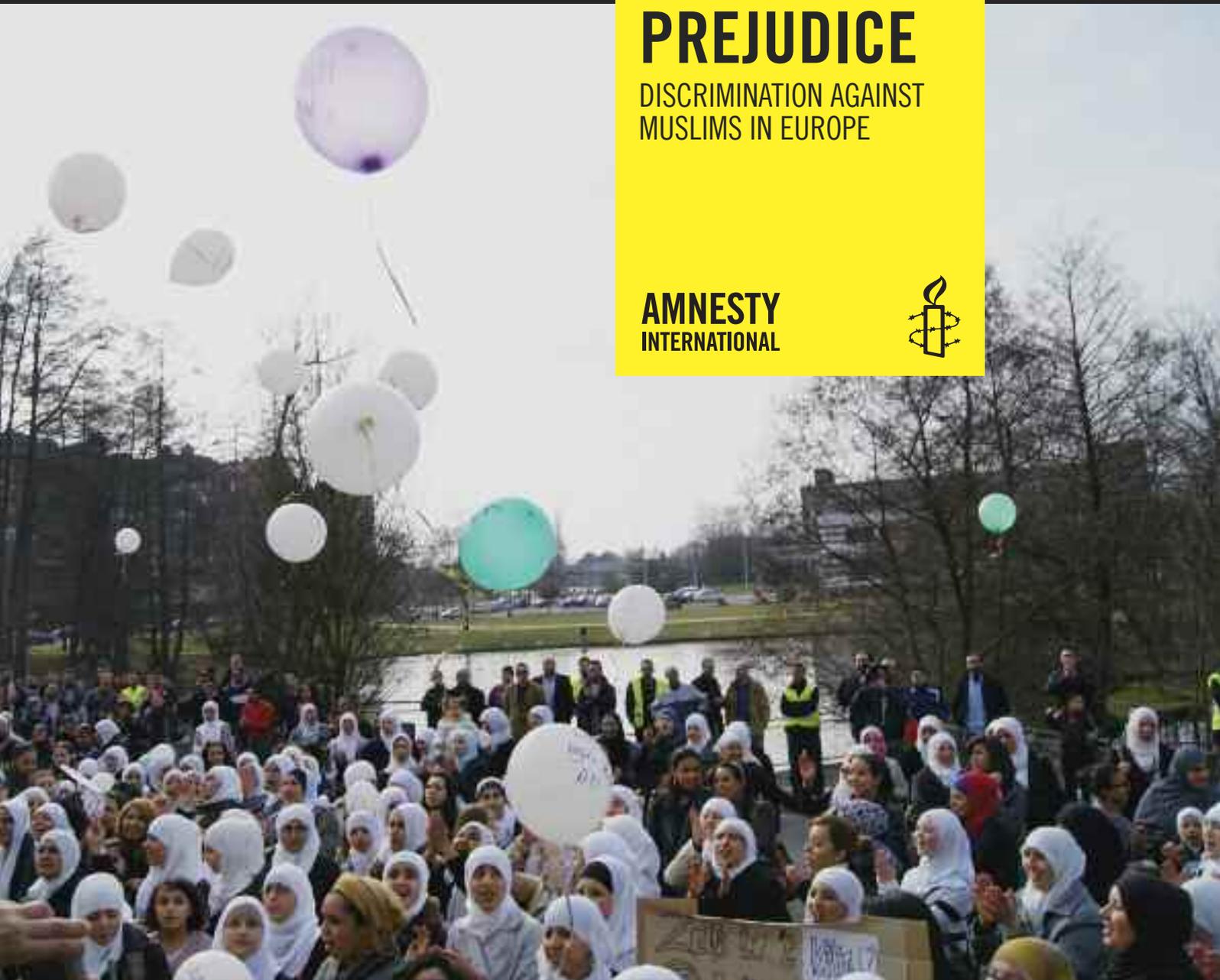


# CHOICE AND PREJUDICE

DISCRIMINATION AGAINST  
MUSLIMS IN EUROPE

AMNESTY  
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY  
INTERNATIONAL**



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*Cover photo:* A demonstration in Genk, Belgium, March 2011. Around 300 Flemish Muslims marched through the city in a peaceful procession, shouting “we want freedom”. They were protesting against the dismissal of a female employee of the Dutch department store chain HEMA in Genk, who was wearing a hijab (headscarf). © 2011 – StampMedia – Liesbeth Merckx

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# 1. INTRODUCTION

“European countries appear to face another crisis beyond budget deficits – the disintegration of human values. One symptom is the increasing expression of intolerance towards Muslims. [O]pinion polls in several European countries reflect fear, suspicion and negative opinions of Muslims and Islamic culture. These Islamophobic prejudices are combined with racist attitudes – directed not least against people originating from Turkey, Arab countries and South Asia. Muslims with this background are discriminated [against] in the labour market and the education system in a number of European countries.”

Thomas Hammarberg, Council of Europe Commissioner for Human Rights.<sup>1</sup>

Muslims in Europe face discrimination in several areas of life because of their religion, their ethnic origin or their gender, or a combination of these grounds. Discrimination has a negative impact on their lives and affects their exercise of many human rights. It blights their individual prospects, opportunities and self-esteem and can result in isolation, exclusion and stigmatization. For example, legislation and policies restricting the wearing of religious and

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<sup>1</sup> Thomas Hammarberg. Human rights' comment "European Muslims are stigmatized by populist rhetoric". October 2010, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=99](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=99)

cultural symbols and dress often have the effect of excluding from employment Muslim women who choose to manifest their religious, cultural or traditional background by wearing specific forms of dress and thus indirectly contribute to their own marginalization. Some women interviewed during this research said they felt discouraged from seeking employment and thus decided either to stay at home or work in sectors where wearing religious and cultural symbols or dress was perceived to be less problematic. Such legislation and policies are detrimental to women's equality and autonomy.

