

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Letter to the French government regarding findings of international human rights mechanisms on counterterrorism policies

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Dear Ministers Dati and Alliot-Marie,

We are writing to call your attention to the conclusions of two recent reviews of France's human rights record by authoritative international human rights bodies. In July, the United Nations Human Rights Committee conducted a comprehensive review of France's compliance with the International Covenant on Civil and Political Rights (ICCPR). In May, France was among the second batch of countries to be reviewed under the new Universal Periodic Review procedure at the UN Human Rights Council. Both processes involved rigorous questioning of the compatibility of France's counterterrorism law and policy with its international human rights obligations.

In the context of its global project on respect for human rights in the fight against terrorism, Human Rights Watch has examined French counterterrorism laws and practices in two major reports since 2007. [In the Name of Prevention: Insufficient Safeguards in National Security Removals](#), published in June 2007, examines how procedures for the forced removal of foreign nationals accused of links with terrorism and extremism lack adequate safeguards against violations of fundamental rights, including protection against return to torture or other prohibited ill-treatment. [Preempting Justice: Counterterrorism Laws and Procedures in France](#), published in July 2008, documents the ways in which problematic features of France's criminal justice approach to fighting terrorism undermine the rule of law and international fair trial standards.

Concerns expressed by the Human Rights Committee, as well as by peer countries during the Universal Periodic Review (UPR), reflect many of our findings. We urge you to act on the recommendations formulated in the Committee's Concluding Observations and the Report of the Working Group on the UPR of France in order to bring French law and practice into full compliance with international human rights law.

Absolute prohibition on returns to torture and other prohibited ill-treatment. The Human Rights Committee stressed that France has a binding obligation to ensure that any decision to send a foreign national, including an asylum seeker, to his or her country of origin must be the result of a fair process in which any risk of human rights violations upon return is effectively assessed. In this respect, the Committee expressed its concern over the lack of an automatically suspensive appeal against expulsion in cases involving national security. All individuals ordered expelled must, according to the Committee, have sufficient time to file for asylum, benefit from the assistance of a translator, and be able to "exercise their right to a suspensive appeal."

This issue was taken up also during the UPR of France at the Human Rights Council. The Report of the Working Group on the review of France noted the recommendations that France should "make effective efforts to respect its international obligations not to forcibly return any individual to a country where he or she may be at risk of serious human rights violations, including torture or other ill-treatment," and that it should "adopt further measures...to ensure granting possible requests of the Committee against Torture for interim measures in individual cases aimed at preventing the breach of provisions of the Convention against Torture."

Under current law, the lack of automatic suspension of removals during appeals creates a situation in which individuals facing removal do not have access to an effective remedy. Those who fear that removal would place them at risk of torture or ill-treatment can petition for interim relief (rfr-libert), 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. In cases involving national security, the submission of an asylum claim suspends removal only at first instance. Therefore, an initial negative decision by the national refugee office can lead to immediate removal even if the individual has appealed the decision to the independent refugee appeals

board.

Human Rights Watch welcomes the legislative reform in November 2007 giving individuals seeking to enter France to apply for asylum the right to an in-country appeal against refusal to enter. The reform was undertaken in compliance with an April 2007 ruling by the European Court of Human Rights 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 European 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." However, the reform failed to extend this right to others at risk of unsafe returns.

The UN Committee against Torture (CAT) has condemned France twice since 2005 for deporting individuals, who had 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 who was stripped of his French citizenship in order to expel him to Tunisia in August 2006.

International fair trial standards. Both the Human Rights Committee and the UPR process noted problematic aspects of French criminal law and procedures in terrorism cases. The Committee expressed serious concern about lack of appropriate safeguards during police custody and lengthy pre-trial detention in terrorism cases. The Report of the Working Group on the UPR of France references the concerns expressed by the UN Special Rapporteur on the protection of human rights while countering terrorism, Martin Scheinin, in an April 2006 communication to the French government. Scheinin raised questions about the broad definition of terrorism offenses in the criminal code, extended police custody and delayed access to a lawyer in police custody, as well as lengthy pre-trial detention. Human Rights Watch would be interested to learn whether the French government has yet responded to the Working Group's report as it pledged to do by July 2008.

Police custody. Noting that terrorism suspects may be held for up to six days in police custody before a hearing with a judge, the Committee expressed its concern that suspects only have access to a lawyer after 72 hours in custody, and that criminal suspects are not informed of their right to remain silent.

