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## Human Rights Watch Concerns and Recommendations on France

Submitted to the UN Committee Against Torture in advance of its Review of France

March 2010

This memorandum provides an overview of Human Rights Watch’s concerns and recommendations on France, submitted to the United Nations Committee Against Torture (“the Committee”) in advance of its upcoming review of France. We hope it will inform the Committee’s consideration of the French government’s (“the government”) compliance with the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). Our comments are focused primarily on counterterrorism measures that the government has introduced which we believe breach Convention standards. For fuller analyses, please see Human Rights Watch reports *Preempting Justice: Counterterrorism Laws and Procedures in France* and *France* (available at [www.hrw.org/en/reports/2008/07/01/preempting-justice](http://www.hrw.org/en/reports/2008/07/01/preempting-justice)); *In the Name of Prevention: Insufficient Safeguards in National Security Removals* (available at [www.hrw.org/en/reports/2007/06/05/name-prevention](http://www.hrw.org/en/reports/2007/06/05/name-prevention)); and *Submission to the Léger Committee on criminal justice reform* (available at <http://www.hrw.org/en/news/2009/06/09/human-rights-watch-submission-leger-commission-reform-france-s-criminal-procedure-an>).

### Insufficient safeguards in national security removals (Convention articles 3 and 15)

#### *Lack of an automatic in-country appeal*

Since 2001, France has forcibly removed dozens of foreign nationals accused of links to terrorism and extremism, through administrative “ministerial expulsion orders” and through judicially-authorized criminal deportations following conviction and

time served. 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. A European Commission document published in March 2009 indicated, on the basis of information from the French government, that France had expelled 91 individuals suspected or convicted of terrorism activities between 2003 and 2007. National security removals form an integral part of France’s national strategy to counter violent radicalization and recruitment to terrorism.

The procedures for national security removals in France do not provide sufficient guarantees to prevent the return to a real risk of torture and ill-treatment, in violation of the non-refoulement obligation under Convention article 3.

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 file a petition for the protection of fundamental liberties (*référé-liberté*), and the interim relief judge must decide within 48 hours whether to suspend the expulsion order and/or the separate 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, most recently in April 2007 when it ruled in the case of *Gebremedhin v. France* 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 of Human Rights 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.” While legislative reforms in November 2007 gave individuals seeking to enter France to apply for asylum the right to an in-country appeal against refusal of permission to

enter, in compliance with the European Court of Human Rights ruling, they failed to extend this right to others at risk of unsafe returns.

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 (Office français de protection des réfugiés et apatrides, OFPRA) can lead to immediate removal even if the individual has appealed the decision to the independent national court of asylum (Cour nationale du droit d'asile, CNDA).

This is also true for all asylum applications processed under the so-called priority procedure, irrespective of whether national security is invoked. This procedure is used for asylum-seekers from countries France has placed on a national list of "safe countries origin", those whose application is deemed fraudulent, abusive, or solely designed to forestall removal, as well as those considered a threat to public order. The current list of fifteen safe countries includes Bosnia and Herzegovina, Georgia, Madagascar, Mali, Senegal and Ukraine. In 2008, the national court of asylum concluded that almost 250 applicants from these countries, rejected at first instance by the national refugee office, were in fact in need of some form of protection.

The European Court of Human Rights ruled in December 2009 that France would violate its nonrefoulement obligations were it to expel Kamel Daoudi to Algeria, his country of origin. Daoudi had been convicted in France under the broad charge of "criminal association in relation to a terrorist enterprise" and had been placed in a detention center pending deportation immediately upon release from prison. The Court issued interim measures on Daoudi's behalf, and he had been assigned to compulsory residence at the time of the Court's judgment.

The December 2009 expulsion of Tunisian Yassine Ferchichi to Senegal sets a worrying precedent. Ferchichi had also been convicted of "criminal association in relation to a terrorist enterprise," and was expelled December 24, 2009, the day he was released from prison having served his prison sentence. The European Court of Human Rights had issued, on December 23, an order for interim measures to France to refrain from sending Ferchichi to Tunisia until the Court had had time to examine the case due to concerns about the risk of torture and ill-treatment, and had communicated to French authorities by phone and fax on December 24, before the