

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# FRANCE: COUNTER-TERROR MEASURES FOLLOWING THE MURDER OF SAMUEL PATY RAISE HUMAN RIGHTS CONCERNS

On 16 October, Samuel Paty, a 47-year-old teacher, was murdered in Conflans-Sainte-Honorine (Paris region). An 18-year old holding refugee status in France beheaded the teacher allegedly because he had shown his students some cartoons depicting the prophet Mohammed. On 29 October, three people were killed in a church in Nice. The main suspect is a 21-year old Tunisian national. The authorities have arrested another person who is suspected of being an accomplice.

Amnesty International condemns the murders in the strongest possible terms. All our thoughts are with the families of the victims. French authorities have legal obligations to carry out a prompt, thorough, independent, impartial, transparent and effective investigation into the murders. Anyone suspected of being responsible should be brought to justice and judged following a fair trial.

Regrettably, following the murders, the French Minister of Interior Gérald Darmanin, made announcements that raise concerns regarding the authorities' willingness to comply with the country's international human rights obligations.<sup>1</sup> In the context of a hearing before the National Assembly on 2 November, the Minister provided further details regarding the government's counter-terror measures.<sup>2</sup> Amnesty International is concerned that the measures violate the principles of non-discrimination, non-refoulement, and the right to freedom of association.

## FREEDOM OF EXPRESSION

Expressing opinions that might disturb, offend or shock is a cornerstone of the right to freedom of expression. The authorities must enable everyone to express their opinions. This right covers the possibility to criticise all religions. All instances of incitement to violence targeting persons who criticize religions must be prohibited.

The right to freedom of expression also protects the ability to criticize the choice of depicting or conceiving religions in ways that may be perceived as stereotypical or offensive. Disagreeing with those choices, for example considering them stereotypical or prejudiced, is also covered by freedom of expression.

French authorities must uphold everyone's rights to freedom of religion or belief and to freedom of expression. These rights are enshrined in both international and regional human rights treaties.<sup>3</sup> Under international human rights law, no restrictions are permissible on the right to hold (or not to hold) religious or other beliefs, or opinions generally. However, the right to express such opinions (freedom of expression) or to manifest one's religion or belief may be subject to certain restrictions but only where such restrictions are demonstrably necessary and proportionate for the purpose of achieving a specified legitimate aim such as the protection of public safety, order, health, or the fundamental rights and freedoms of others.<sup>4</sup> The European Court of Human Rights found that the right to freedom of expression "is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broad-mindedness without which there is no democratic society."<sup>5</sup>

The right to freedom of expression requires authorities not only to refrain from voicing stereotypical and discriminatory speech, but also to play an active role in countering stereotypes and prejudices. While upholding the right for everyone to criticize religions, they should also, in the aftermath of the murders, ensure that neither Muslims nor refugees are targeted with discriminatory speech and violence, and should uphold the rights of everyone to manifest their religion or belief without fear of discrimination and violence. However, despite this obligation, in the last 20 years, French authorities have

<sup>1</sup> [https://www.lemonde.fr/societe/article/2020/10/20/attentat-de-conflans-entre-effets-d-annonce-et-recyclages-gerald-darmanin-fait-feu-de-tout-bois\\_6056645\\_3224.html](https://www.lemonde.fr/societe/article/2020/10/20/attentat-de-conflans-entre-effets-d-annonce-et-recyclages-gerald-darmanin-fait-feu-de-tout-bois_6056645_3224.html); [https://www.liberation.fr/france/2020/10/26/gerald-darmanin-ce-qu-on-cherche-a-combattre-c-est-une-ideologie-pas-une-religion\\_1803552](https://www.liberation.fr/france/2020/10/26/gerald-darmanin-ce-qu-on-cherche-a-combattre-c-est-une-ideologie-pas-une-religion_1803552)

<sup>2</sup> [http://videos.assemblee-nationale.fr/direct.9792372\\_5fa007fc1fe69](http://videos.assemblee-nationale.fr/direct.9792372_5fa007fc1fe69)

<sup>3</sup> These treaties include the ICCPR, Articles 18 and 19, and the European Convention on Human Rights, Articles 9 and 10.

