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BY Express Mail and E Mail

Mrs. Gabriela Knaul
Special Rapporteur on the Independence of
Judges and Lawyers
Palais Wilson
UNOG-OHCHR
CH 1211 Genève 10
Suisse

RE: Complaint Regarding Violations of the Right to a Fair Trial and the
Independence and Impartiality of the Judiciary in France.

Dear Special Rapporteur Knaul:

I am human rights counsel for the Church of Scientology. I am providing this submission regarding violations of the right to a fair trial and the independence and impartiality of the judiciary in France on behalf of the Church of Scientology, including the Church of Scientology known as the Spiritual Association of the Church of Scientology Celebrity Centre (ASES CC) in Paris.

I respectfully submit the enclosed complaint concerning alleged violations regarding the right to a fair trial and the independence and impartiality of the judiciary in cases regarding minority religious associations and their adherents in France.

ASES CC is directly concerned with the actions of the government to undermine the independence of the judiciary since it is a defendant in a criminal trial before the Appeals Court of Paris starting November 3, 2011. The accusation of “fraud” is based on the use of a personality test and a purported “psychological subjection under the cover of the Scientology doctrine”. This amounts to nothing short of a 21st Century “heresy” trial. What is really at stake is the very practice of the religion.

A Circular “On the Penal Policy Regarding Vigilance and the Fight Against Sectarian Abuses” has been issued on September 19, 2011 addressed to all Prosecutors and Presiding Magistrates of the French Appeals Courts, as well as Prosecutors and Presidents of Lower Courts. The new Circular has been published on the site of the Ministry of Justice: http://www.textes.justice.gouv.fr/art_pix/JUSD1125511C.pdf .

This Circular, which has been sent to give directions to the Prosecutors and Judges on how to interpret a 2001 law on the “repression of sectarian movements”, gives instructions regarding specific points which will have to be decided by the Paris Appeals Court in the coming ASES CC case. The Circular provides the following direction to Magistrates:

It is important then that the hearings of the individuals involved in the case and all other useful investigations allow the assessment of the existence of a psychological subjection and the exercise of this subjection by individuals or legal entities through physical, cognitive or behavioral practices the victims have been induced to follow. As examples, we can mention: tests, purification cures, vitamin diets, long fasting, repeated initiation courses, introduction of a vocabulary or civil status specific to the group...

The Circular thus instructs Magistrates to consider religious practices such as purification and initiation courses as “behavioral practices” susceptible to constitute “psychological subjection”. Additionally, the Circular gives instruction to the Magistrates to collaborate with an anti-religious association that is a civil party in the case. How can there be equality and fairness in a trial when the Circular instructs Magistrates to work in cooperation with a civil party? The issuance of such a Circular a few weeks before the ASES CC trial constitutes undue influence on the Judges and undermines the principle of the independence of the judiciary and the right to a fair trial.

As background, repressive measures have been initiated since 1996 by the French government to target religions derogatorily designated as “sectarian movements”. These special measures have undermined the general institutional framework and guarantees securing a fair trial, judicial impartiality, and judicial independence in France for religious minorities in France, in particular:

- Public pronouncements by French government officials that minority religions designated as “sects” or “sectarian movements” must “*be fought against*”;

- “Awareness” sessions for judges, prosecutors and police organized and run by the “Sect Mission” which prejudice entire movements by portraying specific targeted faiths in a negative light;
- “Cells of vigilance” presided over by the chief administrative officer of a French department, bringing together all of the governmental services concerned with the subject throughout the country, *including the judicial services and representatives of the anti-sect associations*;
- Ministry of Justice Circulars *to prosecutors and judges* instructing them to maintain institutional contacts with biased anti-sect associations or to accept them as civil parties in criminal proceedings, and to pressure prosecutors and judges to go forward with criminal cases based on vague and unscientific notions of “psychological subjection”; and
- Special laws targeting religions and designed to interfere with the right to a fair trial for religious minorities and undermine the impartiality of the judiciary by providing participation as civil parties in such legal proceedings to blatantly biased groups subsidized almost exclusively by the French government that are committed to “*fighting sects*”.

The defective criminal system designed to discriminate against so-called “sectarian movements” became much worse with the issuance of the September 2011 Circular issued to all Prosecutors and presiding Magistrates. The clear purpose and effect of the Circular is to prejudice the judiciary against so-called “sectarian movements” and to pressure them to convict members of these religions based on vague and unscientific criteria in violation of the Rule of Law.

As the UN Human Rights Committee notes in its General Comment 32 on Article 14 of the ICCPR:

Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.

These principles of fairness and freedom from direct or indirect influence, pressure, intimidation or intrusion are egregiously violated by the 2011 Circular. Religious groups are being targeted on the basis of broad and vague standards which could just as easily be applied to all religions, but which are not so applied due to the discriminatory motives underlying these draft laws.

Any prosecution and trial based on such extremely vague language as “psychological subjection” allows for too broad of an interpretation that will inevitably result in arbitrary and discriminatory application of the law by permitting virtually unfettered discretion by officials to use the criminal law as a weapon to repress minority faiths. As the European Human Rights Court has determined in the context of an adult choosing of his or her own

free will to associate with a religious movement:

There is no generally accepted and scientific definition of what constitutes “mind control”.

Jehovah's Witnesses v. Russia (application 302/02 10 June 2010).

Laws which are excessively vague, which are discriminatory in intent and application, and which allow for the imposition of draconian measures on religious communities and their parishioners are incompatible with the rule of law in a democratic society and thus violate fundamental rights protected by all major international human rights treaties.

The vague nature of the Circular directly contravenes Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which mandate that any actions subject to criminal charges must be defined in terms that are sufficiently clear, specific and foreseeable for citizens to know beforehand what actions or omissions would involve their responsibility and to preclude arbitrary prosecution.

The 2011 Circular also violates the right to freedom of religion guaranteed by Article 18 of the ICCPR by violating the right to religious freedom through the manifestation of religion by imposing unjustified restrictions on this right. In addition, the Circular's targeting of selected minority faiths for these proceedings also violates the prohibition against religious discrimination contained in Articles 2 and 26 of the ICCPR. This right to be free from religious discrimination is particularly important to members of targeted religious movements which are the subject of special laws against “sectarian movements” as they are denied the same guarantees of religious freedom provided to other religions.

The measures implemented by the French government to “*fight against*” minority religions in the judicial process represent an unprecedented level of discrimination in contravention of international human rights standards that have indelibly tainted the entire judicial institutional framework and guarantees securing judicial independence in France in cases concerning any of the targeted religions and their adherents. International assistance is necessary to remedy this institutionalized discrimination.

These repressive measures detailed in the attached submission cannot be countenanced under UN Basic Principles on the Integrity of the Judiciary, *The Bangalore Draft Code of Judicial Conduct 2001*, *Guidelines on the Role of Prosecutors*, and Articles 2, 14, 15, 18 and 26 of the International Covenant on Civil and Political Rights.

On behalf of Church of Scientology and its parishioners, I respectfully request that the Rapporteur communicate with the French government regarding this matter and investigate the allegations detailed in the enclosed submission in order that the right to a fair trial be restored for religious minorities in France.

Thank you for your assistance. If you have any questions on the information that we provided to you, or if you need any further information, please do not hesitate to contact me.

Sincerely,

William C. Walsh

Enc. English extracts of the Circular of September 19, 2011 “On the Penal Policy Regarding Vigilance and the Fight Against Sectarian Abuses”