but was a direct consequence of a combination of the prevalence in France of racial profiling by police and a dangerously permissive legal framework governing the use of lethal force by law enforcement. This framework fails to set a threshold of requiring an *imminent threat* of death or serious injury before firearms are permitted to be used, giving the police overly broad discretion in the use of firearms, which falls well short of international human rights law and standards.

Nahel M’s killing cannot be divorced from the effects of long-denied and unaddressed police impunity for unnecessary or excessive use of force – including the unlawful use of lethal force -- within the context of the festering injustice of systemic racism in law enforcement in France.

Indeed, in 2021 a coalition of organizations including Maison Communautaire pour un Développement Solidaire (Community House for Solidarity Development – MCDS); Pazapas; Réseau Egalité, Antidiscrimination, Justice Interdisciplinaire (Equality, Anti-discrimination, Interdisciplinary Justice Network – Reaji); Amnesty International France; Human Rights Watch; and Open Society Justice Initiative filed a joint class action lawsuit in France’s highest administrative authority criticizing the French state for years of inaction and failure to take necessary steps to prevent and remedy racial profiling in police identity checks, despite overwhelming evidence of systemic discrimination.<sup>4</sup>

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<sup>1</sup> Mediapart, « Mort de Nahel à Nanterre : un policier mis en examen pour « homicide volontaire » et incarcéré », 29 June 2023, <https://www.mediapart.fr/journal/france/290623/mort-de-nahel-nanterre-un-policier-mis-en-examen-pour-homicide-volontaire-et-incarcere>

<sup>2</sup> Libération, « Pourquoi une enquête a-t-elle été ouverte contre Nahel après sa mort ? », 20 June 2023, [https://www.liberation.fr/checknews/pourquoi-une-enquete-a-t-elle-ete-ouverte-contre-nahel-apres-sa-mort-20230630\\_616CYW17CZELBGI4ZMFCRQKEDI/](https://www.liberation.fr/checknews/pourquoi-une-enquete-a-t-elle-ete-ouverte-contre-nahel-apres-sa-mort-20230630_616CYW17CZELBGI4ZMFCRQKEDI/)

<sup>3</sup> «Le fait, pour tout conducteur, d’omettre d’obtempérer à une sommation de s’arrêter émanant d’un fonctionnaire ou d’un agent chargé de constater les infractions et muni des insignes extérieurs et apparents de sa qualité est puni de deux ans d’emprisonnement et de 15 000 euros d’amende. »

France, Highway Code, 2017, [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000045071445](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000045071445), Chapter 3, Article L233-1

<sup>4</sup> Amnesty International, « France: Class action lawsuit against ethnic profiling filed over systemic racial discrimination », 22 July 2021, <https://www.amnesty.org/en/latest/press-release/2021/07/france-class-action-lawsuit-against-ethnic-profiling-filed-over-systemic-racial-discrimination/>

As noted by former UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, in her *amicus curiae* brief for the class action lawsuit:

Racial profiling is simultaneously a cause and a consequence of systemic racism. Such practices do not exist in a vacuum and their continued prevalence within France can be seen as reflective of the persistence of systemic societal racism. The continuation of racial profiling and racist systems which perpetuate it is in clear contravention of France's obligations under international human rights law to prohibit racial discrimination. There is a clear legal and moral imperative for France, as a State party to almost all the core human rights treaties, to take concrete and decisive steps to eliminate racial profiling, as part of broader efforts to dismantle systemic racism across all sectors of French society.<sup>5</sup>

The UN Special Rapporteur's emphasis that racial profiling practices do not exist in a vacuum is particularly pertinent in relation to long-standing denials by the French authorities of widespread excessive use of force and – as labelled by Amnesty International as long ago as 2005 – *de facto* impunity for law enforcement for human rights violations, including unlawful killings, unnecessary or excessive use of force, torture and other ill-treatment, with racist abuse reported in many cases and racist motivation appearing to be a factor in many more.<sup>6</sup>

## **“HOW MANY NAHELS WERE NOT FILMED? (COMBIEN DE NAHEL N'ONT PAS ÉTÉ FILMÉS ?)”<sup>7</sup>**

Prior to the emergence of verified footage of the incident, unnamed police sources were cited in the first media reports to emerge about the incident, which contained descriptions of the events that were subsequently contradicted by the audiovisual evidence recorded by an eyewitness to the incident.

Media reports about the shooting began emerging approximately two hours after the incident had occurred with unnamed police sources claiming that the driver had refused to abide by an instruction to stop his vehicle, known as a “refus d’obtempérer,” a violation of Article L233-1-1 of the Highway Code, which carries a penalty of five years in prison and a fine of 75,000 EUR if non-compliance also directly exposes others to a risk of death or serious injury.<sup>8</sup>

The initial media reports on 27 June also cited unnamed police sources saying that a police officer had positioned himself in *front* of the car to stop it and that the driver, Nahel M, had then accelerated the vehicle in the police officer's direction, resulting in the officer drawing their firearm, shooting once at Nahel M, and causing the car to crash into a roadside pole.<sup>9</sup>

Video footage of the incident began circulating on social media networks a few hours later, contradicting key elements of the information attributed to the unnamed police sources in these initial media reports.

In the video,<sup>10</sup> two police officers are positioned on the left-hand side of the vehicle by the driver's seat, both with their firearms drawn, pointing at close range towards where the driver would be positioned. Prior to the shooting, the second

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5 Conseil D'Etat, *Third-party intervention by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in action de groupe en cessation de manquement before Conseil D'etat, Section du Contentieux*, UN Special Rapporteur on Contemporary Forms of Racism, Racial discrimination, Xenophobia and Related Intolerance,

<https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/amicus/2022-06-28/AmicusBrieftoFrance-Third%20party-intervention-SR-Achiume-EN.pdf>, January 2021, paras 83 - 85

6 Amnesty International, *France: Briefing to the UN Committee against Torture, 2010*, (AI Index: EUR 21/002/2010) [https://www2.ohchr.org/english/bodies/cat/docs/ngos/AI\\_France44.pdf](https://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_France44.pdf),

See also: Amnesty International, *France: Public outrage: Police officers above the law in France*, (Index Number: EUR 21/003/2009), 2 April 2009,

<https://www.amnesty.org/en/documents/eur21/003/2009/en/>

Amnesty International, *France: 'Our lives are left hanging': Families of victims of deaths in police custody wait for justice to be done*, (Index Number: EUR 21/003/2011), 30 November 2011,

