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Summary

Discrimination on grounds of origin or religion is a significant problem in France. Abusive police identity checks disproportionately affect minority youth, while a law banning face coverings in public places violates the rights of observant Muslim women. Roma from Eastern Europe are subject to camp evictions and expulsions from French territory. Finally, French counterterrorism laws undermine fundamental human rights while national security removals and the accelerated asylum procedure expose individuals to the risk of return to countries where they face torture or persecution.

Abusive Identity Checks

In response to recommendations formulated during its previous UPR in 2008, France committed itself to counter racism and all forms of discrimination, as well as to intensify its efforts to prevent racist acts by law enforcement agents. Nevertheless, repetitive and abusive identity checks targeting minority young adults and children continue to raise serious concerns about the use of ethnic profiling by the French police.

Human Rights Watch research conducted in and around three French cities in 2011 indicates that the identity check system is open to abuse by the police, who use the system as a central tool in their operations and have broad powers to stop and check individuals regardless of whether they suspect criminal activity. These abuses include repeated checks—“countless” in the words of most interviewees—sometimes involving physical and verbal abuse. Stops can involve lengthy questioning, orders to empty pockets, bag searches, and intrusive pat-downs—including of children as young as 14-years-old, who described having to put their hands against a wall or car to be patted down. Considered by the police to be an administrative procedure, pat-downs during identity checks are not regulated in law.

The threat of criminal sanction adds a coercive dimension to identity checks, with failure to cooperate during an identity check potentially leading to administrative or criminal charges, ranging from the minor offense of “refusal to cooperate” to the more serious charges of “insulting an officer” (*outrage*) and “assaulting an officer” (*rebellion*).

Moreover, statistical and anecdotal evidence indicates that young Blacks and Arabs living in economically disadvantaged areas are particularly frequent targets for such stops, suggesting that police engage in ethnic profiling (i.e. making assumptions who is more likely to be a delinquent based on appearance, including race and ethnicity, rather than behavior) to determine who to stop. Ethnic profiling is discriminatory and contravenes both national and international law when police systematically target certain groups for stops, even when these actions are grounded in unconscious stereotyping rather than intentional policy.

Police are not obligated to offer individuals any explanation for their actions, or provide a written record of their actions. Nor do French authorities record or publish data on the use of identity checks by police, or track the ethnicity of those stopped.

Human Rights Watch welcomes recent indications from the new government of President Hollande that it will examine the possibility of introducing a requirement that all individuals subjected to an identity check receive a written record of the procedure. Stop forms, as these records are commonly called, are a good way to improve both police efficiency and police accountability. However, further steps must be taken to ensure that all stops and pat-downs are based on a reasonable, individualized suspicion, including legal reform, detailed guidance for law enforcement officers, and appropriate training.

Restrictions on religious dress

France rejected recommendations made during the previous UPR in 2008 to repeal the 2004 ban on students wearing ostentatious religious symbols—including the hijab (Muslim headscarf), Jewish kippah, Sikh turban and large Christian crosses—in public schools. Instead, France moved to impose further restrictions on religious expression.

In April 2011, France enacted a law prohibiting the concealment of one's face in public, with the declared intention to prevent the wearing of Muslim veils that cover the face in public places. Sanctions include a fine of up to 150 Euros and/or the obligation to attend a “citizenship” course. The law also makes it a crime to coerce women to wear such veils, punishable by a year in prison and a 30,000 Euro fine. According to official figures, 354 women were stopped by the police in the first year of the law’s application. Of these, 299 received verbal warnings (*verbalisations*) and 55 received either formal warnings of infringement of the law (*rappels à la loi*) or citations to appear in court (*convocations à la justice*). By January 2012, six people had been fined by courts for violation of the law.

The ban violates the fundamental rights to freedom from discrimination, freedom of religion and the right to autonomy. The measure is neither necessary nor proportionate—the two requirements for permissible interference with qualified rights—and is in our view deeply counterproductive. While the ban is crafted in neutral terms—prohibiting concealment of the face in public—the declared aim behind the law is to counter the wearing of full-face veils, and these bans are likely to have a disproportionate impact on Muslim women. In other words, these bans are discriminatory in practice.

