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June 17, 2008

Members of the United Nations Human Rights Committee  
Attn: Patrice Gillibert, Secretary of the Human Rights Committee  
UNOG-OHCHR  
CH 1211 Geneva 10  
Switzerland

## Re: Review of France

Dear Committee Members,

We write in advance of the Human Rights Committee's ("the Committee") upcoming review of France, to highlight a few areas of concern we hope will inform your consideration of the French government's ("the government") compliance with the International Covenant on Civil and Political Rights ("the Covenant").

Human Rights Watch submitted comments to the Committee in advance of the pre-session meeting in March. The present submission reiterates many of those concerns and maintains as its primary focus those counterterrorism measures in France we believe to breach Covenant standards. For fuller analyses, please see the Human Rights Watch report *France: In the Name of Prevention: Insufficient Safeguards in National Security Removals* (available at <http://hrw.org/reports/2007/france0607/>); *Letter to French Parliament: Improve Safeguards in Expulsion Cases* (available at <http://hrw.org/english/docs/2007/09/14/france16878.htm>); and *Letter to French Senators: More Safeguards Needed in Anti-Terrorism Bill* (available at <http://hrw.org/english/docs/2005/12/09/france12182.htm>).

Our analysis of French criminal laws and procedures in terrorism investigations and prosecutions is based on research conducted between July 2007 and February 2008. We will publish a report, entitled *Preempting Justice: Counterterrorism Laws and Procedures in France*, on July 2, 2008. We will be pleased to share with you an advance copy of the report as soon as it has been sent to print.

We welcome the Committee's attention to abuses in the context of the fight against terrorism, as reflected in the list of issues it formulated to the government. This letter is intended to provide further information to the Committee in this area, which we hope will inform the questions asked of the government during the review itself.

## Criminal law and procedure in terrorism investigations (Covenant Articles 10 and 14)

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 in relation to a terrorist undertaking" (*association de malfaiteurs en relation avec une entreprise terroriste*). Investigations into alleged international terrorism networks in France can often last for years, during which time large numbers of people – including the wives and partners of primary suspects – are detained, interrogated and remanded into pre-trial detention on the basis of minimal proof.

Human Rights Watch is concerned that the lack of safeguards during police custody undermines the right of detainees to an effective defense, guaranteed under Covenant Article 14, 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 if *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 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.<sup>1</sup>

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 in police custody, 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.

Human Rights Watch has collected testimonies about sleep deprivation, disorientation, constant, repetitive questioning, intense psychological pressure and even physical abuse in police custody.

***Human Rights Watch encourages the Committee to ask the government about the compatibility of its laws and procedures governing police custody with its Covenant obligations. In particular, it should ask the government what justifications exist for delaying access to a lawyer for three days; for denying suspects the right to have a lawyer present during interrogations; for failing to notify suspects of their right to remain silent during questioning; for limiting the amount of time suspects have to confer with their lawyers; and for failing to audio and video-record interrogations in terrorism cases.***

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<sup>1</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), reports on visits conducted in 1996, 2000, 2003, and 2006. All CPT reports on France are available at <http://www.cpt.coe.int/en/states/fra.htm>.

Intelligence material, including information coming from third countries, is often at the heart of terrorism investigations. Indeed, most if not all investigations are launched on the basis of intelligence information. Human Rights Watch acknowledges the critical role of intelligence services in counterterrorism efforts. We are concerned, however, that current procedures do not allow suspects or their lawyers to effectively challenge intelligence information. Nor are there sufficient safeguards to prevent the use of evidence obtained under torture or other prohibited ill-treatment.

***We encourage the Committee to ask the government to explain what safeguards are in place to ensure that evidence obtained by torture or other prohibited ill-treatment, wherever in the world this takes place, is never used at any stage in judicial proceedings.***

The association de malfaiteurs charge, considered the cornerstone of the French preemptive counterterrorism model, lacks legal certainty because there is no requirement that any of the participants in an alleged conspiracy take concrete steps to implement the terrorist plot. Terrorism suspects are often remanded in 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.

In addition to Covenant Article 15, the requirement that a law is formulated with sufficient precision to enable an individual to regulate his or her conduct, also has implications for the legitimate exercise of rights of association, expression, and religious freedom (Covenant Articles 22, 19, and 18).

Our research indicates that the interpretation of the association de malfaiteurs statute and the conduct of terrorism investigations raise concerns about illegitimate interference with these protected rights, in particular freedom of expression and freedom of association. Most investigations into alleged Islamist terrorist activity in France are based on the mapping of networks of contacts. This can lead to the arrest and indictment of family members, friends, neighbors, members of the same mosque, coworkers, or those who frequent a particular restaurant. Similarly, there appears to be too much scope for criminal action to be undertaken against individuals purely on the basis of their beliefs or expression of these, when they have not taken any identifiable steps toward engaging in terrorist violence.

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.