<https://www.amnesty.org/en/documents/eur21/003/2011/en/>

and Amnesty International, *France: The search for justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment*, (Index Number: EUR

21/001/2005), 5 April 2005, <https://www.amnesty.org/en/documents/eur21/001/2005/en/>

7 A popular slogan at #justicepourNahel protests

8 *Lorsque les faits prévus à l'article L. 233-1 ont été commis dans des circonstances exposant directement autrui à un risque de mort ou de blessures de nature à entraîner une mutilation ou une infirmité permanente, ils sont punis de cinq ans d'emprisonnement et de 75 000 € d'amende.* »,

France, Highway Code, 2017, [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000045071445](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000045071445), Chapter 3, Article L233-1-1

9 « D'après les éléments fournis par une source policière, un fonctionnaire de police s'est placé à l'avant pour le stopper, le conducteur lui a alors foncé dessus. Le policier a fait usage de son arme et a tiré une fois. Le véhicule s'encastre quelques mètres plus loin dans un poteau »

BFMTV, « Nanterre: Ce que l'on sait du refus d'obtempérer qui a conduit à la mort d'un adolescent », 27 June 2023, [https://www.bfmtv.com/paris/nanterre-ce-que-l-on-sait-du-refus-d-obtempere-qui-a-conduit-a-la-mort-d-un-adolescent\\_AN-202306270498.html](https://www.bfmtv.com/paris/nanterre-ce-que-l-on-sait-du-refus-d-obtempere-qui-a-conduit-a-la-mort-d-un-adolescent_AN-202306270498.html)

10 Le Monde, Nahel M. tué par un policier à Nanterre : les images du drame, 28 June 2023, [https://www.lemonde.fr/societe/video/2023/06/28/adolescent-tue-par-un-policier-a-nanterre-le-resume-des-evenements\\_6179582\\_3224.html](https://www.lemonde.fr/societe/video/2023/06/28/adolescent-tue-par-un-policier-a-nanterre-le-resume-des-evenements_6179582_3224.html)

officer appears to throw at least one punch or strike, hitting the driver.<sup>11</sup> The car starts to move a second later and immediately thereafter one officer fires their weapon through the driver side window before stepping aside as the car moves forward. There is unclear audio from the footage. Nahel M's legal team have claimed that the audio captures the officer with his weapon drawn by the driver's window threatening "I'm going to put a bullet in your head" ("Je vais te mettre une balle dans la tête") and the second officer encouraging "Shoot him!" ("Shoot le!"), seconds before the first officer fires his weapon into the driver-side window of the car.<sup>12</sup>

On 30 June, BFMTV broadcast a video initially uploaded to social media featuring the audio of a person claiming to be a friend of Nahel M's and the 17-year-old front seat passenger who fled the scene after the shooting. This person claimed that one of the two officers first asked Nahel M to lower his window, which Nahel M did, and then the officer threatened to shoot Nahel M if he did not turn off the engine. This person also claimed that the officer warned Nahel M, "don't move or I'll put a bullet in your head", with the second officer saying, "shoot him". The friend claimed that Nahel M was struck three times with the butt of the gun. The third strike caused a reaction, with Nahel M releasing the brake, and as the car began to advance, the officer shot Nahel M at close range and killed him.<sup>13</sup>

Also on 30 June, the 17-year-old front seat passenger, who had been missing since the shooting, gave an interview to *Le Parisien*. According to his account, a police officer instructed Nahel M to lower the window and to turn off the engine. Both officers struck Nahel M with the butt of their guns. The passenger described Nahel M as being panicked and unable to speak, and said that both police officers were pointing their guns at Nahel M. The officer closest to the driver's window struck Nahel M with the butt of his gun again (a third strike) and instructed him to turn off the engine or else the officer would shoot. The front-seat passenger said the other officer also said "something to the effect of 'I am going to put a bullet in your head'". He recounted that Nahel M tried to protect himself from being hit again. Nahel M was stunned and lifted his foot off the break and, as the car was an automatic, it started rolling forwards. The second officer then said "shoot him" just before the other officer fired his gun into the car. The passenger said that Nahel M was in agony and his foot was stuck on the accelerator. Nahel M was conscious for another three seconds and pressed the car horn. Nahel M started trembling and then lost consciousness. The front-seat passenger fled fearing that he would be shot and killed too.<sup>14</sup>

On 3 July, *Le Parisien* published an interview with the father of the 14-year-old backseat passenger, who shared his son's version of the tragic incident. This account also noted that both police officers had their guns pointed at Nahel M and that Nahel M was struck "about three times" by the officers, with Nahel M trying to protect his head. The back-seat passenger recounted one officer saying to Nahel M that he would "put a bullet in his head" and that Nahel M subsequently released the brake in a state of panic, and when the car began moving, the second officer said, "shoot him" and his colleague fired one bullet at Nahel M, killing him.<sup>15</sup>

An unnamed source in a *TF1 Info* media report of 3 July claimed the second police officer, the colleague of the officer under investigation, declared while in custody that he had only said "Turn off the engine!" (Coupe le moteur) and "Put your hands behind your head!" (Les mains derrière la tête).<sup>16</sup>

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11 At 00:03 – 00:04 in this video, *Le Monde*, Nahel M. tué par un policier à Nanterre : les images du drame, 28 June 2023, [https://www.lemonde.fr/societe/video/2023/06/28/adolescent-tue-par-un-policier-a-nanterre-le-resume-des-evenements\\_6179582\\_3224.html](https://www.lemonde.fr/societe/video/2023/06/28/adolescent-tue-par-un-policier-a-nanterre-le-resume-des-evenements_6179582_3224.html)

12 Libération, Nahel, conducteur de 17 ans abattu à Nanterre : les images qui mettent en cause le tir du policier, 27 June 2023, [https://www.liberation.fr/societe/police-justice/hauts-de-seine-un-automobiliste-soupconne-dun-refus-dobtemperer-tue-par-la-police-20230627\\_HALNID55IFHZ7MXL6W7RCQCSDA/?redirected=1](https://www.liberation.fr/societe/police-justice/hauts-de-seine-un-automobiliste-soupconne-dun-refus-dobtemperer-tue-par-la-police-20230627_HALNID55IFHZ7MXL6W7RCQCSDA/?redirected=1)

