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FRANCE: AUTHORITIES MUST REPEAL DISCRIMINATORY BAN ON THE WEARING OF *ABAYA* IN PUBLIC SCHOOLS

On 27 August 2023, in a prime-time television interview, Gabriel Attal, France's Minister of Education, announced that he had decided that "the *abaya* could no longer be worn at school".¹

On 28 August 2023, just a few days before children in France were to re-start school after the summer holidays, the Minister confirmed in a speech that wearing of "religious dress such as *abaya* or *qamis*" would be banned in all public schools in France.² The Minister justified this decision to "refuse *communautarisme*"³ and asserted that "schools must at all costs (...) be protected from religious proselytism".⁴

On 31 August 2023, the official Bulletin of the French Ministry of Education published some guidance addressed to school principals and inspectors confirming the ban on wearing *abaya* and *qamis*.⁵ The guidance also foresaw that in cases where pupils did not comply with the ban, the school personnel should enter in a dialogue with the pupil and their families. If the dialogue were to fail, disciplinary proceedings should systematically be initiated by school principals (knowing that, according to the French code of education, disciplinary proceedings can lead to school expulsion).⁶

This new guidance is understood by French authorities to implement aspects of the law of 15 March 2004 "governing, in application of the principle of secularism, the wearing of signs or dress expressing religious affiliation in public schools"⁷; which, as Amnesty International has emphasized, discriminates against Muslim girls, and those perceived as Muslim, on grounds of race, religion and gender in their enjoyment to their rights to freedom of expression, religion or belief and in their access to education.⁸

On 4 September 2023, France's President Emmanuel Macron declared in an interview that while he did not want "children of the Muslim faith [and teenage girls] to feel excluded from or uncomfortable at school"; according to him, the *abaya* is a way to say "I'm different". He added that "we live in a society with a minority of people who, misusing a religion, challenge the Republic and secularism; and this has sometimes led to the worst: we can't pretend that the terrorist attack and Samuel Paty's assassination didn't happen in our country"; drawing a parallel between the wearing of *abaya* and a violent and deadly attack against a school teacher.⁹

¹ TF1 channel, news broadcast, Sunday 27 August 2023, 8PM, <https://www.tf1.fr/tf1/jt-we/videos/rentree-scolaire-ce-qui-faut-retenir-de-l-interview-de-gabriel-attal-26960632.html>, as of minute 6:10.

Quote in French: "J'ai décidé qu'on ne pourrait plus porter l'abaya à l'école".

² Press conference by the Minister of National Education and Youth, in the premise of the Ministry of Education, 28 August 2023, 9AM, broadcasted by BFMTV, https://www.youtube.com/watch?v=2twaENNRz_w, as of minute 25:33.

Quote in French: "Le port de tenues religieuses comme les abayas et les qamis".

³ This notion refers both to supposed forms of *entre-soi* and to collective demands described as particularist or separatist. Marwan Mohammed and Julien Talpin, *Communautarisme ?*, 2018.

⁴ Quote in French: "Ce choix est un choix de fidélité à nos valeurs et de refus du communautarisme. L'école doit à tout prix (...) être protégée du prosélytisme religieux, de tout embryon de communautarisme ou de refus de nos règles communes les plus importantes."

⁵ Bulletin officiel de l'éducation nationale, de la jeunesse et des sports n°32, 31 August 2023 <https://www.education.gouv.fr/bo/2023/Hebdo32/MENG2323654N>

⁶ France, Code of Education, 2019, article R511-13, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000039016602

⁷ France, Loi n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, 2004, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000417977>

⁸ Amnesty International, Choice and Prejudice: discrimination against Muslims in Europe (index: eur 01/001/2012), 2012, <https://www.amnesty.org/en/documents/eur01/001/2012/en/>, p. 65-68

⁹ Youtube channel HugoDécrypte - Grand format, L'interview d'Emmanuel Macron par HugoDécrypte, 4 September 2023, <https://www.youtube.com/watch?v=3Z6HnUJ3hcw>, minute as of 43:29.

Quotes in French: "Je ne veux pas que les enfants de confession musulmane [et les adolescentes] se sentent exclus ou mal à l'aise à l'école"; "C'est un choix religieux, c'est quelque chose qui convie quelque chose : le fait de dire "moi je suis différent et je viens comme ça"; "Il ne faut pas se tromper ; nous vivons dans notre société avec une minorité de gens qui, détournant une religion, viennent défier la République et la laïcité. Et ça a parfois donné le pire : on ne peut pas faire comme s'il n'y avait pas eu l'attaque terroriste et l'assassinat de Samuel Paty dans notre pays (...) et ça, c'est fait parce qu'un enseignant apprenait la laïcité dans son cours, et qu'ensuite il y a eu cet emballement avec les réseaux sociaux, et des gens qui ont ensuite commis le pire." (...)