<sup>4</sup> See, for example, Article 18.3 of the ICCPR.

<sup>5</sup> See European Court of Human Rights, *Handyside v. United Kingdom*, judgment of 7 December 1976.

passed laws and policies that have restricted the wearing of religious and cultural symbols or dress and that have discriminated against Muslims in the exercise of their rights to freedom of religion or belief and to freedom of expression.<sup>6</sup>

## RIGHT TO NON-DISCRIMINATION

Any measure that the French authorities might adopt to protect national security must not only be necessary and proportionate but must also abide by the principle of non-discrimination.<sup>7</sup> This principle requires French authorities to refrain from adopting any measure that could directly or indirectly discriminate against any groups defined by protected characteristics such as religion or belief, race, ethnicity, nationality or migration status.

French authorities must never adopt measures targeting Muslims on grounds that do not meet the threshold of evidence in criminal law procedures. All criminal prosecutions must meet international human rights standards. Amnesty International showed that in the past French authorities used the concept of "radicalization" to justify the imposition of emergency measures without a sound basis and in a discriminatory manner.<sup>8</sup> Administrative measures, such as assigned residence, are employed in France as a proxy for criminal proceedings specifically because the safeguards are weak and the executive enjoys a high degree of discretion when issuing orders. Such discretion coupled with weak safeguards create the conditions for arbitrary and discriminatory practices toward Muslims. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concluded that: "French Arab and/or Muslim communities have been primarily subject to exceptional measures both during the state of emergency and presently from the SILT law, in tandem with other counter-terrorism measures."<sup>9</sup>

Since the murder of Samuel Paty, a number of political leaders have made discriminatory statements against Muslims in the national media and in a general climate of suspicion and rejection of Muslims. Among these statements, the declaration of the Minister of the Interior conflating the existence of halal shelves in supermarkets, "community separatism" and terrorism are particularly alarming.<sup>10</sup> All these statements fuel this dangerous climate, particularly in the preparation of the forthcoming parliamentary debate on the so-called "secularism and liberties" law, which targets religious separatism.

Public officials must refrain from making any stereotypical, stigmatizing and discriminatory comments targeting Muslims and refugees.<sup>11</sup> Those statements feed into a continuing and growing discriminatory environment for Muslims in France. During the 2015-2017 state of emergency, French authorities disproportionately targeted Muslims with heavy security measures without due process leading to long-term consequences for the targeted individuals and their family members including fear, stress and other health-related issues. The authorities and political leaders must not repeat the discriminatory conduct of the past, which contributes to a portrayal of all Muslims as suspects.

Moreover, judicial authorities should ensure that any incitement to commit a violent crime targeting Muslims and places of worship, is prohibited. Any alleged discriminatory motive associated with a violent crime must be investigated. State interventions should include measures to combat discrimination, such as calls by political leaders to condemn discrimination and broader educational policies as proposed in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>12</sup>

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<sup>6</sup> Amnesty International. Choice and Prejudice: discrimination against Muslims in Europe.

<sup>7</sup> The principle of non-discrimination is enshrined in many international human rights treaties including the ICCPR (Articles 2.2 and 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 2.2). Article 14 in the European Convention for the Protection of Human Rights and Fundamental Freedoms prevents its Contracting Parties from discriminating on the ground of religion or belief in relation to the enjoyment of the rights it enshrines. Protocol 12 to the ECHR encompasses a free-standing anti-discrimination clause that prohibits discrimination on the ground of religion or belief in respect of all legal rights.