***We welcome the Committee’s request that the government provide greater detail with respect to the definition of terrorism. We encourage the Committee to pursue this issue in session and ask the government to explain how the rights of association and freedom of expression are protected in the application of the association de malfaiteurs charge.***

*Similarly, we urge the Committee to clarify the standard of proof necessary to justify pre-trial detention in the context of a terrorism investigation, and what steps are envisioned to strengthen the role of the liberty and custody judge.*

### **Insufficient safeguards in national security removals (Covenant Articles 7, 17 and 19)**

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 and the related protection against refoulement guaranteed under Covenant Article 7; the right to hold opinions and the right to freedom of expression under Covenant Article 19; and the right to family and private life under Covenant Article 17.

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 automatic suspension of removals during appeals 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 (ECtHR), 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 ECtHR 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 individuals seeking to enter France to apply for asylum the right to an in-country appeal against refusal to enter, in compliance with the ECtHR’s ruling, but failed to extend this right to others at risk of unsafe returns.

In April 2008, the ECtHR again stepped in and requested that France suspend the criminal deportation of Kamel Daoudi, an Algerian sentenced to six years in prison on terrorism charges. The day he was released from prison upon time served, Daoudi was placed in detention pending deportation. After the ECtHR issued interim measures, following Daoudi’s application arguing that his deportation to Algeria put him at risk of torture and prohibited ill-treatment, the government assigned Daoudi to compulsory residence in France. Under this system, Daoudi is required to live in a particular place, report to the police at regular intervals, and request prior authorization in order to travel outside a circumscribed area.

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.

The UN Committee Against Torture (CAT) has condemned France twice since 2002 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.

***We strongly encourage the Committee to ask the government to institute an in-country appeal that automatically suspends any removal, allowing any person subject to forced removal to remain in France until the determination of any appeal in relation to the risk of torture or other prohibited ill-treatment. We further request that the Committee urge the government to ensure that all individuals claiming asylum be allowed to remain in France until the conclusion of their asylum determination procedure.***

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 which speech can lead to administrative expulsion, to include “incitement to discrimination, hatred or violence against a specific person or group or persons.” This is far more expansive than the previous language, which allowed for expulsions for incitement to discrimination, hatred or violence on the grounds of ethnicity or religion. At least fifteen men described by authorities as imams have been expelled since 2001, many 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 to 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.

***We urge the Committee to ask the government to explain how procedures based on evidence that cannot be adequately contested are compatible with Covenant Article 14, in particular the right to be informed of the nature and cause of the charge, to have adequate time and facilities for the preparation of one’s defense, and to examine, or have examined,***

***witnesses for the prosecution and to obtain the attendance and examination of witnesses on one's behalf under the same conditions.***

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.<sup>2</sup>

***We encourage the Committee to ask the government to clarify the scope of the 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.***

### **Preventive Detention Law (Covenant Articles 9 and 14)**

In early February 2008, the French parliament adopted a law allowing indefinite detention of certain criminal offenders after they have served their prison sentence. The law gives three-judge commissions the authority to impose an additional one-year detention term on offenders who are due to be released after serving their 15-year or more prison sentences for a violent crime. The determination is based on an assessment that the individual is dangerous and likely to reoffend. The one-year period can be renewed indefinitely, and the law provides for a limited right of appeal. Originally aimed only at those convicted of violent crimes against children, the law was broadened to include offenders convicted of serious violence against adults. When adopted, the law made the measure retroactive for all those convicted prior to the law taking effect but who had not completed their prison sentence by September 1, 2008.

A ruling by the Constitutional Council on February 21, 2008 upheld the measure, arguing it did not constitute a criminal sanction, but ruled that it could not be applied retroactively, given that it constitutes deprivation of liberty for a significant amount of time and can be renewed indefinitely. The law, stripped of retroactive effect, entered into effect on February 26, 2008.

This preventive detention scheme violates fair trial standards guaranteed under Covenant Article 14, including the right to the presumption of innocence and the right not to be punished twice for the same crime. It is likely that the limited appeal available to detainees does not meet the requirement of paragraph 4 of Covenant Article 9 with respect to the ability to challenge the lawfulness of the detention. France already had measures in place to ensure confinement in a psychiatric facility for those who pose a direct threat to themselves or others and who suffer from a mental illness. There are also mechanisms to monitor certain categories of criminals upon release, such as requirements to register with the police and

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<sup>2</sup> See for example *Beldjoudi v. France*, judgment of 26 March 1992, Series A no. 234-A; *Mokrani v. France*, no. 52206/99, 15 July 2003; *Mehemi v. France*, judgment of 26 September 1997, *Reports of Judgments and Decisions 1997-VI*; *Ezzouhdi v. France*, no. 47160/99, 13 February 2001; and *Nasri v. France* judgment of 13 July 1995, Series A no. 320-B. All ECtHR judgments are available at [www.echr.coe.int](http://www.echr.coe.int).

the use of electronic bracelets. Therefore the necessity of this broad measure has not been shown.

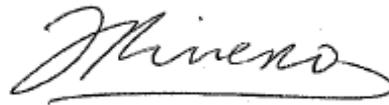
***We welcome the Committee's question to the government on this issue. We encourage the Committee to ask the government to explain how the preventive detention law, even if not applied retroactively, comports with obligations under Covenant Articles 9 and 14.***

We hope you will find these comments useful and would welcome an opportunity to discuss them further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Sincerely,



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Julie de Rivero  
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