Muslims should be given the possibility to make independent choices in relation to the expression of their cultural and religious backgrounds. Such choices include the way in which Muslims manifest their cultural and religious background by, for instance, wearing or not wearing specific forms of dress or by worshipping or not worshipping with other members of their community. Muslims should be able to make these choices free from any pressure or coercion from family or community and any form of stereotype and prejudice from other private citizens or state institutions.

Discrimination against Muslims in Europe is fuelled by stereotyped and negative views, which fail to take into account basic demographic and sociological factors such as the diversity of Muslim groups as well as their cultural and religious practices across the region. Regrettably, some political parties' messages and the portrayal of Muslims in some sections of the media reinforce these views. There is a particular responsibility for public officials and those seeking political office not to promote or strengthen stereotypical views which are likely to foster intolerance and discrimination. For example, if they portray Islam as a system of values which denies gender equality or a violent ideology, they help foster a climate of hostility and suspicion against people perceived as Muslim which can lead to discrimination. For instance, when a private employer does not hire a Muslim woman who wears specific forms of dress on the grounds that her dress would not be acceptable to colleagues or clients.

Although the right to freedom of expression includes the right to criticize religions or belief systems, even where followers may be offended or shocked, such criticism, which includes when it aims to challenge violations of human rights which may be fuelled by those practices, should not be led by stereotyping and intolerance and should take into account the human rights of those who associate themselves with a specific religion.

This report illustrates how Muslims, and especially Muslim women, can be discriminated against in access to employment and at work simply because they wear specific forms of dress. Some employers in countries including Belgium, France, the Netherlands and Switzerland have been introducing internal regulations or have implemented informal policies prohibiting the wearing of religious and cultural symbols and dress with the aim of enforcing a concept of neutrality, promoting a specific corporate image or pleasing their clients.

This report also documents the discriminatory experiences faced by Muslim pupils and students in their exercise of their rights to freedom of expression and freedom of religion or belief and stemming from laws or policies forbidding the wearing of religious symbols or dress. Belgium and France, for example, have introduced a general ban on religious symbols in public schools. In Spain individual schools have at times enforced internal regulations

prohibiting headwear, which resulted in the exclusion from class of Muslim pupils wearing the headscarf.

Stereotypes and prejudices against Muslim religious and cultural practices have also resulted in restrictions on the establishment of Muslim places of worship. For example, the major Swiss political parties ran a campaign against the building of minarets with the aim of holding a referendum which resulted in a general prohibition being enshrined in the constitution. In Spain (Catalonia), local authorities have at times denied authorisation to open new Muslim prayer rooms merely because local inhabitants opposed the establishment of a mosque in their neighbourhood.

States have an obligation to take measures to prevent discrimination, not only by their own officials but also by private individuals or other non-state actors. To achieve this aim, laws should prohibit discrimination on grounds of religion or belief, and on any other grounds such as ethnicity and gender, in all areas of life including employment. Such legislation should be effectively applied in the private sector. Amnesty International maintains that differences of treatment implemented by private, and in some cases public, employers against Muslims wearing religious and cultural symbols and dress with the purpose of promoting a specific corporate image, pleasing clients, or enforcing a concept of neutrality, amount to discrimination on the grounds of religion or belief. Therefore, states and European institutions should ensure that laws combating discrimination in employment are effectively implemented in a way which is consistent with human rights standards.

States should avoid introducing general bans on cultural and religious symbols or dress which apply to pupils and students. Although pupils' rights to freedom of expression and religion or belief may sometimes be restricted by individual schools to achieve a legitimate aim, such as the need to promote human rights of the others, states should ensure that schools do not implement restrictions which are not necessary or proportionate to the sought aim. When a restriction on religious or cultural symbols or dress is applied to pupils, it is up to the restricting authority to prove it is in line with international human rights standards and it does not result in the violation of the best interest of the child..

Amnesty International is concerned about the lack of adequate places of worship in Catalonia, which results in Muslims praying in outdoor spaces such as football courts or car parks, and about the discriminatory provision prohibiting the building of minarets in Switzerland. States should ensure that the right to have adequate places of worship, which is a key component of the right to freedom of religion or belief, is fulfilled. To this end, states should ensure that provision is made for space which can be used for building new places of worship in the same way as they make provision for space to establish other community facilities which the local community needs. Local authorities should genuinely consult religious associations when developing urban management plans, refrain from supporting campaigns against the establishment of new places of worship and put in place effective policies aimed at resolving disputes between local residents and Muslim associations.

Public debate about restrictions on religious and cultural symbols and dress perceived as Muslim has focused largely on the headscarf or full-face veil worn by women. Sometimes

anxiety about women's status in Islam has been proposed as a justification for such measures. States are required to bring an end to discrimination against women in the enjoyment of their rights, which includes eradicating all forms of violence against women, irrespective of the religion, culture, or racial and ethnic identity of the victim or perpetrator, and effective prevention consists in states offering appropriate services to women at risk. But it is stereotypical to assume that women who wear certain forms of dress do so only under coercion. Space should be made for women and girls in diverse religions and traditions to debate and inform others about the reality of their lives. They should be free to challenge religious and cultural practices or not to, to discuss how they can be changed or maintained without pressure or constraints imposed by the state or by any non-state actor likely to strengthen prejudices instead of counteracting them. States should adopt a more rational approach to concerns about women's equality in minority religions and cultures based on the views and preferences of the women themselves and their experience of discrimination either by those who claim to be in their community, or those from other parts of society.

## 1.1 AIMS OF THE REPORT

In its work to date against discrimination in Europe, Amnesty International has raised concerns about negative views and stereotypes affecting ethnic minorities such as the Roma, as well as migrants and lesbian, gay, bisexual and transgender individuals. Amnesty International has helped bring to the attention of policy-makers and the public the negative impact on human rights which arise from discrimination on the grounds of ethnicity, migrant status, sexual orientation and gender identity.

The aim of this report is to focus on discrimination on grounds of religion or belief and to illustrate some of its consequences on Muslims in Europe. This report is not comprehensive and should not be read as an exhaustive analysis of all forms of discrimination experienced by Muslims. Similarly, this report, researched and compiled in the framework of broader work on discrimination in Europe, does not imply that discrimination on grounds of religion or belief exclusively affect Muslims. Indeed, this form of discrimination can have an impact on other religious groups in Europe. For instance, Christian Evangelicals in Catalonia told Amnesty International that they felt discriminated against in the exercise of their right to freedom of religion because of the barriers they experienced in establishing places of worship. Jews are also still discriminated against in Europe and violent attacks perpetrated with an anti-Semitic bias remain a matter of concern.

As the geographical scope of this research is limited to the European continent, it does not focus on religious-based discrimination experienced by other minority religious groups, including Christians, in other regions of the world.

## 1.2 METHODOLOGY

Examples of discrimination on the ground of religion and unlawful restrictions of the rights to freedom of expression and religion presented in this report come from field research undertaken by Amnesty International in five countries: Belgium, France, the Netherlands, Spain and Switzerland. These countries were chosen on the basis of relevant trends observed, previous work undertaken by Amnesty International on issues covered by this report, such as prohibitions on full-face veils, and the potential positive impact that campaigning and

advocacy work could bring. The examples included in this report provide insights into how discrimination on the ground of religion or belief can affect Muslims in Europe.

Field research was conducted throughout 2011. Amnesty International representatives spent an average of 10 days in each country and carried out overall more than 200 interviews<sup>2</sup> with Muslim individuals who have been affected by discrimination, civil society organizations focusing on combating racism and xenophobia, organizations representing Muslim women, academic experts who have been focusing on discrimination against Muslims, representatives of national equality bodies, representatives from the offices of ombudspersons at the national or local level, representatives of trade unions, members of national or local parliaments, and representatives from national or local ministries of the interior, labour, social affairs and equal opportunities and justice as well as municipal councillors responsible for integration and equal opportunities.

### 1.3 TERMINOLOGY

Some scholars and civil society organizations characterize the phenomenon of stereotypical discourse, prejudice and discrimination against Islam and Muslims as **Islamophobia**. Amnesty International believes that from a human rights standpoint it is necessary to distinguish between criticism of Islam, which is an element of the right to freedom of expression as explained above, stereotypical discourse on Islam and Muslims, and the specific discriminatory patterns affecting Muslims in specific areas of life that undermine the exercise of other human rights. In this report Amnesty International uses the terms **discrimination against Muslims** and **stereotypical discourse and views on Islam and Muslims** rather than “Islamophobia”.

Being Muslim can comprise identity characteristics other than purely religion, such as cultural or traditional background. In this report, the terms **Muslims** or **Muslim individuals** refer to people who self-identify as Muslim by referring to their cultural, religious, or traditional background or values. For example, a woman originally from Morocco and whose mother goes regularly to the mosque should not be considered a Muslim unless she identifies herself as such. Similarly, a man born in Belgium and whose father goes to church every Sunday could be Muslim because he identifies himself as such following his conversion to Islam.

Individuals wear religious and cultural symbols and dress for many different reasons. For example, a woman could wear a headscarf as a manifestation of her culture, religion and tradition or for any other reason, while others often perceive such forms of symbols and dress simply as a manifestation of a specific religion. For the purpose of this report the term **religious and cultural symbols and dress** refers to **forms of dress and symbols commonly perceived as associated with a particular religious and cultural affiliation or identification**. Wearing such symbols and forms of dress is an exercise of the right to freedom of expression,

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<sup>2</sup> Most of the interviews were carried out in English, French or Spanish without interpretation. Two interviews were carried out in German and Dutch with interpretation.

and may also be an exercise of the right to manifest one's religion or belief for individuals who wear such forms of dress and symbols as an expression of their religious beliefs.

This report refers to **full-face veils** to describe several forms of dress covering a considerable part of the face such as the niqab, a veil covering the lower part of the face up to the eyes, or the burqa, a head-to-toe covering with a mesh grid over the eyes. The term **headscarf** is used to refer to any form of dress covering the head. Headscarves can be worn in many different ways and could cover other parts of the body such as the neck, the ears or part of the forehead. This form of dress is sometimes referred to as hijab.

**“Non-denominational”** education is used to describe an educational system that is not based on any specific religious, political or philosophical ethos. In some countries this form of education is known as “neutral” education.

**Secularism** can be defined differently according to the specific historical and political context where it is used. It could, for example, refer to the specific form of organization of the relations between the state and religious authorities implying the separation between the two. The term **neutrality** likewise can have different meanings depending on the specific historical and political context where it is used. It could refer, for example, to the state adopting an impartial stance towards all political, religious and philosophical beliefs. In some countries the term could refer to the duty of civil servants and public officials to be impartial towards users of public services. In France, for instance, the neutrality of public servants directly stemming from secularism implies a prohibition on them wearing any form of religious and cultural symbols and dress. In Belgium the debate is on whether the neutrality of civil servants applies only to how they exercise their functions (for example, avoiding treating users differently) or also to their appearance (refraining from wearing any religious, political or philosophical symbols). This report sometimes refers to these terms as they are used in these specific national contexts.

## 2. BACKGROUND

**“Information about religions and beliefs should always include the crucial insight that religions – as a social reality – are not monolithic. This message is particularly important, because it helps to deconstruct existing notions of a collective mentality that is stereotypically, and often negatively, ascribed to all followers of various religions or beliefs. In extreme cases, such ascription of a collective mentality may amount to ‘de-personalised’ perceptions of human beings, possibly with devastating dehumanizing repercussions.”**

**Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief<sup>3</sup>**

In 2010, it was estimated that more than 44 million Muslims were living in Europe, excluding Turkey.<sup>4</sup> In some countries, such as Bosnia and Herzegovina, Macedonia or the Russian Federation, the Muslim population has been established for centuries. In Albania, Kosovo and Turkey Muslims represent the majority of the population.<sup>5</sup> In other countries

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<sup>3</sup> Report of the UN Special Rapporteur on freedom of religion or belief, A/HRC.16/53, 15 December 2010, para34; Interim Report of the Special Rapporteur on freedom of religion or belief, A/65/207, 29 July 2010, para68.

<sup>4</sup> Pew Research Center's Forum on Religion & Public Life, "The Future of the Global Muslim Population, Projections for 2010–2030: Europe, 2011".

<sup>5</sup> According to the Pew Research Center's estimations, 16 million Muslims were living in the Russian Federation in 2010.

Muslims have often acquired the citizenship of the country to which they or their relatives have migrated or sought asylum during the 20th or 21st century.

In 2010, Muslims made up less than 10 per cent of the population in any Western and Northern European country: 6 per cent in Belgium, 7.5 per cent in France, 5.5 per cent in the Netherlands, 2.3 per cent in Spain, 5.7 per cent in Switzerland, 5 per cent in Germany and 4.6 per cent in the United Kingdom.<sup>6</sup> In some of these countries a significant share of the Muslim population holds national citizenship. In France at least 2 million Muslims, almost half of the entire Muslim population in the country, hold French citizenship, and 55 per cent of Muslims living in Belgium are Belgian citizens. In contrast only a tiny minority of Muslims in Switzerland, less than 1 per cent, hold Swiss citizenship.<sup>7</sup>

The Muslim population in Europe is currently growing but at a slower pace than in the past. It is estimated that in 2030 Muslims will make up around 10 per cent of the population in France, Belgium and Sweden, around 8 per cent in Switzerland, the Netherlands and the United Kingdom, 7 per cent in Germany and less than 4 per cent in Spain.<sup>8</sup>

Muslims with a migrant background in Western and Northern Europe are ethnically very diverse, although the presence of different groups in specific countries varies depending on a wide range of factors including post-decolonization migration patterns, history of European labour markets and refugee flows. For example, the biggest groups of Muslims in France are originally from Algeria, Morocco, Tunisia and sub-Saharan Africa, while in Belgium and the Netherlands the majority are of Moroccan and Turkish origin, but in the United Kingdom only a small percentage are originally from Northern Africa and the overall majority have Bangladeshi, Pakistani or Indian origin. A considerable share of Muslims living in Switzerland is from former Yugoslavia, whereas the biggest groups of Muslims in Catalonia (Spain) are originally from Algeria, Mali, Morocco, Pakistan and Senegal. Muslims from Iran and Iraq are relatively numerous in Sweden, Norway and Denmark, if compared with other European countries.<sup>9</sup>

In the last decade or so some stereotypical views on Muslims have been voiced by some political leaders and have been reflected in public opinion polls across Europe. In this

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6 Pew Research Center's Forum on Religion & Public Life, "The Future of Global Muslim Population, Projections for 2010–2030: Europe, 2011", p124.

7 Open Society Institute, "Muslims in the EU: Cities Reports. France: Belgium. 2007"; 2000 Swiss census: 0.6 per cent of Muslims living in Switzerland hold Swiss citizenship.

8 According to the Pew Research Center's estimations, the annual growth rate of the Muslim population in Europe was 2.2 per cent in the 1990–2000 decade and is forecast to decrease to 1.2 per cent in the decade 2020–2030.

9 Center for Strategic & International Studies, "Muslim Integration: Challenging conventional wisdom in Europe and the United States: Estimated new Muslim numbers for selected countries of origin and settlement", Europe, Early 2000s: Table 2, 2007, p11. For information on Catalonia (Spain): Jordi Moreras, "Musulmans a Catalunya. Radiografia d'un Islam implantat", European Institute of the Mediterranean, 2008 .

discourse the establishment of Muslim places of worship and the wearing of religious and cultural symbols and dress are seen to illustrate “unwillingness by Muslims to integrate” or an intention to “impose values at odds with European identity”. On some occasions issues such as forced marriage, perceived as a Muslim practice, have similarly been cited to corroborate these ideas. At times public opinion and political parties do not distinguish between practices clearly violating human rights, such as forced marriage, and other practices relating to the exercise of freedom of expression and religion or belief, such as the choice to wear a headscarf or other forms of religious and cultural symbols and dress.

In the aftermath of the attacks in the United States on 11 September 2001, perceptions of Muslims in Europe worsened and a rising level of hostility against Muslims was observed in several European countries.<sup>10</sup> However, anti-Muslim prejudice could not be entirely ascribed to these events; according to some research, negative views on Muslims were already present in Europe prior to 2001. For instance, Europeans were on average less willing to have Muslim neighbours than migrant neighbours. Particularly high levels of discomfort were observed in Belgium, Bulgaria, Estonia, Finland, Greece, Lithuania, Malta and Romania.<sup>11</sup>

The views expressed in several opinion polls undertaken in Europe on Muslims or religious practices perceived to be Muslim appear to reflect stereotypical notions. For instance, in France 68 per cent and in Germany 75 per cent of those polled think that Muslims are not integrated in their society mainly because they refuse to do so.<sup>12</sup> Sixty-eight per cent of French oppose the choice of Muslim women to wear the headscarf<sup>13</sup> and half of Germans are against the construction of mosques even when there is a demand from believers.<sup>14</sup> One third of Swiss see the wearing of the headscarf as humiliating for women.<sup>15</sup> In the United Kingdom almost 70 per cent think that Islam encourages repression of women<sup>16</sup> and more than 70 per cent of Belgians living in Flanders think that Muslim women are dominated by their

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10 European Monitoring Centre on Racism and Xenophobia, “Summary report on Islamophobia in the EU after 11 September 2011”, Vienna, May 2002.

11 Zan Strabac & Ola Linstead, “Anti-Muslim prejudice in Europe: a multilevel analysis of survey data from 30 countries”, *Social Science Research* 37, 2008, pp268–86.

12 French Institute of Public Opinion (IFOP), “Comparative survey France/Germany on Islam”, Research Report, 13 December 2010.

13 National Advisory Commission on Human Rights, “Annual report 2010: perceptions of racism in the public opinion”, p82.

14 IFOP, “Comparative survey France/Germany on Islam”, Research Report, 13 [see en 13] December 2010, [http://www.ifop.fr/media/poll/1365-2-study\\_file.pdf](http://www.ifop.fr/media/poll/1365-2-study_file.pdf), accessed 20 January 2012.

15 Sandro Cattacin, Brigitta Gerber, Massimo Sardi, Robert Wegener, “Monitoring misanthropy and rightwing extremist attitudes in Switzerland”, 2006, p41.

16 YouGov, “Exploring Islam Foundation survey results”, May 2010.

husbands.<sup>17</sup> Around 40 per cent of Dutch consider the Western European and the Muslim ways of living incompatible, although the same percentage agrees that Muslims could greatly contribute to Dutch culture.<sup>18</sup> Thirty-seven per cent of Spaniards believe that it is acceptable to expel a student from school simply because she wears the headscarf and the same percentage state that protests against the building of a Muslim place of worship should be supported.<sup>19</sup>

## TWO MUSLIM WOMEN'S EXPERIENCE OF HOSTILITY AND PREJUDICE

Stereotypical perceptions of headscarves and the position of women in Muslim families impact negatively on women who choose to wear symbols or forms of dress perceived as Muslim. Some of the women Amnesty International met highlighted the negative climate they have been experiencing on some occasions simply because they chose to wear the headscarf. Linda D.<sup>20</sup> from the Parisian region stated: "When the legislation aimed at banning religious symbols at school was discussed I was a teenager. I did not wear the headscarf at school but only a bandana. The public discussion on the topic paved the way for stereotypical views on Islam and Muslims to be more virulently put forward. I noticed that people were more hostile to me and I was sometimes called names in the street. On one occasion a man asked me if I liked to play the slave. I was young, I did not know exactly how to react. More recently, during the debate on full-face veils a woman told me, 'I thought that the veil was forbidden in France'. She then damaged my car." P., who lives in the Italian-speaking part of Switzerland, told Amnesty International: "Muslims are held responsible for what happens in Middle East and North Africa. It is also because of the stereotypical portrayal of Muslims in the media. For instance, I remember that after September 11 a colleague of mine said that all Muslims should be set fire to. People called me names in the street or made unpleasant remarks. Recently I have been insulted in the street by a man who identified Islam as the cause of what was happening in Libya and who told me to return to my own country. Another time another man started shouting at me saying that I had to remove the sheet I was wearing on my head. I have been raised in Switzerland and I believe this is my country. I do not understand how other citizens assume they have the right to treat me like that."

### 2.1 DIVERSE RELIGIOUS AND CULTURAL PRACTICES

Religiosity, or in this case the attitude of Muslim believers towards various aspects of their

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17 Jaak Billiet, Marc Swyngedouw, "Etnische minderheden en de Vlaamse kiezers. Een analyse op basis van de postelectorale verkiezingsonderzoeken", 2007, p14.

18 FORUM, Institute for Multicultural Affairs, "The position of Muslims in the Netherlands", Factbook 2010, p31, <http://www.forum.nl/Portals/International/English-pdf/Muslims-in-the-Netherlands-2010.pdf>, accessed 21 January 2012.

19 Observatorio Español del Racismo y la Xenofobia, "Evolución del racismo y la xenofobia en España", Informe 2010, pp215–17.

20 Most of the individuals interviewed in the framework of this research explicitly expressed the wish to remain anonymous. Therefore, their names have been changed or disguised according to the preference expressed by each interviewee.

religion such as participation in religious observance, is influenced by many components. These include the level of education, gender, socio-economic status, religiosity patterns of the non-Muslim population and, where Muslims have a migrant background, the length of time they have been in the country.<sup>21</sup>

In other words, religion is only one of many salient features of Muslim cultural background. Indeed, a person could define herself by her Muslim origin or Muslim cultural background without considering herself as a religious person. For example, a French woman whose parents are Moroccan could consider herself as French or Moroccan or both. She could be religious and manifest her religion by wearing the headscarf in public or only by fasting during Ramadan, or she could equally be atheist and consider her parents' religion only as her cultural background.

Specific practices can be the expression of religious, cultural and/or traditional beliefs and customs. For example, specific dietary requirements, which are sometimes perceived as a religious duty, are not necessarily considered to be so by people who identify themselves as Muslim. According to an opinion survey in Switzerland, half of those Muslims who stated they were not religious followed Muslim dietary requirements, while one out of four who declared themselves to be very religious did not.<sup>22</sup>

A survey conducted in 2006 found that the percentage of Muslim women who covered their hair every day varied greatly across European countries, from 53 per cent in the United Kingdom, 45 per cent in Spain and 44 per cent in Germany to just 13 per cent in France.<sup>23</sup>

In the Netherlands, according to a recent survey, a strong majority of people with Turkish and Moroccan background defined themselves as Muslim (95 and 96 per cent respectively) but religious practice among the two groups differed substantially. For instance, 69 per cent of Muslims with Moroccan background prayed five times a day while only 29 per cent of Muslims with Turkish background did so. The monthly attendance at mosques has been decreasing steadily in recent years.<sup>24</sup>

In France, 41 per cent of Muslims defined themselves as practising, 34 per cent as non-practising and 22 per cent as "of Muslim origin". Among Muslims with a Turkish background

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21 Frank Van Tubergen, Jórunn Í. Sindradóttir, "The religiosity of immigrants in Europe: a cross-national study", *Journal for the Scientific Study of Religion*, 2011, p50.

22 Marco Giugni, Matteo Gianni and Noémi Michel, "Entre demandes de reconnaissance et politique d'accomodation: les orientations culturelles, sociales et politiques des musulmans en Suisse", rapport final, December 2010.

23 Forty-five per cent of Muslim women in Spain and 44 per cent in Germany wore the headscarf everyday in 2006. Pew Research Center, "European debate the scarf and the veil", 20 November 2006, <http://pewresearch.org/pubs/95/europeans-debate-the-scarf-and-the-veil>, accessed 20 January 2012.

24 While 47 per cent of Muslims visited a mosque once a month in 1998 and 1999, only 35 per cent did so in the period 2004–08. FORUM, "The position of Muslims in the Netherlands", Factbook 2010.

49 per cent identified themselves as practising compared with only 36 per cent of those with a Tunisian background. Twenty-five per cent of Muslims sent to the mosque on Friday, while one third drank alcohol and 60 per cent supported the ban on the wearing of full-face veils in the country.<sup>25</sup> In Spain, 12 per cent of Muslims identified themselves as non-practising.<sup>26</sup> Religious practices of Muslims in Switzerland differed significantly across ethnic groups. For example Muslims originally from the Maghreb went to the mosque less often than Muslims with Balkan or Turkish background but prayed more often individually.<sup>27</sup>

## 2.2 THE RISE OF POLITICAL PARTIES PROMOTING AN ANTI-ISLAM DISCOURSE

In the last two decades, parties promoting an anti-Islam discourse have had sufficient electoral success to be represented in the national parliaments of a considerable number of European countries including Austria, Belgium, Denmark, France, Italy, the Netherlands, Norway and Switzerland. For instance, the French National Front, which collected no more than 0.2 per cent of the votes in 1981, received almost 17 per cent of the votes in the 2002 presidential elections.

These parties have instrumentalized public sentiments of anxiety and disenchantment and have contributed to Islam being identified as the “most significant enemy” by promoting ideologies of ethnic nationalism and notions of a “clash of civilizations” in warning against the “Islamization” of Europe. Their political platforms are aimed at halting immigration, establishing mandatory integration criteria for migrants and reducing the influence of Islam.

These parties have also been successful in entering governmental coalitions. The Dutch Party for Freedom (PVV) currently supports the liberal-conservative governmental coalition in the Netherlands, which has a tiny majority in the Parliament.<sup>28</sup> The Swiss People’s Party (SVP), which promoted the referendum leading to the ban of minarets (see chapter 5), continues to be the largest party in the Swiss Parliament after the federal elections held in October 2011.<sup>29</sup> The Danish People’s Party supported the Danish liberal-conservative governmental

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25 IFOP, “Enquête auprès de la population d’origine musulmane”, 15 March 2011, [http://www.ifop.fr/media/poll/1499-1-study\\_file.pdf](http://www.ifop.fr/media/poll/1499-1-study_file.pdf), accessed 21 January 2012.

26 Metroscopia, “La comunidad musulmana de origen inmigrante en España”, February 2011, <http://www.observatorioinmigracion.gva.es/images/stories/ESTUDIO%20METROSCOPIA%20.pdf>, accessed 31 January 2012.

27 Marco Giugni, Matteo Gianni and Noémi Michel, “Entre demandes de reconnaissance et politique d’accomodation: les orientations culturelles, sociales et politiques des musulmans en Suisse, rapport final, December 2010.

28 The Party for Freedom (PVV) collected 15.45 per cent of the votes on the occasion of the 2010 national elections and 17 per cent of the votes on the occasion of the 2009 European Parliament’s elections, <http://www.nlverkiezingen.com/TK2010.html>

29 The SVP got 26.6 per cent of the votes in the federal elections held on 23 October 2011. It got 28.9 per cent of the votes in the 2007 elections, [http://www.politik-stat.ch/nrw2011CH\\_it.html](http://www.politik-stat.ch/nrw2011CH_it.html)

coalition from 2007 to 2011.<sup>30</sup> The Italian Northern League has been increasing its share of votes in recent years and, as a result, held key ministerial positions in the last government led by Silvio Berlusconi (2008–11).<sup>31</sup>

Although the Platform for Catalonia (PxC) has not succeeded in entering the Catalan autonomous Parliament, it substantially improved its share of votes at local elections. Sixty-seven city councillors were elected from the party in the municipal elections in May 2011 compared with 17 in the 2007 elections. The success of parties openly hostile to Islam is not limited to Western European countries. For instance, in Bulgaria, which has had a substantial Muslim population for centuries, 21 members of the National Union Attack (ATAKA) were elected in the 2009 parliamentary elections. The party has an openly anti-Muslim agenda and its supporters have been involved in violent attacks against Muslims.<sup>32</sup>

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30 The party received 12.3 per cent of votes in 2011 compared with 13.9 per cent in 2007.

31 The Northern League doubled its votes on the occasion of the regional elections in 2010 (12.28 per cent) compared with regional elections held in 2005 (5.5 per cent). Similarly, it got twice as many votes on the occasion of the 2008 political elections (8.5 per cent) compared with the 2006 elections (4.6 per cent).

[http://www.repubblica.it/static/speciale/2010/elezioni/regionali/riepilogo\\_nazionale.html](http://www.repubblica.it/static/speciale/2010/elezioni/regionali/riepilogo_nazionale.html)

32 On 20 May 2011 violence escalated on the occasion of a protest organized by party supporters in the front of the mosque. Four Muslims were injured as well as one ATAKA Member of the Parliament. See Bulgarian Helsinki Committee, Submission to the Human Rights Committee regarding the consideration of the third periodic report on Bulgaria: "Freedom of religion and protection against discrimination on the grounds of religion and belief", 3 June 2011, p29. Concluding Observations of the Human Rights Committee: Bulgaria, CCPR/C//BGR/CO/3, 19 August 2011, para9

## EXAMPLES OF ANTI-ISLAM DISCOURSE

“The number of Muslims living in Switzerland is estimated to be higher than 400,000. It is rapidly increasing because of immigration, family reunion, forced marriages and high birth rates. Only a minority of them supports the radical ideology of Islamists. However, Muslim immigrants are often coming from countries that are not familiar with democracy. They bring with them concepts on law and order which are incompatible with our judicial system.”

Programme of the Swiss People's Party (SVP) 2011

“Europe will no longer be Europe, it will turn into an Islamic republic. We are at a turning point, and if we don't protect our civilization it will disappear. Yes, I'm attached to the nation. I want to preserve our cultural and historic identity.”

Marine Le Pen, National Front, France<sup>33</sup>

“Islam is the biggest threat, threatening our country and the entire free Western world. We have too much mass immigration from Muslim countries and too many hate palaces – Cohen [referring to the leader of the social democrats] labels these as Mosques, I believe – and immigrants are still over-represented in crime statistics. Enough is enough.”

Geert Wilders, Party for Freedom (PVV), the Netherlands<sup>34</sup>

“The Islamic immigration, massive in Catalonia, threatens our European identity heritage (respect for personal and collective freedom, democracy as a mean to take decisions, Greco-Latin culture, Christian religion, languages of Catalonia or popular traditions).”

Programme of the Platform for Catalonia (PxC), Catalonia (Spain)<sup>35</sup>

“The pseudo-prayers in Milan and in front of the Colosseum are nothing to do with religion – they are threatening and intimidatory acts towards the Italian people. Those who take part should be identified by the police and possibly expelled from our country. People must not use prayer as a political weapon.”

Maurizio Gasparri, People of Freedom (PDL), Italy<sup>36</sup>

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33 “Two personalities clash on European immigration”, *New York Times*, 5 January 2008, <http://www.nytimes.com/2008/01/15/world/europe/15iht-debate.4.9237106.html>

34 “Links kan de boom in”, *De Telegraaf*, 1 August 2011.

35 “Programme for the autonomous elections 2010”, <http://www.pxcatalunya.com/pdf/castellano.pdf>

36 “Row over Muslim prayers outside the Colosseum”, 20 January 2009, <http://www.italymag.co.uk/italy/lazio/row-over-muslim-prayers-outside-colosseum>.

### 3. INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

Under international law, discrimination is any difference of treatment based on a prohibited ground that does not have an objective and reasonable justification. Discrimination impairs the exercise of other human rights on an equal basis including the right to work, the rights to freedom of expression and religion or belief, the right to education and the right to the highest attainable standard of health.

International and European anti-discrimination law prohibits both direct and indirect discrimination. The latter occurs when an apparently neutral law, procedure or practice results in a disproportionate disadvantage for, or has a disparate impact on, a particular group without any objective or reasonable justification.

A difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose compatible with the human rights obligations of the state.<sup>37</sup> A legitimate purpose could be related to public policy concerns such as health, safety or security. However, in order for a difference of treatment to qualify as objective and reasonable it should also be proportionate to the aim it seeks to achieve.<sup>38</sup> For example, regarding the claim that work safety requirements for the wearing of a helmet indirectly discriminated against Sikhs because religious custom requires them to wear a turban, the UN Human Rights Committee held that the protection of workers' safety was an objective justification and proportional, and therefore did not violate the principle of non-discrimination.<sup>39</sup> The European Court of Human Rights has been insistent that unfavorable treatment based on prohibited ground will require particularly weighty justification to be compatible with the non-discrimination principle.<sup>40</sup>

Religion or belief is a prohibited ground of discrimination in several international human rights treaties including Article 2.1 in the International Covenant on Civil and Political Rights (ICCPR), Article 2.2 in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 2 in the Convention on the Rights of the Child (CRC).<sup>41</sup> All the five

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37 Human Rights Committee (HRC) General Comment No. 18, para13.

38 See, for example, European Court of Human Rights, *Abdulaziz, Cabales and Balkandali v. United Kingdom* (Application No. 9214/80), judgment of 28 May 1985, para72.

39 HRC, *Karnel Singh Bhinder v. Canada* (No. 208/1986).

40 Amnesty International, *Dealing with difference: A framework to combat discrimination in Europe, reasonable and objective justification*, pp18–19, <http://www.amnesty.org/en/library/info/EUR01/003/2009/en>

41 Although the Convention on the Elimination of All Forms of Racial Discrimination (CERD) does not include explicitly religion as a ground in its definition of racial discrimination, its implementing Committee has on a few occasions

countries where field research was undertaken have ratified those three international human rights treaties and are therefore bound to respect, protect and fulfil the rights enshrined by them.

