

I. Executive Summary

Radical Islamists too often scoff at being sentenced to prison, but there's one thing they dread above all: expulsion from French territory.
—French counterterrorism police officer, 2006¹

France has pursued unapologetically a policy of forcibly returning non-French citizens accused of links to terrorism and extremism to their countries of origin since the 1980s.

Over the past five years France has forcibly removed dozens of such foreigners. Some were deported after serving prison sentences for terrorism-related offenses. Others were Muslim religious leaders (imams) expelled for preaching ideas deemed by the authorities to advocate extremism and contribute to radicalization. Available government figures indicate that 71 individuals described as “Islamic fundamentalists” were forcibly removed from France between September 11, 2001, and September 2006. Fifteen of these were described by the government as imams.

In at least one case the government stripped a man of his acquired French citizenship in order to return him to his country of birth.

France, like all states, has the right to control its borders and exclude foreigners who pose a threat to its national security. It has a duty to protect the population from acts of terrorism. But it also has an obligation under European and international human rights law to ensure that measures taken in the name of countering terrorism and protecting the public are compatible with coexisting human rights protections, including the rights of those deemed to pose a threat. The French government is obliged to ensure that the process of removals on national security grounds has effective safeguards to guarantee due process and to protect those subject to removal against serious violations of their fundamental human rights.

¹ Unnamed counterterrorism police officer, quoted in Jean Chichizola, “Eleven Islamists to be expelled” (“*Onze religieux islamistes en instance d’expulsion*”), *Le Figaro* (Paris), September 27, 2006.

At first glance French law appears to contain adequate protections against expulsion for long-term or otherwise integrated foreign residents. The appeals processes available to individuals subject to forced removal from France appear to satisfy the requirement for due process. But on closer examination, the process is insufficient to ensure that fundamental rights are indeed protected. Forced removal is a dramatic measure with serious—and potentially irreparable—consequences for the individuals and their families. The greatest danger is that in its haste to forcibly remove, France may send individuals back to countries where they risk being tortured or subjected to cruel, inhuman or degrading treatment, a serious violation of France’s obligations under international law.

National security exceptions to the legal protections against forced removal that apply in France to various categories of foreign residents mean that anyone designated as a threat can be removed, even if they have lived in France their entire lives. Once an initial decision on their case has been taken, French law allows the government to expel or deport while an appeal is pending, even in cases where there is a fear of persecution upon return to the country of nationality, unless a judge grants a stay of execution in the specific case. Asylum claims have suspensive effect only at first instance, so an initial negative decision by the Office for the Protection of Refugees and Stateless Persons paves the way for immediate removal even if the individual has appealed the decision to the independent refugee appeals board.

The United Nations Committee Against Torture condemned France over the deportation of an Algerian man, Mahfoud Brada, in 2002, for violating its absolute obligation not to return anyone to a country where they face torture or prohibited ill-treatment. Brada, who had been convicted for rape and ordered barred from French territory for ten years, was deported while his appeal was pending and despite the committee’s request for a stay on the deportation. Notwithstanding the committee’s strong criticism and call on the French authorities to “strictly compl[y]” with its requests in the future, France again ignored the committee’s request for a stay when it expelled a Tunisian man, Adel Tebourski, in mid-2006.

The expulsion of imams largely because they have engaged in speech deemed a national security threat raises concerns about the protection of freedom of

expression and the bypassing of due process safeguards for those facing forced removal. Expulsions on national security grounds take place following administrative procedures. In opting to pursue a policy to expel a person by way of administrative decision—rather than prosecute them for speech offenses—the French authorities in effect use immigration law to bypass the more stringent evidential and procedural guarantees in the criminal justice system. Cases examined by Human Rights Watch, based on intelligence reports that do not disclose either the sources of their information or how the information was obtained, involved speech that, while offensive, did not involve obvious incitement to violence that would justify the draconian sanction of expulsion, or any such extreme interference with the fundamental right of freedom of expression.

Finally, 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.

Deportation and expulsion are not the only tools the government has at its disposal for dealing with those deemed to pose a threat to national security. Another option is to make more effective and fairer use of the administrative system of assigning individuals to compulsory residence in a specific location in France. Recourse to this option is preferable given that it can be effected in a way that—unlike forced removals of the type described in this report—does not breach international law.

Removals from France do not occur in a political or social vacuum. They take place in the context of a broad debate about security, integration, and immigration in a country that is home to Western Europe's largest Muslim community. Forced removals of long-term residents and Muslim religious leaders are viewed with concern within France's Muslim population. To the extent that these measures are perceived by French Muslims to be discriminatory and unjust, they may prove to be counterproductive, by alienating communities whose cooperation is vital to the effort to combat terrorism.

There is growing interest in Europe in exploring a common approach to national security removals within the framework of the European Union’s Action Plan to combat terrorism, and specifically the strategy to counter violent radicalization and recruitment. France is a leading voice on these issues, and has most recently pushed for a European Council resolution on information sharing with respect to expulsions of terrorism suspects and those who incite discrimination, hatred or violence. Any effort toward a common European approach must be based on a better model than current French policy and practice, and must be firmly grounded in international human rights law.

Key Recommendations

Human Rights Watch believes that France can best set standards in both counterterrorism efforts and commitment to human rights by improving the procedural safeguards governing national security removals, and actively pursuing less draconian alternatives, such as residential orders, based on fair process and judicial oversight. We urge the French government to take the following key steps:

- Ensure that any person subject to forced removal from France is allowed to remain in France until the determination of any appeal in relation to the risk of torture or other ill-treatment or interference with the right to family life.
- Ensure that individuals claiming asylum may remain in France until the conclusion of the asylum determination procedure.
- End the national security exception to the granting of “subsidiary protection”—a temporary form of protection in lieu of refugee status—where a person faces the risk of the death penalty, or torture or other ill-treatment.
- Improve and apply more fairly the system of assigning individuals to compulsory residence in France as an alternative to forced removal when the removal cannot be carried out in a manner consistent with human rights law.
- Clarify in law and jurisprudence the materiality and intensity of the threat to national security allowing for expulsions, especially in cases involving speech offenses.

As France and other nations look to forced removals as a tool in the strategy to counter violent radicalization and recruitment to terrorism, regional and international

human rights authorities could help clarify more precise benchmarks for legitimate interference with the right to family life and the right to freedom of expression.

Detailed recommendations can be found at the end of the report.