Discrimination against Roma

Mass evictions and expulsions of Eastern European Roma raise serious concerns about unlawful discrimination on the basis of ethnicity and national origin. There is ample evidence that French authorities mounted a concerted administrative policy of targeting Roma for camp evictions and removal from France in 2010. Statements by high-level officials, including then-President Nicolas Sarkozy, and government circulars illustrate this policy. While an openly discriminatory circular from July 2010 ordering prefects to systematically target Roma camps for eviction and their inhabitants for expulsion orders was subsequently withdrawn, in practice Roma remain the target of such expulsions in the absence of sufficient procedural safeguards and individual assessments.

Despite partially improving safeguards in expulsion cases, immigration law reform in 2011 arguably made it easier for authorities to expel Roma from Romania and Bulgaria, who as citizens of the European Union have the right to stay in France for three months without conditions. The law now allows expulsion for “abuse of right” if an EU citizen has been in France on repeat short-term stays or is in France “for the fundamental purpose” of benefiting from the social assistance system. Authorities make it a practice to expel Roma on a mere presumption that they might one day receive social benefits.

The new law requires authorities to conduct an individual assessment, taking into account the person’s age, health, economic, and family situation, as well as integration in France, before issuing an order to leave the

country or ordering a forced removal on public security grounds. But this important safeguard does not include all of the necessary criteria, such as the impact of an expulsion on the economic, personal, and family life of the individual, and the hardships the spouse or partner and children risk in the country of origin.

Criminal law and procedure in terrorism investigations

Acting on the recommendation made by Mexico during the previous UPR in 2008, France sent a detailed response in late June 2008 to concerns raised by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism in a 2006 communication. However, the letter is limited largely to a description and defense of existing laws and procedures. Despite an important reform of police custody rules in 2011, Human Rights Watch has continuing concerns that France's laws and procedures in terrorism investigations violate fair trial standards.

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.

The use of evidence obtained from third countries where torture and ill-treatment are routine raises particular concerns, including about the nature of cooperation between intelligence services in France and those countries. Some defendants in France who credibly allege they were tortured in third countries into confessing have successfully had the confessions excluded as evidence. But the courts appear to have allowed as evidence in some cases statements allegedly made under torture by third persons. Trips by investigative judges to third countries with poor records on torture to verify material for use in French prosecutions raise questions about the willingness of French judges to turn a blind eye to allegations of abuse.

France reformed its code of criminal procedure in 2011 to ensure that all detainees, including terrorism suspects, have access to a lawyer while in police custody, including during interrogations, but it curtailed that access in exceptional cases for high-security suspects, including alleged terrorists. The prosecutor may delay access to a lawyer, guaranteed at the outset of detention, for 24 hours in such cases. A special "liberty and detention" judge can then order two subsequent postponements of one day each, in cases of imminent threat or a terrorist attack or because authorities deem it is imperative for international cooperation. These exceptions mean that terrorism suspects may be held and interrogated in police custody for up to three days before having access to a lawyer; this was the rule prior to the 2011 reform. If police custody is prolonged beyond three days, the terrorism suspect has access to a lawyer every 24 hours. Each client-lawyer interview is limited to 30 minutes.

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 into 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.

Insufficient safeguards against refoulement

France responded to recommendations from its previous UPR in 2008 to ensure respect for its nonrefoulement obligations by asserting that "French authorities are very attentive to the examination of

risks upon return.” Policies and procedures have remained unchanged, however, exposing individuals deemed national security threats and certain asylum seekers to the risk of return to countries where they may face persecution or torture or prohibited ill-treatment.

Appeals against national security removals, including concerning the country of return on the grounds of risk of torture or prohibited ill-treatment, are non-suspensive. 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*). Even though authorities generally suspend removal while the interim relief judge considers the case, they are not obliged to do so.