The Committee urged the government to ensure that all those arrested on suspicion of having committed a crime, including a terrorism offense, be brought before a judge "as promptly as possible." Mindful that the right to confer with a lawyer "constitutes...a fundamental guarantee against ill-treatment," the Committee said the government should ensure that terrorism suspects have access to a lawyer without delay. The Committee had expressed its concerns over delayed access to a lawyer in terrorism cases in its 1997 Concluding Observations on France's third periodic report. Finally, the Committee stipulated that all criminal suspects should be informed of their right to remain silent under police questioning.

The lack of safeguards during police custody in current law and practice undermines the right of detainees to an effective defense, guaranteed under ICCPR Article 14, at a critical stage. During police custody, detainees have severely curtailed access to legal counsel. Access to a lawyer is granted only after 72 hours (or 96 hours if police custody is extended to six days). Subsequent visits are permitted after a further 24 hours. Each visit is limited to 30 minutes, and the lawyer 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 in detention, namely access to a lawyer from the outset of detention. The Council of Europe Committee for the Prevention of Torture has repeatedly criticized these restrictions on access to a lawyer and has urged France in every report on the country since 1996 to improve safeguards in police custody, including access to a lawyer from the outset of detention.

Police may interrogate detainees at will during police custody in the absence of their lawyer, at any time of the day or night, leading to oppressive questioning. Human Rights Watch has collected testimonies about sleep deprivation, disorientation, constant, repetitive questioning, intense psychological pressure and even physical abuse during this period. Although all detainees in France have the right to silence, they are not notified of this right before or during interrogations, and all statements made during police custody are admissible in court. A recent reform instituting audio and video-recording of all interrogations as well as hearings with the investigative magistrate explicitly excluded terrorism cases.

Pre-trial detention. The Committee expressed its concern that terrorism suspects may be held in pre-trial detention for as long as four years and eight months, concluding that an "institutionalized practice of extended detention for investigative purposes...is difficult to reconcile with the right guaranteed in the Covenant to be tried within a reasonable time." The Committee first expressed concern with lengthy pre-trial detention in its 1997 Concluding Observations on France's third periodic report. In its recent conclusions, the Committee recommended that France limit pre-trial detention and strengthen the role of liberty and custody judges.

The vast majority of terrorism suspects are detained and prosecuted under the broadly defined charge of membership in a "criminal association in relation to a terrorist undertaking" ("association de malfaiteurs"). Classified as a minor felony charge, this offense gives rise to a maximum of three years and four months in pre-trial detention and is punishable by up to ten years. Serious felony terrorism offenses-including leadership in such an organization-give rise to a maximum of 4 years and eight months in pre-trial detention and are punishable by up to life in prison. Investigations into alleged international terrorism networks in France can often last for years, during which time large numbers of people - including the (family) partners of primary suspects - may be detained, interrogated and remanded into pre-trial detention on the basis of minimal proof.

While a positive reform in 2001 placed the responsibility for determining whether to remand a suspect in pre-trial detention in the hands of specialized "liberty and custody judges," in practice these judges rarely contradict the recommendations of the investigating judges. This appears to be especially the case in large, complex investigations involving numerous accused and voluminous case-files.

Preventive detention. The Committee concluded that the law adopted in February 2008, which allows certain former violent offenders to be detained for renewable one-year periods after they have served their prison sentence, could violate the Covenant. In particular, the Committee concluded that the preventive detention regime under the new law calls into question the right to the presumption of innocence and the right not to be punished twice for the same crime (ICCPR article 14) and the right to challenge the lawfulness of

detention (ICCPR article 9). The Committee also said the law poses problems with respect to ICCPR article 15 prohibiting the imposition of a heavier penalty than what was applicable at the time the offense was committed. The Committee recommended that the law be re-examined in light of France's obligations under the ICCPR.

France has been at the forefront of efforts to advance respect for international human rights law, as well as expand its boundaries, worldwide. It has also become an authoritative voice on counterterrorism issues. France can best demonstrate its leadership in both fields by ensuring that its counterterrorism laws and policies, as well as measures taken against recidivism, are fully compliant with the entire range of human rights obligations. Therefore, we urge you to implement the recommendations emanating from the Human Rights Committee and the Universal Periodic Review.

We thank you for your attention and look forward to a continuing dialogue on these important matters.

Sincerely,

Holly Cartner
Executive Director
Europe and Central Asia Division
Human Rights Watch

Jean-Marie Fardeau
Director
Paris Office
Human Rights Watch

Cc:

Jean-Luc Warsmann, President, Law Commission of the National Assembly
Jean-Jacques Hiest, President, Law Commission of the Senate
Michel Forst, secretary general of the National Consultative Commission on Human Rights
Jean-Marie Delarue, Inspector General of Places of Detention
Jean-Baptiste Mattie, Permanent Representative of France to the United Nations Office at Geneva

International Alternatives to Detaining Immigrants

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