<sup>8</sup> Amnesty International, Upturned lives. The disproportionate impact of France's state of emergency. <https://www.amnesty.org/download/Documents/EUR2133642016ENGLISH.pdf>

<sup>9</sup> The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism preliminary report following her country visit in France in May 2018, p.7 [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E)

<sup>10</sup> [https://www.francetvinfo.fr/societe/religion/religion-laicite/gerald-darmanin-declaration-polemique-sur-les-rayons-halal-et-casher-des-supermarches\\_4150921.html](https://www.francetvinfo.fr/societe/religion/religion-laicite/gerald-darmanin-declaration-polemique-sur-les-rayons-halal-et-casher-des-supermarches_4150921.html)

<sup>11</sup> <https://www.amnesty.fr/discriminations/actualites/discriminations-musulmans-stop>

<sup>12</sup> [https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)

## NON-REFOULEMENT

On 18 October, the media reported that Gérard Darmanin, the Minister of the Interior, intended to tighten French asylum laws and practices with a view to “avoiding granting refugee status almost automatically to citizens of specific countries”.<sup>13</sup> The Minister of Interior also announced the planned expulsion of 231 foreign nationals who are suspected of “radicalization”. The announcement followed the release of information that the murder suspect in Samuel Payy’s case had refugee status in France. On 2 November, the Minister explained that 16 foreign nationals who were suspected of “radicalization” had been expelled in the previous month and that many more will be expelled in the following months.<sup>14</sup>

International human rights law and standards establish the absolute ban on torture and other ill-treatment, which includes a prohibition on sending anyone to a place where they would be at risk of such abuse, regardless of their alleged offence (the *principle of non-refoulement*).<sup>15</sup> The principle of *non-refoulement* applies to everyone including people who are excluded from refugee protection and people who have committed any crime. The European Court of Human Rights has categorically concluded that balancing the risk of harm to the person if removed from the country against the danger a person presents to the community if not sent back is misconceived.<sup>16</sup>

Under French law, foreign nationals who represent a serious threat to public order or national security can be subject to an expulsion order, the only exception being if they are a minor.<sup>17</sup> In case of absolute urgency, the expulsion can be carried out immediately without any procedural safeguards, including the possibility to appeal the decision before the implementation of the expulsion order.<sup>18</sup> As such, French law does not currently comply with international human rights law obligations regarding non-refoulement.

Amnesty International is concerned that the expulsion of foreign nationals announced by the Minister of the Interior violate the principle of non-refoulement, which is also a principle of customary international law. Amnesty International calls on the French authorities to comply with their international obligations and refrain from expelling any person to a place where they would be at real risk of torture and other ill-treatment.

## FREEDOM OF ASSOCIATION

On 19 October, Gérard Darmanin, the Minister of the Interior, announced the government’s intention to dissolve several organizations and to close Muslim places of worship. The Minister of Interior also announced that 51 associations and several dozens of people would be subject to house searches on the basis of information available to intelligence services. On 2 November, the Minister of Interior announced that two organizations had been dissolved and that two will be dissolved in the next two weeks.<sup>19</sup> Moreover, the Minister emphasized that 172 house searches (*visites et saisines*) had been authorized by a judge and that 48 were in the process of being authorized. Although these searches must be authorized by a judge, they can be sought and justified on the basis of vague grounds.<sup>20</sup>

Under French law, the Council of Ministers can dissolve an organization by decree.<sup>21</sup> An organization can be shut down if, for example, it promotes armed gatherings or incites to violence, hatred and discrimination. But French law does not require prior judicial scrutiny on the government’s decision to dissolve an organization. Once issued, any dissolution decree can be contested before administrative courts. Moreover, under another legal provision, prefects, i.e. state’s local representatives, can close those places of worship that incite to violence, discrimination and the commission of a terrorism-related offence under French law, including the apology of terrorism.<sup>22</sup> Amnesty International has raised

<sup>13</sup> <https://www.europe1.fr/politique/information-europe-1-darmanin-veut-expulser-231-etrangers-fiches-pour-radicalisation-3999461>

<sup>14</sup> [http://videos.assemblee-nationale.fr/direct.9792372\\_5fa007fc1fe69](http://videos.assemblee-nationale.fr/direct.9792372_5fa007fc1fe69)

<sup>15</sup> European Convention of Human Rights (ECHR), Article 3; UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 7.