The lack of an automatically suspensive appeal creates a situation in which individuals facing removal do not have access to an effective remedy. In May 2012 the European Court of Human Rights found that France had violated the right 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 agreed with the plaintiff, Asebeha Gebremedhin, that a “practice” of suspending expulsion until a decision was made on interim relief petitions “cannot be a substitute for a fundamental procedural guarantee of a suspensive appeal.”

The UN Committee against Torture 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.

France’s “priority asylum procedure” also places individuals at risk. Under this accelerated procedure, the appeal to the National Court of Asylum against a negative decision at first instance is not suspensive. This means asylum seekers can be returned to their countries of origin before their asylum claim has been fully examined. The priority procedure is used for asylum seekers coming from countries on France’s list of “safe countries of origin,” those deemed a threat to public order, those whose application is deemed fraudulent, and those who apply while in detention pending deportation.

The United Nations High Commissioner for Refugees, the United Nations Human Rights Committee, and the Council of Europe’s Commissioner for Human Rights have regularly expressed their concerns about the accelerated asylum procedure in France, and have recommended the creation of a suspensive appeal. Upon examination of France in May 2010, the United Nations Committee against Torture said it was “concerned at reports that 22 per cent of asylum applications submitted in 2009 were dealt with under the so-called priority procedure, which does not allow for an appeal with suspensive effect...the Committee is not convinced that the priority procedure offers adequate safeguards against removal where there is a risk of torture.”

Finally, the European Court of Human Rights condemned France in February 2012 in the case of *I.M. v. France*, concerning a Sudanese man who applied for asylum while in immigration detention, finding that the lack of a suspensive appeal under the priority procedure was part of the reason why I.M. had been denied the right to an effective remedy. The Court emphasized that the effectiveness of an appeal “involves the requirements of quality, speed and suspensiveness, considering in particular the importance the Court attaches to article 3 and the irreversible nature of the harm likely to be caused if the risk of torture or ill-treatment should be realized.”

Recommendations

Regarding abusive identity checks, France should:

- Reform the Code of Criminal Procedure to require that all identity checks and pat-downs be based on a reasonable, individualized suspicion;
- Move quickly to introduce stop forms and ensure that these forms include at a minimum the name and age of the person stopped, information allowing the identification of the law enforcement officer(s) conducting the stop, the legal basis for the stop, whether a pat-down or search of belongings was conducted, and the outcome of the procedure; and
- Provide clear guidance and provide training to law enforcement officers on permissible grounds to conduct an identity check, as well as on procedures for stops and searches of children.

Regarding the ban on full-face coverings in public spaces, France should:

- Repeal or amend Law no. 2010-1192 instituting the ban on full-face concealment in public spaces to ensure that women who choose to veil their faces for religious reasons may do so without fear of legal sanction.

Regarding Eastern European Roma, France should:

- Abolish “abuse of rights” as a grounds for removal of EU citizens in view of its disparate impact on Roma from Eastern Europe, and ensure that Roma are not unlawfully targeted for removal and that all removal orders are subject to a full individual assessment.

Regarding criminal law and counterterrorism, France should:

- Introduce further reforms to the Code of Criminal Procedure to ensure that all suspects in police custody, regardless of the nature of the suspected crime, should have access to a lawyer from the outset of detention and during all interrogations;
- Ensure that all suspects in police custody, regardless of the nature of the suspected crime, have a sufficient and reasonable time to consult with a lawyer; the thirty minute limit to client-lawyer conferences should be removed; and
- Amend the codes governing criminal and civil proceedings to state explicitly that evidence extracted under torture or ill-treatment, regardless of its provenance, is not admissible at any stage of legal proceedings and investigations by judges and prosecutors, and to make clear that where an allegation that a statement was made under torture is raised, the burden of proof is on the state to show that it was not made under torture.

Regarding asylum procedures, France should:

- Reform the asylum procedure to institute a fully suspensive appeal before the National Court of Asylum for *all* asylum seekers, including those whose claims are examined under the priority procedure.