Additionally, on 5 September 2023, in an internal briefing, the Minister of Justice, Éric Dupond-Moretti, called for "a firm, rapid and systematic penal response" to breaches of the principle of secularism in schools, and that the "abuses that might be committed (...) will necessarily call for a highly reactive penal response".¹⁰

On 7 September 2023, the association Action Droits des Musulmans filed an urgent complaint with the Conseil d'Etat alleging violations of the right to privacy, to freedom of religion, to education, and of the principles of the respect of the best interests of the child and of non-discrimination. The Conseil d'Etat judges ruled that the ban on wearing *abaya* and *qamis* did not seriously and manifestly illegally infringe those rights; and that the wearing of the garments in schools was part of a process of religious affirmation, as shown by the comments made during discussions with pupils; and was hence prohibited by the 2004 law.¹¹

On 8 September 2023, three unions filed another complaint with the Conseil d'Etat, alleging the incompetence of the Minister of Education to decide what is religious in nature;¹² and that since the *abaya* cannot be considered a religious garment in itself, its prohibition will necessarily be based on the student's supposed religion or origin, thus creating discrimination.¹³

DISCRIMINATION AGAINST MUSLIM WOMEN AND GIRLS

While nor the 2004 law, nor the Bulletin, explicitly refer to Muslim people nor to the religion of Islam, they betrayed an overly focus on Muslim people, and those perceived as Muslim, and especially women and girls. This focus on Muslim pupils, and those perceived as Muslim, is confirmed by declarations from government officials, including the President of France.¹⁴

Firstly, French authorities fail at giving a clear definition of what are *abaya* and *qamis*. The bulletin only refers to the fact that "the wearing of such clothing, which ostensibly manifests a religious affiliation in the school environment, cannot be tolerated"¹⁵ hence assuming that they are religious garments¹⁶.

Abaya and *qamis* are Arabic words which refer to garments traditionally worn in Maghreb and Gulf countries, as well as Ovest Africa.¹⁷ *Abaya*, a female garment, designates a loose over-garment, essentially a robe-like dress, descending to the wrists and ankles. Yet, the word *abaya* can also mean any type of dress and coat.

Qamis designates a long tunic that descends above the ankles or at the level of the calves. The word *qamis* can also refer to a shirt.

The lack of clarity that derives from the assumption that undefined pieces of clothing are religious, as well as the summoning of the concept of secularism to justify this ban, risks leading to discriminatory and arbitrary practices of school personnel; knowing that media reports are already pointing out at cases of abuse.¹⁸ Indeed, school personnel now have to decide what is an *abaya* or *qamis* without objective grounds; and risk discriminate pupils based on their name, skin colour and (presumed) religion (here Islam).

¹⁰ Le Parisien, *Radicalisation, abaya, laïcité : la circulaire de Dupond-Moretti sur la rentrée scolaire*, 5 September 2023, Radicalisation, abaya, laïcité : la circulaire de Dupond-Moretti sur la rentrée scolaire - Le Parisien

¹¹ Conseil d'Etat, décision en référé liberté n° 487891 / ECLI:FR:CEORD:2023:487891.20230907, Laïcité : le Conseil d'État rejette le référé contre l'interdiction du port de l'abaya à l'école (conseil-etat.fr)

¹² The Conseil Français du Culture Musulman having affirmed that the *abaya* is not a religious sign.

Conseil Français du Culte Musulman, Press release, 11 June 2023, CFCM a X: "Le CFCM réagit au débat sur les atteintes à la laïcité dans les établissements scolaires qui s'est cristallisé sur le port de l'abaya. Ce terme arabe, qui se traduit par robe ou manteau, est présenté à tort par certains comme un signe religieux musulman. <https://t.co/jNLkdZObol>" / X (twitter.com)

and Press Release, 4 September 2023, Communiqué : Une tenue ne saurait être religieuse par simple suspicion - CFCM (cfc-officiel.fr)

¹³ Actu Juridique, *FLASH : Le conseil d'Etat rejette le recours contre l'interdiction de l'abaya à l'école*, 07 September 2023, <https://www.actu-juridique.fr/administratif/libertes-publiques-ddh/flash-le-conseil-detat-rejette-le-recours-contre-linterdiction-de-labaya-a-lecole/>

and TRT Français, *Interdiction de l'abaya : plusieurs syndicats saisissent le Conseil d'Etat en référé-suspension*, 08 September 2023, <https://www.trtfrancais.com/actualites/interdiction-de-labaya-plusieurs-syndicats-saisissent-le-conseil-detat-en-refere-suspension-14876442>

¹⁴ See interviews mentioned above.

¹⁵ Bulletin officiel de l'éducation nationale, de la jeunesse et des sports n°32, 31 August 2023 <https://www.education.gouv.fr/bo/2023/Hebdo32/MENG2323654N>

Quote in French : "le port de telles tenues, qui manifeste ostensiblement en milieu scolaire une appartenance religieuse, ne peut y être toléré".

¹⁶ While the Conseil Français du Culture Musulman has affirmed that *abaya* is not a religious garment.

Conseil Français du Culte Musulman, Press release, 11 June 2023, <https://twitter.com/CfcmOfficiel/status/1667949823603908609>

and Press Release, 4 September 2023, <https://cfc-officiel.fr/communiqué-une-tenue-ne-saurait-etre-religieuse-par-simple-suspicion/>

¹⁷ The name of these garments may vary depending on the country or region where there are worn. *Qamis* can be called "djellaba" in some countries of the Maghreb, "boubou" in West Africa, or "thawb" in Saudi Arabia and in the countries of the Gulf.

¹⁸ Médiapart, *Depuis l'interdiction de l'abaya, des élèves humiliées et déjà des dérives*, 7 September 2023, <https://www.mediapart.fr/journal/france/070923/depus-l-interdiction-de-l-abaya-des-eleves-humiliees-et-deja-des-derives>

Hence this ban feeds into a persistent racist and discriminatory rhetoric by politicians that conflate Islam with terrorism and vague concepts such as “political Islam”, “radical Islam” and “Islamist separatism” and “communautarism” often referred to interchangeably.¹⁹ Muslim people, and those perceived as Muslim, are too often labelled as “radicalized” or “terrorist threats” simply for exercising their rights to manifest their religion or belief and to freedom of expression. This extends to children who are often treated as suspects.

Yet, France, among other international human rights instruments, has ratified the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination; and is bound by the European Union’s Race and Ethnicity Equality Directive which all prohibit racial and religious discrimination.²⁰

French authorities have embarked, for the last 20 years, on a continuity of lawmaking and regulation of Muslim girls and women’s clothing, fuelled by prejudice against them, and anchoring gendered discrimination towards Muslim women and girls, and those perceived as Muslim.²¹

As of 2003, Muslim women advocates who were opposing the aforementioned 2004 law (which led to the banning of hijab for pupils in French public schools), warned that the French state would not “stop” with banning the hijab, but continue to regulate Muslim girls and women clothing. Amnesty International fears that this new ban is part of this continuum.

Indeed, while the ban officially addresses men (*qamis*) and women’s (*abaya*) garments, the public discourse (governmental officials’ declarations as well as media covering of the topic) focuses mostly on *abaya*.²² This disproportionate focus on women and girls in discourse seems to also have a disproportionate and gender discriminatory effect on the ground. To this day, media reports have only accounted cases of girls being asked to take off their garment and/or being sent back home when refusing to do so,²³ and French authorities have not communicated on cases of boys being asked to take off their garment, nor has Amnesty International been aware of such cases.

Yet, norms associated with dress codes often mirrors gender stereotypes that have a disproportionate impact on women and girls and are underlying causes of the human rights violations that they experience. States and non-state actors are

¹⁹ Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>, p.10 and Amnesty International, *Regional overview of islamophobia in Europe. Report prepared by amnesty international for the Council of Europe committee on equality and non-discrimination draft report “Raising awareness of and combatting islamophobia in europe”* (Index: EUR 01/5659/2022), June 2022, <https://www.amnesty.eu/news/regional-overview-of-islamophobia-in-europe-a-submission-to-the-council-of-europe-pace-committee-on-equality-and-non-discrimination/>, p.13

²⁰ International Convention on the Elimination of All Forms of Racial Discrimination, Articles 2 and 5; International Covenant on Civil and Political Rights, Article 4; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2.

²¹ The following laws, regulations and court decisions have all narrowed the possibility for Muslim women to dress as they please. The following list does not account for various other attempts of restricting Muslim women’s rights, which did not stand the test of parliamentary debat or court :

- Law n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, 2004, which led to the ban of headscarves in public schools, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000417977>
- Law n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public, 2010, which led to the ban of full face covering in public spaces, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022911670/>
- Modification of article L 1321-2-1 of the labour code by law n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels, 2016, foreseeing the possibility for employers to impose religious neutrality at work, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000032983501
- French Football Federation’s statuts, Article 1, 2016, forbidding hijab from competitions, <https://media.fff.fr/uploads/document/949250c4a16ced399ff49fea88140be0.pdf>
- Upheld by Conseil d’Etat ruling n° 458088, 459547, 463408, 28 June 2023, <https://www.conseil-etat.fr/actualites/interdiction-par-la-fff-du-port-pendant-les-matches-de-tout-signe-ou-tenue-manifestant-ostensiblement-une-appartenance-politique-philosophique-r>
- Cour de Cassation decision, Pourvoi n° 20-20.185, 2 March 2022, stating that the Bar Council may prohibit the wearing, with the lawyer’s robe, of any sign expressing a religious, philosophical, community or political affiliation or opinion, after vivid debates around the possibility for Muslim lawyers to wear hijab in court, https://www.courdecassation.fr/decision/621f1707459bcb7900c39e7d?search_api_fulltext=20-20.185&op=Rechercher+sur+judilibre&date_du=&date_au=&judilibre_juridiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1

²² The President and the Ministers’ declarations, as well as the general treatment of the topic by politicians and the media, have overly, if not solely, focused on the wearing of *abaya* and much less so on *qamis*. See interviews mentioned above.

²³ In an interview TV the Ministry of Education announced that 298 students had shown up to school wearing abayas, and that 67 had refused to remove them after being asked to do so by school personnel.

BFMTV, *Abayas interdites à l'école: 67 élèves ont refusé de l'enlever le lundi de la rentrée scolaire*, Interview of Gabriel Attal, Minister of Education 5 September 2023, *Abayas interdites à l'école: 67 élèves ont refusé de l'enlever le lundi de la rentrée scolaire* (bfmtv.com)

No official statement has been made concerning students wearing *qamis*, and Amnesty International has no knowledge of such cases.

eager to control women's bodies and choices. They feel entitled to regulate choices pertaining to the social roles and the appearance of women and girls, including their decision on wearing or not wearing religious and cultural dress, as the symbolic embodiment of a community's values, whether or not these values are shared by the individuals on whom they are enforced.

Enforced dress codes, including both the compulsory wearing of specific symbols and dress or the prohibition to wear them, is a manifestation of underlying discriminatory attitudes and reflect a desire to control women's and girls' bodies and denying their personal autonomy.²⁴

However, France, amongst other international human rights instruments, has ratified the Convention on the Elimination of All Forms of Discrimination Against Women and should thus be aiming at countering gender-based stereotypes, and promoting the values of gender equality and non-discrimination.²⁵

RIGHT TO FREEDOM OF EXPRESSION AND RELIGION OR BELIEF

The Bulletin of the French Ministry of Education, the President's and Ministers' statements, as well as the Conseil d'Etat's ruling, seem to rely on two grounds to justify the ban of *qamis* and *abaya*: the protection of "secularism" as a core value of the French State, and the aim to protect schools from "communitarianism", "proselytism", "a minority of people who misuse a religion" and "people capable of the worst".²⁶

Yet, any restrictions on the rights to freedom of expression²⁷ and religion or belief²⁸ must meet a stringent three-part test: they must be prescribed by law; address a specific legitimate purpose permitted by international law, *i.e.*, the protection of national security, public order, public health, morals, or the protection of the rights of others, and be demonstrably necessary and proportionate for that purpose.

Protecting secularism is not a permissible ground, under international human rights law, to introduce a blanket prohibition on religious and cultural symbols and dress applying to students, nor to restrict human rights including to freedom of expression and religion or belief. A prohibition could be justified in some circumstances, for example to protect the rights of others and so to ensure that children are not pressured to embrace or manifest a specific religion or belief, including by wearing specific forms of religious and cultural symbols and dress. However, a blanket ban such as the one in France, which is applicable in all schools and throughout the national territory, is not a proportionate measure.²⁹

Moreover, it is the responsibility of the State, when adopting and implementing any restrictions on these rights to provide the necessary evidence pointing to its legitimacy, necessity and proportionality and to assess the discriminatory impact that restrictions may have on specific groups.

The French authorities have thus far failed to do so concerning the ban on *abaya* and *qamis*, while entrenching the discrimination and stigmatization against Muslims, and those perceived as Muslim, strengthening racist stereotypes that portray men as inherently violent, women as inherently victims and both as a threat to national security.

RIGHT TO EDUCATION

On 5 September 2023, the day following the going back to school of French pupils and the new ban on *abaya* and *qamis*, the Minister of Education announced that 298 students had shown up wearing abayas, and that 67 had refused to remove them after being asked to do so by school personnel. The Minister specified that these pupils were sent back

²⁴ Amnesty International, *Women's right to choose their dress, free of coercion. Statement submitted by Amnesty International to the 55th session of the United Nations Commission on the Status of Women*, 4 March 2011, https://www.amnesty.nl/content/uploads/2017/02/womens_right_to_dress_boerkaverbod_3.pdf?x68187, p.2

²⁵ Convention on the Elimination of All Forms of Discrimination against Women, Article 5.

²⁶ See interviews mentioned above.

²⁷ Universal Declaration of Human Rights, Article 18; International Covenant on Civil and Political Rights, Article 18; European Convention on Human Rights, Article 10.

²⁸ Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, Article 19; European Convention on Human Rights, Article 9.

²⁹ Amnesty International, *Choice and Prejudice: discrimination against Muslims in Europe* (index: eur 01/001/2012), 2012, <https://www.amnesty.org/en/documents/eur01/001/2012/en/>, p. 68-71

home and that "in the next few days, they'll be back, since they have to go to school, and then we'll see whether they've complied with the rule or not."³⁰

Yet, refusing pupils to attend lessons is a violation of their right to education in clear breach of France's obligations to ensure that all pupils can access education without discrimination as set out in a number of treaties ratified by France, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child³¹.

Additionally, the 2015 interim report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt states that "pressure exercised on children in schools, for instance with the purpose of alienating them from their religion or beliefs, may again simultaneously violate the rights of the child and the rights of his or her parents. In many such cases, the rights of persons belonging to religious minorities may additionally be at stake".³²

Finally, the Committee on economic, social and cultural rights' general comment on Non-discrimination in economic, social and cultural rights states that religion is a "prohibited ground of discrimination [and] covers the profession of religion or belief of one's choice (including the non-profession of any religion or belief), that may be publicly or privately manifested in worship, observance, practice and teaching."³³

Yet, as mentioned above, hundreds of pupils in France have already been impacted by this ban and this is likely only to increase over time. A general ban on religious and cultural symbols and dress applying to pupils is a form of religious and racial discrimination; and breaches pupils' right to freedom of expression, thought, belief and education; while having, in the light of the data available to Amnesty International, a disproportionate and discriminatory effect on women and girls.

RECOMMENDATIONS

In a general context of relentless and decades long targeting of Muslims in France, especially women and girls, Amnesty International is highly concerned by France's ongoing breaches of its international human rights obligations and its consequences on the lives of Muslim people in France, and those perceived as Muslims.

Amnesty International urges the French authorities, and in particular the President and the Ministry of Education to, at a minimum:

- Repeal the ban on the wearing of *abaya* and *qamis* in public schools;
- Respect, protect and fulfil the rights to freedom of expression, religion, belief and education of everyone, and especially Muslim girls, and those perceived as Muslims, to wear *abaya* and other religious or cultural symbols or dress without any discrimination;
- Refrain from weaponizing public discourse for political gain with harmful rhetoric and stereotypical statements that stigmatize Muslims and those perceived to be Muslim, and instead promote the values of non-discrimination;
- Stop homogenizing the different significance *abaya* may represent to women and girls who wish to wear them, nor rely on harmful stereotypes about religions, traditions or culture to restrict individuals' human rights; and instead promote gender equality and women and girls' bodily autonomy.

³⁰ BFMTV, *Abayas interdites à l'école: 67 élèves ont refusé de l'enlever le lundi de la rentrée scolaire*, Interview of Gabriel Attal, Minister of Education 5 September 2023, https://www.bfmtv.com/politique/gouvernement/attal-annonce-que-298-eleves-se-sont-presentes-en-abaya-pour-la-rentree-et-67-ont-refuse-de-l-enlever_AV-202309050267.html

Quote in French: « Dans les prochains jours, elles reviendront puisqu'elles doivent être scolarisées, et puis on verra si elles se sont conformées à la règle ou pas ».

³¹ International Covenant on Economic, Social and Cultural Rights, Article 13; Convention on the Rights of the Child, Article 28.

³² UN General Assembly, Interim report of the Special Rapporteur on freedom of religion or belief, 5 August 2015, <https://www.refworld.org/pdfid/562f43db4.pdf>, para 13.

³³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, <https://www.refworld.org/docid/4a60961f2.html>, para 22.