13 BFMTV, « Mort de Nahel : le troisième passager de la voiture donne sa version des faits pour "rétablir la vérité", 30 June 2023, [https://www.bfmtv.com/police-justice/mort-de-nahel-le-troisieme-passager-de-la-voiture-donne-sa-version-des-faits-pour-retablir-la-verite\\_AV-202306300837.html](https://www.bfmtv.com/police-justice/mort-de-nahel-le-troisieme-passager-de-la-voiture-donne-sa-version-des-faits-pour-retablir-la-verite_AV-202306300837.html)

14 *Le Parisien*, Mort de Nahel : « J'avais peur qu'on me tire dessus », le passager qui a pris la fuite sort du silence, 30 June 2023, <https://www.leparisien.fr/faits-divers/mort-de-nahel-javais-peur-que-je-me-tire-dessus-le-passager-qui-a-pris-la-fuite-sort-du-silence-30-06-2023-2LGI4CKJYBD4ROACDHZQZFE4E.php>

15 « Le jeune homme raconte : « les policiers [...] ont pointé leurs armes sur Nahel » qui prend « environ trois » coups, et tente de « se protéger la tête ». L'un des policiers lance « qu'il allait lui mettre une [balle] dans la tête ». Le pied de Nahel Merzouk aurait « lâché le frein sûrement par panique, en essayant de se protéger. La voiture a avancé toute seule. C'était une automatique. Et le policier a dit à son collègue de tirer. Et le coup est parti. Nahel, après avoir reçu la balle, il a dit : C'est un fou, il a tiré. » Lorsque l'adolescent parvient à s'extraire du véhicule, il lève « les mains pour qu'il ne me tire pas dessus » avant de subir une balayette et d'être mis en garde à vue, comme en attestent les images. « Je me suis retrouvé par terre. J'ai dit (au policier) que je n'avais rien fait, et il m'a dit : Ferme ta gueule. Et il m'a menotté. » Il comprend que son ami est mort. »

*Le Parisien*, « C'est un fou, il a tiré » : les derniers mots de Nahel racontés par le passager arrière de la voiture, 3 July 2023, <https://www.leparisien.fr/faits-divers/cest-un-fou-il-a-tire-les-derniers-mots-de-nahel-racontes-par-le-passager-arriere-de-la-voiture-03-07-2023-6HW455JAGNACTGURYDNERVJWPM.php>

16 *TF1 Info*, « Mort de Nahel : que sait-on du jeune passager de la voiture de la victime, entendu par l'IGPN ce lundi ? » 3 July 2023, <https://www.tf1info.fr/justice-faits-divers/mort-de-nahel-merzouk-que-sait-on-du-jeune-passager-de-la-voiture-de-la-victime-entendu-par-l-igpn-ce-lundi-2262438.html>

## AN UNLAWFUL KILLING: USE OF LETHAL FORCE AND FIREARMS UNDER FRENCH DOMESTIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW

The day of Nahel M's killing, Députée Caroline Abadie, vice-chair of the National Assembly's law committee, stated in an interview that, "After all, the police have the right to use force. We're subject to the rule of law, we must remember the fundamentals, when there's a police roadblock, you stop, simple as that [...] One must also bear in mind these basic principles."<sup>17</sup> Députée Abadie's reasoning is deeply flawed yet reflects widely promoted opinions regarding an alleged justification for the use of lethal force during traffic stops. The MP's declarations pay lip service to international human rights law and standards regarding the use of firearms. The mere fact that a person resists arrest or tries to escape, without posing any danger to anybody's life, is not a sufficient reason to use firearms. In France, the unlawful use of firearms in the context of traffic stops appears to be associated with a racist bias, as many of the victims of unlawful killings occurring in this context are Black and Northern African men (see below).

Unlawful killings of drivers and passengers by French police is a long-standing human rights concern. In 2018, the European Court of Human Rights ruled against France for the arbitrary deprivation of the right to life of Naguib Toubache, who had been killed by French gendarmerie in 2008 but was denied justice and remedy in the French court system, which had determined his killing to have been lawful.

In the l'Oise region in November 2008, Naguib Toubache was shot in the heart and killed at the age of 21. He was in the back passenger seat of a car being pursued by the gendarmes who fired six bullets at the car, with one of the last two bullets hitting Toubache's heart and killing him. A judicial investigation was launched against the gendarme on a charge of manslaughter. On 25 January 2013, an order by the investigating judges reclassified the offence as inadvertent and negligent homicide. On 21 July 2013, the Court of Appeal quashed that order on the grounds that the gendarme was not criminally responsible and should not be committed for trial. The Court of Appeal found that the gendarme's use of his weapon had been absolutely necessary in order to stop the vehicle. The Court of Cassation, the highest court of the French judiciary, dismissed an appeal on points of law by the applicants.

Naguib Toubache's family took the case to the European Court of Human Rights, which ruled in June 2018 that Toubache's death was a violation of Article 2 of the European Convention on Human Rights (ECHR). The Court determined that, at the moment the gendarme opened fire, the driver did not pose an immediate threat to the gendarme's life or the lives of his colleagues, and that stopping the vehicle which had driven away had not been a matter of urgency. Therefore, the use of a firearm by the gendarme not been absolutely necessary in order to carry out a lawful arrest and was unlawful. The ECtHR thus ruled that France had violated Article 2 of the ECHR.<sup>18</sup>

The court also noted that in the period between Toubache's killing in 2008 and his case being heard at the European Court of Human Rights, France had introduced a law, La loi no 2017-258 du 28 février 2017, unifying the framework for the use of firearms by police and gendarmes, incorporating the European Court's jurisprudence, and introducing the dual principle of absolute necessity and strict proportionality for the use of force. Despite the introduction of the absolute necessity and strict proportionality principles on the use of force, France's current framework governing the use of firearms and lethal force still falls below international human rights law and standards.

The right to life is guaranteed under Article 2 of the ECHR and Article 6 of the International Covenant on Civil and Political Rights (no one shall be arbitrarily deprived of their life), to which France is also a signatory. The United Nations Human Rights Committee's General Comment No. 36 on the right to life states that, "The duty to protect by law the right to life requires that any substantive ground for deprivation of life must be prescribed by law and must be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."<sup>19</sup> Furthermore, international standards require all states to ensure that:

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17 LCP, Twitter post, 27 June 2023, "Refus d'obtempérer à #Nanterre : Faisant part de son "émotion" après la mort du jeune homme, @AbadieCaroline rappelle néanmoins que "c'est la police qui détient le droit de faire usage de la force". "Quand il y a un barrage de police, on s'arrête. Point barre." <https://twitter.com/LCP/status/1673718642305908736?s=20>

18 European Court of Human Rights (ECtHR), Toubache v. France application no. 19510/15, 5th division, 7 June 2018, [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-183374%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-183374%22]})

19 UN Human Rights Committee (HRC), General Comment No. 36, 3 September 2019, UN Doc. CCPR/C/GC/36, para 19,

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H159790VGGb%2BWPAXhN19e0rX3cJlmWwe%2FGBLmVrGmT01On6KBQgqmxPNjrlLdefuuQjIN19BgOr%2FS93rKPWbCbgoJ4dRgDoh%2FXgwn>

- “as far as possible, [law enforcement officers] apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>20</sup>
- When the use of force is unavoidable, law enforcement officials shall “Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.”<sup>21</sup>
- Use of firearms is permissible only “when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”<sup>22</sup>

The United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials includes Principle 9, which states that “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life [...] intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.<sup>23</sup>

Amnesty International’s Guidance on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials makes clear that a failure to follow an instruction to stop a car does *not* in and of itself legitimate the use of force.

At checkpoints, it is important to stress that the mere fact a driver does not stop at the checkpoint does not allow the law enforcement official to conclude that the driver is a dangerous person. And firing at a moving vehicle (even if aiming at the tyres) carries a great risk to the car’s passengers. In this regard, it is important to stress that firing at a moving vehicle must be considered as the use of lethal force against a person and not simply as the use of force against an object. Thus, the use of a firearm in such a situation can – if at all – only be justified by considerations other than simply disrespecting the checkpoint, i.e., there must be an **imminent** threat of death or serious injury to third persons.<sup>24</sup>

France’s legal framework regarding the use of lethal force and firearms by the National Police and Gendarmerie is not sufficiently precise and falls short of international human rights law and standards. While attempts have been made to bring France’s legislation in line with the European Court of Human Rights’ jurisprudence in recent years, there remains far too much discretion and arbitrariness regarding when the police are justified in using lethal force.

Historically, the framework governing the use of force by law enforcement in France was established in Article L122-5 of the Penal Code.<sup>25</sup> This article specified that an officer would not be criminally liable if resorting to legitimate defense of themselves or others at risk from an **immediate** unjustified attack, providing the force used was **proportionate** with the gravity of the attack, or if performing an act of self-defense – other than voluntary homicide - to disrupt the execution of a crime or offence against property if the force was **strictly necessary** to achieve an objective and **proportionate goal commensurate** to the gravity of the offence.

The grounds for use of firearms were expanded in 2017 with the addition of Article L. 435-1 to the Internal Security Code, which introduced five new scenarios in which firearms can legally be deployed by the National Police and Gendarmerie.<sup>26</sup>

20 Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

21 Principle 5a of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

22 Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, Article 3, Commentary

23 Principle 9 includes further *cumulative conditions* which can be taken into account when a person is presenting an imminent threat to life “to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives”.

24 Amnesty International, *Use of Force Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law enforcement officials*, August 2015, [https://www.amnesty.org.uk/files/use\\_of\\_force.pdf](https://www.amnesty.org.uk/files/use_of_force.pdf) pg. 119

25 « *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 de l'atteinte. N'est pas pénalement responsable la personne qui, pour interrompre l'exécution d'un crime ou d'un délit contre un bien, accomplit un acte de défense, autre qu'un homicide volontaire, lorsque cet acte est strictement nécessaire au but poursuivi dès lors que les moyens employés sont proportionnés à la gravité de l'infraction* »

France, Penal Code, « [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006117596/#LEGISCTA000006117596](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006117596/#LEGISCTA000006117596), Article 122-5

26 « *Dans l'exercice de leurs fonctions et revêtus de leur uniforme ou des insignes extérieurs et apparents de leur qualité, les agents de la police nationale et les militaires de la gendarmerie nationale peuvent, outre les cas mentionnés à l'article L. 211-9, faire usage de leurs armes en cas d'absolue nécessité et de manière strictement proportionnée :*

The law frames the use of force in permissive terms, rather than taking the more restrictive approach that is required under international law and standards, which sets out a presumption that lethal force should not be used unless certain stringent circumstances apply.

While absolute necessity and strict proportionality are elements of the expanded framework provided by Article L. 435-1 of the Internal Security Code, the Code introduced the possibility of using weapons if there is a “presumed” or “anticipated” risk of injury to others while making no reference to the **imminence** of a threat to life or of serious injury. This formulation leaves excessively wide discretion to interpret any failure to stop a vehicle as presenting a sufficient hypothetical threat and therefore justifying the use of lethal force. The law’s framing is permissive, rather than restrictive. For example, Article L. 435-1 states that. “Agents of the National Police and officers of the national Gendarmerie [...] *can deploy their firearms*” [emphasis added]. Laws formulated as such do not meet international standards since they do not establish a requirement that lethal force be used only as a last resort; do not require that non-lethal means be used first; and do not require that the suspect pose an imminent threat of death or serious injury. International standards prescribe more stringent rules for the use of firearms, which are designed to kill, and their use should be governed by a distinct framework determining legitimate use of firearms with potentially lethal use of force and intentional use of lethal force when unavoidable to protect others’ lives.

A Prefet de Police ordinance dated 9 March 2017 further emphasised the hypothetical/anticipated grounds for using lethal force by describing the fourth point of Article L.435-2 (regarding moving vehicles) as allowing police officers to use firearms if they have a “real and objective reason to believe that the occupants are **likely**, while fleeing, to put their life or physical integrity, or that of others, at risk”<sup>27</sup>

The distinction in application between the lethal force framework of the Penal Code and the Internal Security Code is evidenced by the fact that the latter’s 2017 amendment does not apply to the Municipal Police. There are therefore two varying calculations on when lethal force can be used. As reported in *Liberation* newspaper, during the legislative process that adopted Article 435-1 of the Internal Security Code, the concept of “imminent harm” was removed from the initial draft of the proposed law, with the final version lowering the threshold for the use of lethal force to “likely harm”.<sup>28</sup>

The killing of Nahel M is a tragic example of how flawed this expanded formulation in Article 435-1 of the Internal Security Code is: the publicly available footage of Nahel M’s killing does not indicate that the advancement of the vehicle presented a threat to the police officers as they were positioned at the side of the vehicle, not in front of it. Indeed, the decision to resort to lethal force put others in danger, including the passengers, who can never legitimately be considered “collateral damage” in a policing operation.<sup>33</sup> Moreover, in causing the vehicle to advance while not under the control of the driver, the officers’ actions increased the chances that bystanders would be put at risk of harm.

The arbitrariness and ambiguity regarding Article L. 435 – 1 of the Internal Security Code is further compounded by an apparent distinction in its application, which differs between the Gendarmerie and the National Police. Despite Article L. 435-1 being designed to unify the use of the firearms framework for both the police and gendarmerie, researchers at

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- 1o Lorsque des atteintes à la vie ou à l'intégrité physique sont portées contre eux ou contre autrui ou lorsque des personnes armées menacent leur vie ou leur intégrité physique ou celles d'autrui ;
  - 2o Lorsque, après deux sommations faites à haute voix, ils ne peuvent défendre autrement les lieux qu'ils occupent ou les personnes qui leur sont confiées ;
  - 3o Lorsque, immédiatement après deux sommations adressées à haute voix, ils ne peuvent contraindre à s'arrêter, autrement que par l'usage des armes, des personnes qui cherchent à échapper à leur garde ou à leurs investigations et qui sont susceptibles de perpétrer, dans leur fuite, des atteintes à leur vie ou à leur intégrité physique ou à celles d'autrui ;
  - 4o Lorsqu'ils ne peuvent immobiliser, autrement que par l'usage des armes, des véhicules, embarcations ou autres moyens de transport, dont les conducteurs n'obtempèrent pas à l'ordre d'arrêt et dont les occupants sont susceptibles de perpétrer, dans leur fuite, des atteintes à leur vie ou à leur intégrité physique ou à celles d'autrui ;
  - 5o Dans le but exclusif d'empêcher la réitération, dans un temps rapproché, d'un ou de plusieurs meurtres ou tentatives de meurtre venant d'être commis, lorsqu'ils ont des raisons réelles et objectives d'estimer que cette réitération est probable au regard des informations dont ils disposent au moment où ils font usage de leurs armes. »

France, Internal Security Code, [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000034107970](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034107970), Article L. 435-1

27« Le 4° de l'article L. 435-2 permet aux policiers de faire usage de leurs armes : [...] uniquement s'ils ont des raisons réelles et objectives de penser que les occupants sont susceptibles de perpétrer, dans leur fuite, des atteintes à leur vie ou à leur intégrité physique ou à autrui »

Préfecture de Police, Nouveau cadre juridique d'usage des armes par les forces de sécurité, 9 March 2017, « <https://le-scpn.fr/wp-content/uploads/2017/07/Note-PP-usage-des-armes-par-les-forces-de-s%C3%A9curit%C3%A9-2017-024106.pdf>

28 *Liberation*, « Homicides policiers : Bernard Cazeneuve face à ses mensonges », 5 July 2023,

[https://www.liberation.fr/societe/police-justice/homicides-policiers-bernard-cazeneuve-face-a-ses-mensonges-20230705\\_E53JX0EY2BD7PMKIKQTQR3G3UE?utm\\_medium=Social&xtor=CS7-51-&utm\\_source=Twitter#Echobox=1688547563](https://www.liberation.fr/societe/police-justice/homicides-policiers-bernard-cazeneuve-face-a-ses-mensonges-20230705_E53JX0EY2BD7PMKIKQTQR3G3UE?utm_medium=Social&xtor=CS7-51-&utm_source=Twitter#Echobox=1688547563)

investigative journalism platform, *Flagrant Déni*<sup>29</sup> have revealed a distinct institutional interpretation of Article L. 435 – 1 of the Internal Security Code in formal instructions developed for the Gendarmerie<sup>30</sup> and separately for the National Police<sup>31</sup>.

The outcome for both law enforcement agencies, however, has been an increase in the use of firearms since 2017. *Flagrant Déni*'s comparison of available data has revealed that the use of firearms by the National Police has increased at three times the rate of the Gendarmerie. Since 2017, the use of lethal force following a "refus d'obtempérer" has increased fivefold, with the National Police being responsible for 75% of firearms use resulting in death following an apparent refusal to obey an instruction to stop.<sup>32</sup> According to the Minister of Interior's data, the number of firearm deployments towards moving vehicles has increased significantly since 2017.<sup>33</sup> There has also been an increase in people being shot and killed in moving vehicles by police. According to the independent website *Basta*, 17 people were killed in their vehicles by police between 2002 and 2017; 26 people, however, have been killed in the five years since the introduction of Article 435-1 of the Internal Security Code in 2017.<sup>34</sup> This formulation has blurred the notion of self-defense, contributing to the increase in shootings by police officers. In 2020, according to figures from the IGPN, more than half of police shootings (60%) were carried out on moving vehicles.<sup>35</sup>

A detailed study by academic experts on law enforcement, Sebastian Roché, Paul le Derff and Simon Varaine, concluded that police shootings targeting moving vehicles have increased significantly since the law change in 2017.<sup>36</sup> They note that the introduction of the absolute necessity and strict proportionality principles have been undermined by the lowering of the lethal force threshold from "imminent" to "likely harm," which has contributed to a tragic lowest common denominator effect, concluding that,

« The motivating factors behind this law were primarily to satisfy the demands of the major [police] unions, and perhaps also to strike a better balance between the police officers' right to shoot and the right of citizens to life. However, by expanding police officers' immunity from criminal liability, it nevertheless affects the delicate balance. Perhaps elected officials believed that the superior principles of proportionality and absolute necessity would prevail and provide a framework for this expanded discretion to shoot. If this was the case, they were mistaken, and in the end the lowest rule in the hierarchy of norms eventually prevailed»<sup>37</sup>

The Internal Security Code (article 435-1) must be amended to comply with international law and standards on policing to ensure that law enforcement officers are not authorized to use firearms except as a last resort in self-defense or to defend third parties against an imminent threat of death or serious injury.

## GOVERNMENT MOURNING FOR NAHEL M DELIBERATELY DIVORCED FROM HUMAN RIGHTS CONTEXT

The UN Human Rights Committee's General Comment No. 36 emphasizes that respect for the right to life has ramifications at both an individual and societal level: "The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes

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29 *Flagrant Déni*, Qui sommes-nous ? <https://www.flagrant-deni.fr/accueil/qui/>

30 France, INSTRUCTION n° 233000/GEND/DOE/SDSPSR/BSP du 1<sup>er</sup> mars 2017 relative à l'usage des armes par les militaires de la gendarmerie, 2017, <https://www.flagrant-deni.fr/wp-content/uploads/2023/06/2017.03.1-instruction-DGGN-usage-armes-gendarmerie.pdf>

31 France, Direction Générale de la Police Nationale, Nouveau cadre juridique d'usage des armes, 1<sup>er</sup> March 2017, <https://www.flagrant-deni.fr/wp-content/uploads/2023/06/2017.03.1-instruction-DGPN-usage-armes-police.pdf>

32 *Flagrant Déni*, « Tirs policiers : le droit a du mal à passer dans la pratique », 19 June 2023, <https://www.flagrant-deni.fr/tirs-policiers-le-droit-a-du-mal-a-passer-dans-la-pratique/>

33 France, Ministry of Interior Annual Activity Report for the IGPN 2020, 23 July 2021, <https://www.interieur.gouv.fr/Publications/Rapports-de-l-IGPN/Rapport-annuel-d-activite-de-l-IGPN-2020>

34 *basta!* « Tués par la police : pourquoi le recensement de batsa ! est différent de celui de l'IGPN », <https://basta.media/Tues-par-la-police-pourquoi-le-recensement-de-basta-est-different-de-celui-de-l-IGPN>, 19 July 2023

35 France, Ministry of Interior Annual Activity Report for the IGPN 2020, 23 July 2021, <https://www.interieur.gouv.fr/Publications/Rapports-de-l-IGPN/Rapport-annuel-d-activite-de-l-IGPN-2020>, pg. 37

36 Sebastian Roché, Paul le Derff and Simon Varaine., *Esprit* « Homicides policiers et refus d'obtempérer : La loi a-t-elle rendu les policiers irresponsables ? », September 2022, <https://esprit.presse.fr/actualites/sebastian-roche-et-paul-le-derff-et-simon-varaine/homicides-policiers-et-refus-d-obtempere-44252#no6>

37 « Les motifs de cette loi étaient d'abord de satisfaire les revendications de syndicats majoritaires, et peut-être aussi de mieux équilibrer le droit des policiers à tirer et le droit des citoyens à la vie. En étendant l'irresponsabilité pénale des policiers, elle a néanmoins affecté un équilibre délicat. Peut-être les élus croyaient-ils que les principes supérieurs de proportionnalité et d'absolue nécessité allaient prévaloir et encadrer cette liberté plus grande de tirer ? Si tel est le cas, ils se sont trompés, et c'est la règle la moins haute dans la hiérarchie des normes qui a finalement prévalu. »

Sebastian Roché, Paul le Derff and Simon Varaine, *Esprit*, « Homicides policiers et refus d'obtempérer : La loi a-t-elle rendu les policiers irresponsables ? », September 2022, <https://esprit.presse.fr/actualites/sebastian-roche-et-paul-le-derff-et-simon-varaine/homicides-policiers-et-refus-d-obtempere-44252#no6>

a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.”<sup>38</sup>

The most senior members of the French government promptly condemned the killing of Nahel M.

On 28 June, the day after the shooting, President Macron told reporters in Marseille that Nahel M’s death was “inexplicable” and “unjustifiable” adding “nothing, nothing justifies the death of a teenager” while also offering his support for law enforcement who “perform their duties for our protection”.<sup>39</sup> The same day he also shared a social media post offering his and the nation’s solidarity to the family and loved ones of Nahel M, and saluting the service of law enforcement, recalling the ethical framework which must be respected in policing and stressing the role of the justice system to establish the truth and responsibility, while he also appealed for calm and respect.<sup>40</sup>

The same day, Prime Minister Élisabeth Borne acknowledged in parliament that Nahel M’s killing was an “operation which clearly appears to be outside the rules of engagement for our law enforcement.”<sup>41</sup> A minute’s silence was also observed in the Assemblée Nationale in Nahel M’s memory.

Interior Minister Gerald Darmanin said that if the video footage was confirmed, under no circumstances could what was witnessed be justified. He described the video as “extremely shocking [...] seemingly not in conformity with what we want in the police.”<sup>42</sup>

However, when interrogated about the disturbing trends that Nahel M’s killing exposes, the French authorities have so far resorted to a routine, firm denialism regarding the problems of excessive use of force in French law enforcement and the systemic racism that allows law enforcement officers a large measure of impunity. Such refusals to meaningfully engage with the societal-level resonance and anguish regarding systemic racism which Nahel M’s killing has resurfaced will only result in the continuation of the status quo.

## **GOVERNMENT DOUBLES DOWN ON DENIALISM OF SYSTEMIC RACISM AND EXCESSIVE FORCE IN LAW ENFORCEMENT**

In response to media enquiries about the killing of Nahel M, a spokesperson for the United Nations Office of the High Commissioner for Human Rights (OHCHR) said:

We are concerned by the killing of a 17-year-old of North African descent by police in France on Tuesday. We note that an investigation has been launched into alleged voluntary homicide. This is a moment for the country to seriously address the deep issues of racism and discrimination in law enforcement. We also emphasize the importance of peaceful assembly. We call on the authorities to ensure use of force by police to address violent elements in demonstrations always respects the principles of legality, necessity, proportionality, non-discrimination, precaution and accountability. Any allegations of disproportionate use of force must be swiftly investigated.<sup>43</sup>

This short statement was met with a swift and robust response from the French Foreign Affairs Ministry rejecting “all accusations of racism or systemic discrimination by law enforcement in France as totally unfounded [...] the use of force by the police and national gendarmerie is regulated by the principles of absolute necessity and proportionality.”<sup>44</sup>

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38 UN Human Rights Committee (HRC), General Comment No. 36, on Article 6: right to life, CCPR/C/GC/36, para 2: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>

39 France 3, « VIDEO. "Inexplicable" et "inexcusable" : depuis Marseille, Emmanuel Macron réagit après la mort d'un adolescent tué par la police à Nanterre, 28 June 2023 » <https://france3-regions.francetvinfo.fr/provence-alpes-cote-d-azur/bouches-du-rhone/marseille/video-inexplicable-et-inexcusable-depuis-marseille-emmanuel-macron-reagit-apres-la-mort-d-un-adolescent-tue-par-la-police-a-nanterre-2804189.html>