<sup>16</sup> Saadi v Italy, (37201/06), European Court of Human Rights, 28 February 2008, para. 139, <http://hudoc.echr.coe.int/eng?i=001-85276>.

<sup>17</sup> Articles L521-1, L521-2, L521-3, L521.4 of the Law on Foreigners (Code de l’entrée et de séjour des étrangers et du droit d’asile, CESEDA); [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT00000670158/LEGISCTA000006134412/#LEGISCTA000006134412](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT00000670158/LEGISCTA000006134412/#LEGISCTA000006134412)

<sup>18</sup> Article L 522-1 of the Law on Foreigners (CESEDA); <https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006335213/2016-10-17/>

<sup>19</sup> [http://videos.assemblee-nationale.fr/direct.9792372\\_5fa007fc1fe69](http://videos.assemblee-nationale.fr/direct.9792372_5fa007fc1fe69)

<sup>20</sup> Article 4 of law 2017-1510 (SILT law). The SILT law has slightly improved the judicial scrutiny applicable to house searches compared to house searches under the state of emergency that the authorities had introduced in France after the Paris attacks of November 2015 and which remained into force nearly two years. However, concerns remain regarding the legal clarity of the grounds on the basis of which house searches can be carried out. See: Amnesty International, Punished without trial. The use of administrative control measures in the context of counter-terrorism in France, <https://www.amnesty.org/download/Documents/EUR2193492018ENGLISH.PDF>

<sup>21</sup> Article 212-1 of the Law on National Security.

<sup>22</sup> Article L227-1 of the Law on National Security.

concerns regarding the lack of legal clarity of the term “apology of terrorism” and has called on states to repeal it.<sup>23</sup> On 2 November, the Minister of Interior stated that 66 investigations had been opened for “apology of terrorism” following the murder of Samuel Paty.

Under International human rights law and standards, states can restrict the rights to freedom of association and freedom of religion or belief but any such restrictions must be prescribed by law, necessary in a democratic society in the interests of national security or public safety, public order, protection of national security, public health or the rights of others. Any such restriction must also be necessary and proportionate to the aim that they intend to achieve.<sup>24</sup> As such, French law does not currently comply with international human rights law obligations regarding freedom of association. The dissolution of NGOs and the closure of places of worship that the Minister of Interior announced following the murder of Samuel Paty appear to be based on alleged links between those NGOs and places of worship and the perpetration of the murder.

Under international human rights law and standards, states can criminalize preparatory acts leading to the perpetration of a crime as well as the incitement to commit a crime. The criminalization of a preparatory act must comply with the principle of legality and avoid arbitrary and discriminatory application in practice, by ensuring that any preparatory act that is to be criminalized has a sufficiently close and direct connection to the commission of a principal criminal act, with a real and foreseeable risk that the act would in fact take place.

Moreover, states should prohibit only those forms of expression that genuinely amount to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act.<sup>25</sup>

Amnesty international maintains that the dissolution of associations – including those governing places of worship -must only be carried out in compliance with international human rights law. It must only be conducted where it is necessary and proportionate to the protection of national security or the rights of others. Otherwise, it constitutes a violation of the rights to freedom of association, and in the cases of places of worship, to freedom of religion or belief.

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<sup>23</sup> State should only subject forms of expression to criminal prosecution where it genuinely amounts to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act; vague offences such as “glorification” or “apology” of terrorism should be repealed. See: Amnesty International, *Dangerously Disproportionate. The ever expanding national security state in Europe*, chapter 4: <https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF>

<sup>24</sup> The right to freedom of association is protected by article 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 11 of the European Convention of Human Rights (ECHR). The right to freedom of religion or belief is protected by article 18 of the ICCPR and article 9 of the ECHR.

<sup>25</sup> See Amnesty International, *Dangerously Disproportionate. The ever expanding national security state in Europe*. Chapters 2 and 4, <https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF>