



**International Commission of Jurists submission  
to the Committee Against Torture  
on the 6<sup>th</sup> Periodic Report of France**

*April 2010*

The International Commission of Jurists (ICJ) wishes to provide its views to the Committee against Torture for its consideration of the 6<sup>th</sup> Periodic Report of France. In this submission, the ICJ highlights several issues which it believes should be of particular concern to the Committee in its consideration of the French report.

The ICJ is concerned at the combined effect of restricted legal protections for detainees held in *garde à vue* detention, in particular persons detained on suspicion of terrorist offenses. The ICJ is also concerned that French law does not provide adequate protection against the forcible return (*refoulement*) of foreign nationals to countries where they may face torture; cruel, inhuman or degrading treatment; or other serious violation of human rights, despite the absolute nature of the right of *non-refoulement*. Finally, the ICJ wishes to draw the Committee's attention to the continuing lack of a statutory definition of the offense of torture in the French penal code, and to the inconsistency between the definition derived from French case law and the definition found in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

This submission reflects concerns raised at a hearing of the ICJ's Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights on counter-terrorism laws and practices of European Union Member States, including France, as well as the conclusions and recommendations set out in the final report of the Panel.<sup>1</sup>

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<sup>1</sup> INTERNATIONAL COMMISSION OF JURISTS, ASSESSING DAMAGE, URGING ACTION: REPORT OF THE EMINENT JURISTS PANEL ON TERRORISM, COUNTER-TERRORISM AND HUMAN RIGHTS (2009), [www.icj.org](http://www.icj.org)

## 1. The Abrogation of Legal Protections against Torture and Cruel, Inhuman or Degrading Treatment in the Context of French Counterterrorism Policies

The legal regime governing the detention of terrorist suspects in France significantly weakens detainees' protection from torture and cruel, inhuman or degrading treatment. In particular, French law permits persons suspected of terrorist offenses to be placed in prolonged *garde à vue* detention with severely limited access to lawyers, no access to independent medical monitoring and no video- or audio recording of the events that occur during their interrogations.

### 1.1. The Abrogation of Protections During *Garde à Vue* Detention

Under French law, criminal suspects ordinarily may be held in *garde à vue* detention for up to 24 hours, a period that may be extended to 48 hours with judicial permission.<sup>2</sup> However, persons suspected of terrorism-related offenses may be detained in *garde à vue* for up to 6 days.<sup>3</sup> Such special provision has a wide scope of application, since some terrorism offences, such as *association de malfaiteurs en relation avec une entreprise terroriste*,<sup>4</sup> are broad enough to permit detention of persons who have merely associated with others allegedly with a view to the commission of an act of terrorism. The special procedures applying to suspects in terrorism-related cases require judicial authorisation of the extension from 2 to 3 days of *garde à vue* detention, and again from 3 to 4 days;<sup>5</sup> a judge may authorise further extensions to 5 and then to 6 days only where there is a serious risk of an imminent terrorist attack, or where the need for international co-operation requires it.<sup>6</sup> In general, the detainee must be brought before a magistrate before the decision to extend the *garde à vue* period is made; however, at the extension of detention from 3 to 4 days, this requirement may be waived by the magistrate on the grounds that a presentation of the detainee would be detrimental to the investigation.<sup>7</sup>

During the *garde à vue* period, detainees suspected of terrorist offenses do not have the right to consult promptly or meaningfully with a lawyer: access to counsel is permitted only after 3 days (or, if an extension is requested, 4 days) of the detention period have elapsed, and then only for an initial 30-minute session,<sup>8</sup> a period which will often be insufficient for the lawyer to provide meaningful advice, in particular since the lawyer is not provided with the case file prior to the meeting. Where *garde-à-vue* is extended

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<sup>2</sup> C. PR. PÉN., article 63.

<sup>3</sup> C. PR. PÉN., article 706-88.

<sup>4</sup> Article 421-2-1 of the Criminal Code (Code Pénal) defines this offence as the participation in any group formed or association established with a view to the preparation, marked by one or more material acts, of any of the acts of terrorism listed in Article 421-1

<sup>5</sup> Judicial authorisation is by a judge de libertés et détention or a judge d'instruction, on the request of the prosecutor (C. PÉN article 421-1)

<sup>6</sup> C. PR. PÉN., article 706-88

<sup>7</sup> *Id.*

<sup>8</sup> C. PR. PÉN., article 63-4

beyond 3 days, the lawyer can see the detainee after 4 days and 5 days, but again only for 30 minutes and without access to the case file.<sup>9</sup>

This Committee expressed concern about suspects' lack of access to lawyers in cases related to terrorism during its review of France's 3<sup>rd</sup> Periodic Report in 2005, stating that this practice is "likely to give rise to violations of Article 11 of the Convention, since it is during the first few hours after an arrest, particularly when a person is held incommunicado, that the risk of torture is greatest."<sup>10</sup> Separately, the Committee has stated that "the right promptly to receive independent legal assistance" is an indispensable component of Article 2 CAT, and the Human Rights Committee has confirmed that prompt access to counsel is guaranteed under the International Covenant on Civil and Political Rights (ICCPR).<sup>11</sup> The right of prompt access to a lawyer is also specified in Principle 7 of the UN Basic Principles on the Role of Lawyers.<sup>12</sup> The importance of the safeguard provided by prompt access to a lawyer was recognised by the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, which noted in its final report that:

"Provisions for speedy access to lawyers – as in the French case, within one hour of detention for non-terrorist cases – is intended to prevent the risk of ill-treatment or coerced confessions. Such provisions safeguard the suspects, but also law enforcement officials, who might otherwise face malicious complaints. Delays lay the authorities open to the risk that in reality, or in perception, detainees will be at risk of abuse..."<sup>13</sup>

France's explanation for its continuing refusal to permit those suspected of terrorist offences to meet with their lawyers until at least three days of detention have passed, as submitted in its 6<sup>th</sup> Periodic Report, is not persuasive: "Whatever the case, access to legal counsel is only delayed for the purpose of the inquiry having regard to the seriousness of

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<sup>9</sup> *Id.* On the restricted access to legal advice for terrorism suspects in *garde-a-vue* detention, see generally, evidence presented on France to the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, <http://ejp.org>.

<sup>10</sup> Committee against Torture, *Conclusions and recommendations of the Committee against Torture: France*, ¶ 16, U.N. Doc. CAT/C/FRA/CO/3 (April 3, 2006).

<sup>11</sup> Committee against Torture, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, *Implementation of article 2 by States Parties*, ¶ 13, U.N. Doc. CAT/C/GC/2 (January 24, 2008); Human Rights Committee, General Comment No. 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, ¶ 34, U.N. Doc. CCPR/C/GC/32 (August 23, 2007).

<sup>12</sup> United Nations, *Basic Principles on the Role of Lawyers* (September 7, 1990), available at <http://www.unhcr.org/refworld/docid/3ddb9f034.html>. See also Human Rights Committee, General Comment No. 20, *Prohibition of torture and cruel treatment or punishment*, ¶ 11 (March 10, 1992); Human Rights Committee, *Concluding observations of the Human Rights Committee: Israel*, ¶ 13, U.N. Doc. CCPR/CO/78/ISR (August 21, 2003); Human Rights Committee, *Concluding observations of the Human Rights Committee: Switzerland*, ¶ 26, U.N. Doc. CCPR/C/79/Add.70 (November 8, 1996); Human Rights Committee, Communication No. 326/1988, *Case of Henry Kalenga vs. Zambia*, ¶ 6.3, U.N. Doc. CCPR/C/48/D/326/1988 (1993).

<sup>13</sup> *Supra* note 1, at 146.

the offences in question.”<sup>14</sup> In the view of the ICJ, the seriousness the offence of which an individual is accused does not in itself provide rational justification for restriction on access to a lawyer.

Compounding the lack of access to a lawyer and judicial oversight, persons placed in *garde à vue* on suspicion of terrorist offenses do not have an automatic right to any form of medical treatment or monitoring during the first 48 hours of their detention, and do not have the right to independent medical examinations thereafter.<sup>15</sup> After 48 hours have passed, such persons have the right to be examined by a physician selected by the Attorney General, the *juge d’instruction* or the judicial police; this physician’s main purpose is to provide medical authorisation for the suspect’s continued detention.<sup>16</sup> The ICJ considers that these restrictions on the detainee’s access to medical treatment and monitoring do not comport with the UN’s Standard Minimum Rules for the Treatment of Prisoners, which provide, *inter alia*, that medical officers in prisons “shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures.”<sup>17</sup>

Further increasing their isolation, detainees held on suspicion of terrorist offences may be subject to restrictions on the generally applicable right to inform a family member, co-habitant or colleague of one’s arrest; in the case of those suspected of terrorism, this right may be denied if the prosecutor considers that it might be prejudicial to the investigation,<sup>18</sup> and this restriction is reportedly frequently applied.<sup>19</sup> The combined effect of restrictions on access to lawyers, medical examinations and the provision of information on the arrest to family members, is that detainees may be held virtually incommunicado for at least three days.

An additional weakening of protection from abusive interrogations where terrorist suspects are concerned has occurred with regard to the video- and audio recording of interrogations. Under a law passed in 2007, police interrogations in nearly all serious felony cases must be recorded in this manner; however, the law contains a specific exception for the interrogation of persons suspected of terrorist offenses (including *association de malfaiteurs*), with the result that such interrogations are unmonitored.<sup>20</sup> In the ICJ’s view, there can be no legitimate legal justification for the exemption of the interrogation of terrorist suspects from video- and audio recording requirements. Such an exemption can only facilitate, and promote impunity for, coercive interrogations and harsh detention conditions.

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<sup>14</sup> Committee against Torture, *Fourth to sixth periodic reports of States parties due in 2008: France*, ¶ 66, U.N. Doc. CAT/C/FRA/4-6 (July 23, 2009).

<sup>15</sup> *Supra* notes 2, 3.

<sup>16</sup> *Supra* note 3.

<sup>17</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (1955), article 24.

<sup>18</sup> C. PR. PÉN, article 63-2

<sup>19</sup> HUMAN RIGHTS WATCH, *PREEMPTING JUSTICE: COUNTERTERRORISM LAWS AND PROCEDURES IN FRANCE*, (July 2008).

<sup>20</sup> C. PR. PÉN, articles 64-1, 706-73.

The ICJ considers that, where persons are detained on suspicion of terrorist offences, the cumulative effect of the restrictions on their ability to communicate with others and to access advice and assistance, is that they are not adequately protected from torture or cruel, inhuman or degrading treatment. The Committee against Torture should recommend that:

- **Judicial review of detention should entail the production of the detainee in court in all cases.**
- **All detainees, including those suspected of terrorist offenses, should be entitled by law to consult with an independent lawyer, for a period of time sufficient to allow for the lawyer to provide effective legal advice, immediately following their arrest or detention and regularly thereafter. The limit of 30 minutes on consultations with lawyers should be removed.**
- **In accordance with the Standard Minimum Rules for the Treatment of Prisoners, all detainees should also be entitled by law to comprehensive and independent medical monitoring, commencing immediately upon their placement in *garde à vue*.**
- **All detainees, including those suspected of terrorist offenses, should have an immediate right to inform a family member or other person of their detention.**
- **All interrogations of persons suspected of terrorist offenses should be video- or audiotaped.**

## 2. The right to *non-refoulement*

The ICJ is concerned that French law does not provide adequate protection against the forcible return of asylum-seekers to countries where they may face a real risk of torture or other cruel, inhuman or degrading treatment or punishment, or other serious violations of human rights, and that proposed changes to the law would exacerbate this problem. Furthermore, France has continuously sought to deport terrorist suspects to countries where they face a danger of torture. In the ICJ's view, such practices violate the absolute prohibition on *refoulement*, as established by CAT and other international legal instruments to which France is subject.<sup>21</sup>

### 2.1. The right to *non-refoulement* and *zones d'attente*

Aspects of the French asylum process lead to particular risks of the forcible expulsion of asylum seekers to countries where they face a danger of torture. Under France's *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA), an asylum-seeker arriving in France via rail, air or sea is not regarded as having entered the country: instead, such persons are legally considered to have entered a *zone d'attente*, or "transit zone" from which they are not entitled to have an application for asylum in France fully

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<sup>21</sup> Article 3 CAT; Article 7 ICCPR; Human Rights Committee, General Comment No. 20, *supra* note 10, at ¶ 9; Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (March 29, 2004); Human Rights Committee, Communication No. 470/1991, *Kindler v Canada* (1991), ¶12; European Court of Human Rights, *Saadi v. Italy*, Application No. 37201/06, Judgment of 28 February 2008.

considered; instead, they are held in the waiting zone while a determination is made of whether their intended application for asylum is “manifestly unfounded.” Only if the application is determined not to be manifestly unfounded will they be permitted to enter French territory.<sup>22</sup> Authorities may extend this fictitious transit zone to include any location to which the asylum-seeker may need to go during his or her detention, including hospitals and hotels.<sup>23</sup> Proposed amendments to CESEDA reportedly under consideration in France would permit authorities to create an ad hoc *zone d’attente* at any point along the French border where a non-national without adequate documentation arrives.<sup>24</sup> Normally, detention in a *zone d’attente* may not exceed four days; however, a *juge des libertés et de la détention* may authorise the extension of this detention period to 12 days<sup>25</sup> or, in exceptional cases, to as many as 20 days; in practice, the detention period could be extended to up to 30 days if the detainee applies for asylum.<sup>26</sup>

While detained in a *zone d’attente*, an asylum-seeker does not enjoy the right to comprehensive judicial review of his or her asylum application. Instead, after the applicant is interviewed by the *Office Français de Protection des Réfugiés et Apatrides* (OFPRA), his or her application is forwarded to the Ministry of the Interior, which decides (taking account of OFPRA’s assessment in this regard) whether the application is “manifestly unfounded”; an adverse decision means that the applicant is immediately removable.<sup>27</sup> Only after receiving a favourable decision from the Interior Ministry is the applicant granted the right to enter France (in the legal sense) and receive full judicial consideration of his or her application.<sup>28</sup> Detainees have only 48 hours in which to appeal an adverse decision concerning their applications (Article L213-9)<sup>29</sup>; this appeal must be considered by the administrative tribunal within 72 hours.<sup>30</sup> Although the appeal to the administrative tribunal is suspensive (meaning that the person cannot be removed while it is pending), further appeals from the decision of the administrative court are not suspensive.<sup>31</sup> The ICJ considers that this law, introduced following the 2007 European Court of Human Rights ruling in *Gebremedhin v. France*, does not sufficiently meet the stipulation of the Court in that case: where “a State Party decides to remove an alien to a country where there are substantial grounds for believing that he or she faces a risk” of

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<sup>22</sup> CESEDA article L.221-1; European Court of Human Rights, *Gebremedhin v. France*, Application No. 25389/05, Judgment of 26 April 2007, ¶ 60.

<sup>23</sup> CESEDA article L.221-2.

<sup>24</sup> See draft legislation, *Loi de transposition de directives relatives à l’entrée et au séjour des étrangers et de simplification des procédures d’éloignement*, chapter 1, article 1.

<sup>25</sup> Initially detention is for 4 days (CESEDA article L.221-3) and may be extended by judicial authorisation for a further 8 days (article L.222-2).

<sup>26</sup> CESEDA articles L.221-3, L.222-1, L.222-2.

<sup>27</sup> CESEDA article L.221-1; *Gebremedhin*, *supra* note 20, at ¶ 27.

<sup>28</sup> CESEDA Article L.221-1; *Gebremedhin*, *supra* note 20, at ¶ 27.

<sup>29</sup> CESEDA article L213-9.

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.* Further applications open to persons held in *zones d’attente* and at risk of removal include an urgent application for a stay of execution under Article L.521-1 of the Administrative Courts Code, and an urgent application for an order to protect the applicant’s interests (also known as an urgent application for the protection of a fundamental freedom) under Article L.521-2 of the same Code. However, the European Court of Human Rights found, in *Gebremedhin*, *op cit.* that these did not provide effective protection, since they did not have automatic suspensive effect, even if they sometimes resulted in the authorities refraining from removing the applicant until the application had been considered (*Gebremedhin*, para.66)

torture or ill-treatment, the Court held, “Article 13 [of the European Convention on Human Rights and Fundamental Freedoms] requires that the person concerned should have access to a remedy with automatic suspensive effect.”<sup>32</sup> The Court explicitly found that this requirement of access to a remedy with suspensive effect applies to persons held in *zones d’attente* in France.<sup>33</sup> On this point, the ICJ also recalls this Committee’s 1998 finding with regard to France that “the possibility should exist of lodging a suspensive appeal against a refusal to allow entry into France and subsequent *refoulement*.”<sup>34</sup> The ICJ considers that the right to *non-refoulement* as protected by Article 3 CAT will not be effectively protected, as required by CAT as well as other international law standards,<sup>35</sup> if appeals -- including appeals from first-instance court decisions -- do not have suspensive effect. This is particularly so given the expedited nature of the application to the administrative tribunal for those held in *zones d’attente*.

Other elements of France’s expedited decision-making process for asylum applications filed by persons in *zones d’attente* also contribute to a risk of *refoulement*. Most importantly, asylum-seekers arriving from states the government considers to be “safe countries of origin” are subject to a legal presumption that their applications are manifestly unfounded.<sup>36</sup> The Committee Against Torture has previously stated that this policy “do[es] not guarantee a person absolute protection against the risk of being returned to a State where he or she might be tortured,” and the ICJ agrees, regarding the imposition of such a legal presumption against protection as contrary to both the letter and spirit of CAT.<sup>37</sup>

The ICJ also wishes to call the Committee’s attention to proposed amendments to CESEDA, which would not only permit the creation of ad hoc *zones d’attente*, as discussed above, but would also allow French authorities to prohibit deported persons from returning to French territory for a period of up to three years.<sup>38</sup> The ICJ considers that this form of banishment significantly weakens the right and ability of all persons to seek asylum, as well as the absolute protection against *refoulement*.

