



Human Rights Watch
UPR Submission
France
February 2008

This submission summarizes Human Rights Watch's key concerns with France's compliance with international human rights law in the context of the fight against terrorism. For fuller analyses, please see the attached Human Rights Watch report *France: In the Name of Prevention: Insufficient Safeguards in National Security Removals; Letter to French Parliament: Improve Safeguards in Expulsion Cases; and Letter to French Senators: More Safeguards Needed in Anti-Terrorism Bill*. Proposed recommendations to France are included in Annex I.

Insufficient safeguards in national security removals

Over the past five years, France has forcibly removed dozens of foreign residents accused of links to terrorism and extremism. Available government figures indicate that 71 individuals described as "Islamic fundamentalists" were forcibly removed from France between September 2001 and September 2006. Fifteen of these were described as imams. Though not a new policy, national security removals now form an integral part of France's national strategy to counter violent radicalization and recruitment to terrorism.

The procedures for national security removals do not provide sufficient guarantees to prevent violations of fundamental human rights, including the right to be free from torture and ill-treatment, the right to freedom of expression, and the right to family and private life.

Our primary concern is that those subject to a national security removal do not have the right to an automatic in-country appeal. Those who fear that removal would place them at risk of torture or ill-treatment can petition for interim relief (*référé-liberté*), and the interim relief judge must decide within 48 hours whether to suspend the expulsion order and/or the order designating the country of return. A negative decision can be appealed to the highest administrative court in France, the Council of State (*Conseil d'Etat*). While authorities generally suspend removal while the interim relief judge considers the case, they are not obliged to do so.

Human Rights Watch is concerned that the lack of an automatically suspensive appeal creates a situation in which individuals facing removal do not have access to an effective remedy. This is the view taken by the European Court of Human Rights, most recently in April 2007 when it ruled that France had violated the rights of an Eritrean asylum seeker because none of the appeals available to him following a refusal to enter France to apply for asylum had suspensive effect. In that case, the Court ruled that the "practice" of suspending expulsion until a decision is made on interim relief petitions "cannot be a substitute for a fundamental procedural guarantee of a suspensive appeal." Legislative reforms in November 2007 gave arriving asylum-seekers the right to an in-country appeal against refusal to enter, in compliance with the Court's ruling, but failed to extend this right to others at risk of unsafe returns.

In cases involving national security, asylum claims have suspensive effect only at first instance, so an initial negative decision by the national refugee office paves the way for immediate removal even if the individual has appealed the decision to the independent refugee appeals board.

The UN Committee Against Torture (CAT) has condemned France twice since 2002 for deporting individuals who raised fear of torture on return before their appeals had been fully examined. In both cases France ignored CAT requests for interim measures while the committee considered the claims. The most recent finding, in May 2007, concerned Adel Tebourski, a French-Tunisian national whose acquired French citizenship was stripped in order to expel him to Tunisia in August 2006.

Our second concern with removal procedures in France involves the preference for administrative expulsions in lieu of criminal prosecutions to deal with foreigners accused of extremism and fomenting radicalization. Using immigration powers allows the government to bypass the more stringent procedural safeguards built into the criminal justice system. A 2004 reform to the Immigration code broadened the scope of speech giving rise to administrative expulsion to "incitement to discrimination, hatred or violence against a specific person or group or persons." At least fifteen men described by authorities as imams have been expelled since 2001, many of whom on the grounds they preached ideas that advocated extremism and fomented radicalization.

The government's evidence in these cases, produced only if the expulsion order is appealed in the administrative court, is contained in intelligence reports commonly referred to as "notes blanches" because they are unsigned and do not disclose the sources or the methods used to obtain the information. These reports are shared with the defense but by their very nature cannot be independently verified or easily contested. Council of State jurisprudence requires that a note blanche be rejected if it is too brief, does not provide sufficient details, or is limited to assertions (as opposed to facts). In practice, however, the lack of precision of the legal concept of a threat to public order, the comparatively low standard of proof in the system of administrative justice, and the benefit of the doubt most judges accord the intelligence reports, make it difficult for a person effectively to contest the expulsion.

Our third concern is that forced removals can interfere with the right to family and private life of the individuals removed and their relatives in a way that infringes international human rights law. This is especially true for individuals who were born in France or lived there for the better part of their lives, are married to French citizens or residents, and have children with French citizenship. The European Court of Human Rights has found France in violation of the right to family life in a number of forced removal cases involving long-term residents convicted of serious crimes, although it has yet to rule on a case involving national security.

Criminal law and procedure in terrorism investigations

France's criminal justice approach to countering terrorism is based on a centralized system in which specialized investigating magistrates have broad powers to detain potential terrorism suspects for up to six days in pre-arraignment police custody (*garde à vue*) and charge them with an ill-defined offense of "criminal association to commit a terrorist act" (*association de malfaiteurs*). Investigations into alleged international terrorism networks in France can often last for years, during which time large numbers of people are detained, interrogated and remanded into pre-trial detention on the basis of minimal proof, including the wives and partners of primary suspects. In the investigation of the so-called "Chechen Network" between 2002 and 2005, sixteen couples were arrested. Fourteen of the women were held in *garde à vue* detention and subsequently released without charge. Of the two women prosecuted, one was convicted, while the other was acquitted after spending one year in pre-trial detention with her infant daughter. Eight of the men in these couples were convicted at trial, one was acquitted, and the remaining seven were not prosecuted in this case.

Human Rights Watch is concerned that the lack of safeguards during police custody undermines the right of detainees to an effective defense at a critical stage. During *garde à vue*, detainees have severely curtailed access to legal counsel. Access to a lawyer is granted only after 72 hours

(or 96 hours when garde à vue is extended to six days). Subsequent visits are permitted after a further 24 hours. Each visit is limited to 30 minutes, and counsel does not have access to any detailed information about the charges against their client. Such a system flouts one of the most basic safeguards against miscarriages of justice and risk of ill-treatment, which is the right of access to a lawyer from the outset of detention.

Police may interrogate detainees at will during garde à vue in the absence of their lawyer, at any time of the day or night, leading to oppressive questioning. For example, Human Rights Watch is aware of a case in which a terrorism suspect was interrogated for a total of 43 hours during his four-day garde à vue, while the diabetic wife of another suspect was interrogated for a total of 25 hours during her three-day garde à vue. Although all detainees in France have the right to silence, they are not notified of this right, and all statements made under interrogation are admissible in court. A recent reform instituting audio and video-recording of all police interrogations as well as hearings with the investigative magistrate explicitly excluded terrorism cases.

The association de malfaiteurs charge, considered the cornerstone of the French pre-emptive counterterrorism model, has been criticized as arbitrary and lacking in legal certainty. The elements of the crime, as developed in jurisprudence, include the existence of a group of several people united in a collective criminal purpose, each member must have full awareness of this purpose and the fact that it is a criminal undertaking, and this purpose must be demonstrated through one or more material acts. There is no requirement that any of the participants take concrete steps to implement execution of a terrorist act.

Terrorism suspects are often remanded to pre-trial detention—which can last over three years in minor felony cases and nearly five years in serious felony cases—on the basis of minimal proof. While a positive reform in 2001 placed the responsibility for determining whether to remand a suspect to pre-trial detention in the hands of specialized “liberty and

detention judges," in practice these judges rarely contradict the recommendations of the investigating magistrates. This appears to be especially the case in large, complex investigations involving numerous accused and voluminous case-files.

Human Rights Watch's research to date gives cause for concern that the combination of an overly broad offense and application of a low standard of proof for remand into pre-trial detention creates a situation in which individuals are placed in what is akin to unlawful administrative detention.

Annex 1: Recommendations

We hope to see the Universal Periodic Review of France reflect the concerns outlined in our submission, and include the following recommendations in its outcome document:

- Urge the French government to:
 - Institute an automatic in-country appeal with suspensive effect allowing any person subject to forced removal from France to remain in France until the determination of any appeal in relation to the risk of torture or other ill-treatment.
 - Ensure that individuals claiming asylum may remain in France until the conclusion of the asylum determination procedure.
 - Clarify in law the scope of materiality and intensity of the threat to national security allowing for expulsions, especially in cases involving speech offenses and those involving interference with the right to family and private life.

- Urge the French government to improve safeguards during police custody by:
 - Ensuring that all detainees have access to a lawyer from the outset of detention;
 - Requiring lawyers to be present during all interrogations, and ensuring a private consultation between lawyer and detainee before any formal statement is signed;
 - Ensuring that all detainees are notified of their right to remain silent.

- Urge the French government to specify the standard of proof required to justify the arrest of an individual and that required for remand into pre-trial detention in the context of a terrorism investigation.