40 President Macron, Twitter post, 28 June 2023, <https://twitter.com/EmmanuelMacron/status/1674016056883441666?s=20>: “*Nous partageons l’émotion et la peine de la famille et des proches du jeune Naël. Je veux leur dire notre solidarité et l’affection de la Nation. La Justice a été immédiatement saisie. Nos policiers et nos gendarmes s’engagent pour nous protéger et servir la République. Je les remercie chaque jour pour cela. Ils le font dans un cadre déontologique qui doit être respecté. C’est à la Justice d’établir la vérité et d’assigner les responsabilités. Je souhaite que son travail puisse aboutir rapidement. Dans un tel contexte, ce dont Nanterre et la Nation ont besoin, c’est de respect et de calme.* »

41 Public Sénat, « Mort de Nahel : une intervention de police « manifestation pas conforme aux règles d’engagement », estime Élisabeth Borne », 28 June 2023, <https://www.publicsenat.fr/actualites/politique/mort-de-nahel-une-intervention-qui-ne-semble-manifestement-pas-conforme-aux-regles-d-engagement-estime-elisabeth-borne>

42 FranceInfo, « Adolescent tué par la police à Nanterre : Gérard Darmanin évoque des images "extrêmement choquantes" », 28 June 2023, [https://www.francetvinfo.fr/faits-divers/police/video-adolescent-tue-par-la-police-a-nanterre-gerard-darmanin-evoque-des-images-extremement-choquantes-et-appelle-au-calme\\_5916782.html](https://www.francetvinfo.fr/faits-divers/police/video-adolescent-tue-par-la-police-a-nanterre-gerard-darmanin-evoque-des-images-extremement-choquantes-et-appelle-au-calme_5916782.html)

43 UN Office of the High Commissioner for Human Rights, Press briefing: France, 30 June 2023 <https://www.ohchr.org/en/press-briefing-notes/2023/06/press-briefing-france>

44 France Diplomatie, Déclaration de la porte-parole du Haut-commissariat des Nations unies aux droits de l’Homme, 30 June 2023, <https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/la-france-et-les-nations-unies/evenements-et-actualites-lies-aux-nations-unies/actualites/article/declaration-de-la-porte-parole-du-haut-commissariat-des-nations-unies-aux>



When asked about OHCHR's call for action during an interview with BFMTV, Laurent Nuñez, Préfet de Police de Paris, replied, "Absolutely not, there is no racism in the police" ("Non certainement pas, il n'y a pas de racisme dans la police.") He continued, "There may have been some cases requiring a sanction, or a few slip ups [...] we will continue to perform identity checks regardless of the person's origins, truly, the police do not take on board those kind of factors" ("Il y a pu avoir des cas sanctionnés" ou "quelques dérapages [...] On continuera à contrôler quelles que soient les origines, vraiment, les policiers n'intègrent pas ce genre de dimensions"), before noting that he was "quite shocked" by OHCHR's statement.<sup>45</sup>

In response to concerns about tourism safety, the Minister for the Economy, Bruno Le Maire, gave an interview with the British newspaper The Telegraph saying, "I repeat to them [concerned holidaymakers] with great force that it is unacceptable to say that the French police are racist, it is totally unacceptable," and according to the media article, the Minister "dismissed the fatal shooting of the 17-year-old as 'an isolated incident' in a law enforcement that 'respects the rule of law and which does its job under difficult conditions'".<sup>46</sup>

Six days after the killing of Nahel M, the President of the French Parliament, Yaël Braun Pivet, emphatically stated that "the police are carrying out their mandate in an exemplary fashion!" ("La police exerce sa mission de façon merveilleuse!").<sup>47</sup>

These assessments from senior levels of the French government are indicative of a long-standing denialism of systemic problems of excessive force, and *de facto* impunity and racism in France's law enforcement operations. The authorities prefer to reduce racism to isolated incidents of discrimination, emphasising the motivations of an individual perpetrator at the expense of interrogating patterns of discriminatory practices impacting racialised people.

France's most recent National Plan Combatting Racism, Antisemitism and Discrimination Linked to Origin for 2023 – 2026 exposes this flawed and failing approach to anti-racism as a strategic choice at governmental level. As noted by Human Rights Watch, the National Plan ignores racial profiling by the police and makes no mention of systemic racism, failing to respond to long-standing and repeated requests for the French government to commit to the collection of disaggregated equality data so that the government can develop targeted measures to tackle institutional racism.<sup>48</sup>

Taking into consideration the priorities and glaring omissions of France's National Plan Combatting Racism, alongside the comments on the public record from senior government officials since the killing of Nahel M, it is evident that the French authorities remain steadfast in their staunch denial of the reality of systemic racism manifested in law enforcement operations that target members of France's racialised communities. It also reflects their strategic refusal to take action in the face of overwhelming and long-standing evidence that the French state's claim to be a "colour blind Republic" does not result in meaningful prevention of or accountability for racist law enforcement practices.

The Committee on the Elimination of Racial Discrimination (CERD) has made clear that it is incumbent on states to be proactive in eradicating racial discrimination in all the forms it presents, including structural discrimination:

The vision for equality in the international human rights framework is substantive, and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat *de facto* or unintentional racial discrimination. The CERD has clarified that the prohibition of racial discrimination under ICERD [the Convention] cannot be interpreted restrictively and emphasizes that the Convention applies to purposive or intentional discrimination, as well as discrimination in effect and structural discrimination.<sup>49</sup>

One of the most extensively documented ways in which racialized communities in France are impacted by systemic racism is in relation to law enforcement. Reflecting on Nahel M's killing on 27 June 2023, it is impossible to ignore the lack of substantive action on the part of the French state to meaningful delivery of accountability and systemic reform with guaranteed non-repetition of the recurrent abusive patterns.

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45 BFMTV, « Laurent Nuñez: 'Il n'y a pas de racisme dans la police' », 2 July 2023, [https://www.bfmtv.com/politique/laurent-nunez-il-n-y-a-pas-de-racisme-dans-la-police\\_VN-202307020259.html](https://www.bfmtv.com/politique/laurent-nunez-il-n-y-a-pas-de-racisme-dans-la-police_VN-202307020259.html)

46 The Telegraph, "To say French police are racist is 'unacceptable', Macron's economy minister says", 4 July 2023, <https://www.telegraph.co.uk/world-news/2023/07/04/france-riots-macron-british-tourists-safety/>

47 France 2, Télématin Les 4 vérités – Yaël Braun-Pivet, 3 July 2023, <https://www.france.tv/france-2/telematin/5071101-les-4-verites-yael-braun-pivet.html>

48 Human Rights Watch, "France's Anti-Racism Action Plan Ignores Institutional Racism", 6 February 2023, <https://www.hrw.org/news/2023/02/06/frances-anti-racism-action-plan-ignores-institutional-racism>

49 Conseil D'Etat, *Third-party intervention by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in action de groupe en cessation de manquement before Conseil D'etat, Section du Contentieux*, UN Special Rapporteur on Contemporary Forms of Racism, Racial discrimination, Xenophobia and Related Intolerance, <https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/amicus/2022-06-28/AmicusBrieftoFrance-Third%20party-intervention-SR-Achiume-EN.pdf>, January 2021, pg. 6

In 2005, a year of widespread protests after Zyed Benna and Bouna Traoré were electrocuted to death while hiding from police pursuing them during an identity check, Amnesty International published a report that examined allegations of serious human rights violations by law enforcement officials dating back to 1991.<sup>50</sup> Such violations included unlawful killings, excessive use of force, torture and other ill-treatment. Racist abuse was reported in many cases, and racist motivation appeared to be a factor in many more. The report concluded that a pattern of de facto impunity existed with regard to law enforcement officials in France. It identified a number of factors contributing to this impunity, including gaps or flaws in legislation; reluctance or failure of police, prosecutors and courts to thoroughly investigate and prosecute human rights violations involving law enforcement officials; and sentences which were not commensurate with the gravity of the crime.

Amnesty International warned, in a 2009 report titled, “Public Outrage: Police officers above the law in France”<sup>51</sup>, that:

The failure to ensure accountability of those [law enforcement officials] responsible [for human rights violations], including by showing to the public that this has been done, undermines the credibility of the law enforcement agencies as a whole and damages their relationship with the public. The effects of this are most clearly visible in the outbreaks of violence which have occurred sporadically after deaths related to police interventions, for example the riots which followed the deaths of two young men pursued by police officers in Clichy-sous-Bois in November 2005.<sup>52</sup>

In 2011, Amnesty International wrote:

“The families [of victims of unlawful killings] interviewed by Amnesty International [...] they have been denied their right to know what happened, to see justice being done. Indeed Amnesty International’s research has revealed that where law enforcement officials are involved, investigations, if they happen at all, do not comply with international human rights standards of promptness, independence, impartiality and effectiveness. This comes as a result of the strong co-operative spirit amongst police officers, and the fact that magistrates who rely on police officers in their daily work are reluctant to question them as criminal suspects.”<sup>53</sup>

Despite these decades-long concerns about unnecessary and/or excessive use of force and impunity for the unlawful use of lethal force by law enforcement officials, the French authorities have routinely continued to engage in deliberative denialism, allowing these injustices to fester. In 2019, President Macron vehemently dismissed a question about police violence at a public meeting, saying “Do not speak of repression or police violence, these words are unacceptable in a state governed by the rule of law [...] I reject this term [...] After weeks and weeks [of protests] I have to say that there have been no deaths caused by law enforcement” (Ne parlez pas de répression et de violences policières, ces mots sont inacceptables dans un État de droit [...] Je refuse ce terme, tranche-t-il. Après des semaines et des semaines, moi, je constate qu’il n’y a aucun mort à déplorer du fait des forces de l’ordre).<sup>54</sup> The following year, Interior Minister Gerald Darmanin flippantly dismissed a question put to him in a parliamentary inquiry about police violence in the wake of the killing in 2020 of Cedric Chauviat by police officers who employed a dangerous chokehold that Amnesty International had recommended be outlawed since 2005. Mr. Darmanin’s response was to say that it is he who chokes when he hears the words “police violence”.<sup>55</sup>

The stubborn refusal of France’s leaders to recognise any correlation between the killing of Nahel M and wider, systemic problems regarding the unnecessary or excessive use of force by law enforcement officials, impunity for the unlawful use of lethal force, and systemic racism is a profound concern. Instead of prioritising accountability and non-repetition for unlawful acts by law enforcement which could bring some closure to the turmoil French society has experienced since Nahel M’s death, the government’s position of deliberate denial condemns France to the same human rights violations

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50 Amnesty International, “France: *The search for justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment*”, (Index number: EUR 21/001/2005), 5 April 2005, <https://www.amnesty.org/en/documents/eur21/001/2005/en/>

51 Amnesty International, France: *Public outrage: Police officers above the law in France*, (Index Number: EUR 21/003/2009), 2 April 2009, <https://www.amnesty.org/en/documents/eur21/003/2009/en/>

52 Amnesty International, “France: Breaches of the law cannot be solved by breaking the law”, 22 November 2005, [https://www.amnesty.or.jp/en/news/2005/1122\\_453.html](https://www.amnesty.or.jp/en/news/2005/1122_453.html)

53 Amnesty International, France: *‘Our lives are left hanging’: Families of victims of deaths in police custody wait for justice to be done*, (Index Number: EUR 21/003/2011), 30 November 2011, <https://www.amnesty.org/en/documents/eur21/003/2011/en/>

54 Konbini, « Macron juge inacceptable de parler de “violences policières” dans un État de droit », 8 March 2019, <https://www.konbini.com/news/macron-juge-inacceptable-de-parler-de-violences-policieres-dans-un-etat-de-droit/>

55 Libération, “Après sa sortie sur les violences policières, Darmanin ne s’étouffe pas avec les regrets », 29 July 2020, [https://www.liberation.fr/politiques/2020/07/29/apres-sa-sortie-sur-les-violences-policieres-Gerald-darmanin-ne-s-etouffe-pas-avec-les-regrets\\_1795515/](https://www.liberation.fr/politiques/2020/07/29/apres-sa-sortie-sur-les-violences-policieres-Gerald-darmanin-ne-s-etouffe-pas-avec-les-regrets_1795515/)

being repeated, including the unlawful deprivation of life which can only continue to foster further mistrust in law enforcement amongst racialised individuals and communities in France.