#### **The ICJ urges the Committee to recommend:**

- **that asylum-seekers who physically enter French territory or reach the French border should enjoy all the rights normally granted to persons**

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<sup>32</sup> *Gebremedhin*, *supra* note 20, at ¶ 66.

<sup>33</sup> *Gebremedhin*, *supra* note 20, at ¶ 67.

<sup>34</sup> Report of the Committee against Torture, ¶ 145, U.N. Doc. A/53/44 (September 16, 1998); *see also* Report of the Committee against Torture, ¶ 131(d), U.N. Doc. A/58/44 (2003) where the Committee recommended that Belgium “[g]ive suspensive effect not only to emergency remedies applied for but also to appeals filed by any foreigner against whom an expulsion order is issued and who claims that he or she faces the risk of being subjected to torture in the country to which he or she is to be returned.”

<sup>35</sup> Human Rights Committee, *Alzery v. Sweden*, ¶ 11(8), U.N. Doc. CCPR/C/88/D/1416/2005 (November 10, 2006); Human Rights Committee, *Maksudov v. Kyrgyzstan*, ¶ 12.7, U.N. Doc. CCPR/C/93/D/1461 (July 31, 2008) (also on article 6); CPT/Inf (2005) 15, ¶ 30. *Twenty Guidelines on Forced Return*, adopted by the Committee of Ministers of the Council of Europe at the 925<sup>th</sup> Meeting of the Ministers’ Deputies, May 4, 2005, Guidelines 5(1) and 5(3).

<sup>36</sup> *Supra* note 12, at ¶ 41.

<sup>37</sup> CAT/C/FRA/CO/3, *supra* note 8, at ¶ 9.

<sup>38</sup> *Supra* note 22, at title II, chapter 1, article 18.III.

present in France, and that the separate legal regime created by *zones d'attente* should be abolished without delay.

- that France provide full judicial consideration for all asylum applications, in compliance with its international human rights law obligations; eliminate the legal presumption that persons from particular countries (so-called “safe countries of origin”) are not entitled to asylum; and discontinue the quasi-judicial process of pre-screening asylum applications to determine whether they are “manifestly unfounded,” as this process does not provide adequate legal protections for applicants.
- that France should adopt legal provisions ensuring that any appeal against removal, including appeals to higher courts from the decision of the administrative tribunal, will have an automatic suspensive effect.
- that persons who claim that they will face a risk of torture or ill-treatment in their countries of origin be given more than 48 hours in which to file such appeals, so that they may have adequate time to locate and engage in meaningful consultations with a lawyer.
- that France should refrain from adopting amendments to CESEDA that would allow authorities to prohibit deported persons, including asylum-seekers, from re-entering French territory or presenting themselves at the French border, and which would expand the use of *zones d'attente*, since these amendments would serve to weaken existing protections against *refoulement*.

## 2.2 Refoulement of Persons Suspected or Convicted of Terrorist Offenses

Where the *refoulement* of persons suspected or convicted of terrorist offenses is concerned, the ICJ notes that the Committee against Torture has repeatedly found, including in cases against France, that the prohibition on *refoulement* in Article 3 CAT is absolute and may not be made subject to exceptions for persons convicted of terrorism-related offenses.<sup>39</sup> This reflects other relevant international standards binding on France, including the jurisprudence of the European Court of Human Rights.<sup>40</sup> However, in the case of *Daoudi*, a French court held that persons convicted of terrorist offenses may be

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<sup>39</sup> See, e.g., Committee against Torture, *Arkauz Arana v. France*, Communication No. 63/1997, U.N. Doc. CAT/C/23/D/63/1997 (2000); Committee against Torture, *Tebourski v. France*, Communication No. 300/2006, U.N. Doc. CAT/C/38/D/300/2006 (2007) (“Once [a] person alludes to a risk of torture under the conditions laid down in [CAT] article 3, the State party can no longer cite domestic concerns as grounds for failing in its obligation under the Convention to guarantee protection to anyone in its jurisdiction who fears that he is in serious danger of being tortured if he is returned to another country.”). See also Committee against Torture, *Agiza v. Sweden*, Communication No. 233/2003\*, ¶ 13.8, U.N. Doc. CAT/C/34/D/233/2003 (May 24, 2005).

<sup>40</sup> European Court of Human Rights, *Soering v. UK*, Judgment of July 7, 1989, Application No. 14038/88; European Court of Human Rights, *Chahal v. UK*, Judgment of October 25, 1996, Application No. 22414/93; *Saadi vs. Italy*, *supra* note 19.

forcibly expelled despite a real risk of torture in the destination country,<sup>41</sup> a decision which was found by the European Court of Human Rights, in its December 2009 judgment in *Daoudi v. France*, to lead to a violation of the prohibition on *non-refoulement*.<sup>42</sup> More recently, the Court has issued an interim measure enjoining France from forcibly deporting a Tunisian citizen convicted of terrorist offenses to Tunisia, where he allegedly would face a real risk of torture.<sup>43</sup>

**The Committee should ask the French government what measures it has taken to guard against the risk that those suspected or convicted of a terrorism-related offense may be expelled, returned or extradited to a country where they face a real risk of torture, other cruel, inhuman or degrading treatment or other serious violations of human rights.**

### **3. The Lack of a Statutory Definition of the Crime of Torture**

Although the French penal code prohibits torture, it does not itself provide a definition of the crime.<sup>44</sup> The relevant provision of the code states simply that “the act of subjecting a person to torture or to acts of barbarity shall be punished by fifteen years of imprisonment” (“[l]e fait de soumettre une personne à des tortures ou à des actes de barbarie est puni de quinze ans de réclusion criminelle”).<sup>45</sup> The ICJ is concerned that this statutory vagueness is not adequate for the purposes of preventing crimes of torture, or holding perpetrators to account.

In a literal sense, the definition of torture found in the French penal code may satisfy the requirements of Article 4 CAT, which mandates that “[e]ach State Party shall ensure that all acts of torture are offenses under its criminal law,” and that “[e]ach State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.”<sup>46</sup> In its 6<sup>th</sup> Periodic Report, France has claimed that a more complete definition of the crime of torture may be found in its case law, which “provides that torture or acts of barbarity require the demonstration of a material element, involving the commission of an act or a number of acts of *exceptional seriousness* that *amount to more than mere violence* and cause the victim acute pain or suffering, and a moral element involving the desire to deny the victim human dignity” (emphasis added).<sup>47</sup> The government further asserts that this definition is consistent with that found in Article 1 of the Convention.<sup>48</sup>

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<sup>41</sup> See *Daoudi v. France*, Judgment of December 3, 2009, Application No. 19576/08, ¶ 28. See also Human Rights Council, Summary Prepared By the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Resolution 5/1 of the Human Rights Council: *France*, ¶ 23, U.N. Doc. A/HRC/WG.6/2/FRA/3 (March 25, 2008).

<sup>42</sup> *Daoudi*, *supra* note 39, at ¶¶ 64, 73.

<sup>43</sup> Fédération Internationale des ligues des Droits de l’Homme, *Risque de renvoi dangereux: la France doit respecter ses engagements*, December 23, 2009, available at <http://www.fidh.org/Risque-de-renvoi-dangereux-la-France-doit>.

<sup>44</sup> A/HRC/WG.6/2/FRA/3, *supra* note 39, at ¶ 8.

<sup>45</sup> C. PÉN., article 222-1.

<sup>46</sup> Article 4 CAT.

<sup>47</sup> *Supra* note 12, at ¶ 7.

<sup>48</sup> *Id.* at ¶ 8.

The ICJ considers that the absence of a clear and comprehensive statutory definition of the crime undermines efforts to prevent and punish torture and cruel, inhuman or degrading treatment. Furthermore, it is not clear that the definition of torture derived from French case law is fully consistent with the Convention definition in Article 1 CAT, particularly given the requirements that an act “amount to more than mere violence” or be of “exceptional seriousness” in order to constitute torture; thus, it is possible that acts of violence causing severe pain or suffering that would fall within the Convention definition may not be prohibited under the French one. Since international conventions are directly applicable in French domestic law (and displace domestic law where relevant), the courts should construe the prohibition on torture in Article 222-1 of the *Code pénal* in accordance with the CAT definition. **However, in the interests of clear and effective prevention and accountability for crimes of torture, the ICJ urges the Committee to recommend that France revise and expand its statutory definition of the crime of torture in accordance with Article 1 CAT.**