At the regional level, Article 14 in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter European Convention on Human Rights, ECHR) 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. Similarly, Article E of the European Social Charter (revised) (ESC) enshrines the principle of non-discrimination on the ground of religion or belief in the enjoyment of the rights it sets forth, including the right to work, the right to education and the right to protection of health. Regrettably Belgium, France and Switzerland have not ratified Protocol 12 to the ECHR.

The Charter on Fundamental Rights of the European Union prohibits any form of discrimination on the ground of religion or belief (Article 21). However, European Union anti-discrimination Directives do not provide an equal level of protection against different forms of discrimination. For example, while Directive 2000/43/EC (Race Directive) requires member states to forbid discrimination on the ground of race in the areas of employment, education, social protection, social advantages and access to goods and services,<sup>42</sup> Directive 2000/78/EC (Framework Employment Directive) forbids discrimination on the ground of religion only in the area of employment.<sup>43</sup> The European Commission put forward a proposal for a new anti-discrimination Directive on 2 July 2008 with the aim of introducing European standards of protection against discrimination on the grounds of sexual orientation, age, disability and religion or belief in the areas of access to goods and services, education, social protection and social advantages.<sup>44</sup> As this report was being prepared this proposal was still being discussed within the Council of the European Union and there was no consensus among member states on the need to adopt new anti-discrimination legislation.

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focused on the intersection between the grounds of race and religion. See, for instance, "Final observations on Ireland", para18, 14 April 2005, CERD/C/IRL/CO/2. Amnesty International, *Dealing with difference: A framework to combat discrimination in Europe, reasonable and objective justification*, pp18–19, <http://www.amnesty.org/en/library/info/EUR01/003/2009/en>

42 Directive 43/2000/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 3.

43 Protection on other grounds, such as sexual orientation, age and disability is also limited to the area of employment and occupation. See, for example, Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

44 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:HTML>

The obligations of states to ensure the right to non-discrimination requires them to refrain from discriminating themselves, but also to prevent discrimination by non-state actors such as private employers, private education institutions and private providers of good and services. This requires them to put in place effective legislation, policy measures, avenues of redress and sanctions for discrimination in the private sector.<sup>45</sup>

### 3.1 DISCRIMINATION IN EMPLOYMENT

The International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention No. 111 prohibits discrimination on the ground of religion or belief in the areas of employment and occupation. The 1996 ILO General Survey on equality in employment and discrimination highlighted a possible conflict between an occupational requirement and the manifestation of religion. For example, as noted above, a Sikh mason could be required to wear a helmet for safety reasons and thus denied the possibility to wear the turban. Similarly a Muslim woman working in a chemistry laboratory could be asked not to wear a long and loose headscarf for safety reasons. In these contexts, a difference of treatment based on religion should not be deemed as discriminatory. However, as the Survey pointed out, the limits imposed on freedom of religion or belief must respect the principle of proportionality “taking care to avoid arbitrary repercussions on employment and occupation, particularly in the public sector”.<sup>46</sup>

The EU Framework Employment Directive (2000/78) requires EU member states to forbid both direct and indirect discrimination as well as harassment and incitement to discriminate on the ground of religion or belief in the area of employment and occupation, including vocational training.<sup>47</sup> This Directive introduces the principle according to which a difference of treatment based on religion is lawful if it corresponds to a genuine and determining occupational requirement<sup>48</sup>, which could be seen as an objective and reasonable justification.

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45 See HRC, General Comment No. 31 on Article 2 (non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR) and Committee on the Elimination of All Forms of Racial Discrimination, General Recommendation XX on Article 5 of the CERD.

46 Equality and Occupation, 83rd International Labour Conference, 1996, para42: “The freedom to practice a religion can be hindered by the constraints of a trade or occupation. This may happen ...when the exercise of a religion requires a special type of clothing or work conditions ... In these cases the worker’s rights to practice his or her faith or belief needs to be weighed against the need to meet the requirements inherent in the job or operational requirements. These rights may, however, be restricted within the limits imposed by the principle of proportionality, taking care to avoid arbitrary repercussions on employment and occupation, particularly in the public sector”.

47 Directive 78/2000/EC, Article 2. The definition of indirect discrimination excludes cases where a difference of treatment is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

48 Council Directive 2000/78/EC, Article 4.1 “Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational

However, the circumstances in which these requirements can be introduced should be limited<sup>49</sup> and the necessity of introducing an occupational requirement based on one of the prohibited grounds should stem from the very nature of the occupation and the tasks involved.<sup>50</sup>

Restrictions imposed by employers on the wearing of religious and cultural symbols and dress in the workplace could violate the right to non-discrimination on the ground of religion or belief if such restrictions were not based on an objective and reasonable justification, with the aim of satisfying a genuine and determining occupational requirement. In particular, restrictions aimed at complying with the wishes of clients or colleagues or at promoting a specific corporate image, examples of which are given in this report, cannot be seen as determining occupational requirements because they are based on very general principles that could apply to any occupation. On the contrary, a determining occupational requirement is something which is strictly necessary to accomplish the specific tasks required by a given employment position.

### **NEUTRALITY: OBJECTIVE AND REASONABLE JUSTIFICATION?**

The claim is sometimes made that difference of treatment in employment on the ground of religion or belief can be justified by the principle of neutrality. This principle, sometimes enshrined in constitutions, has been interpreted differently in different countries, according to the specific national and historical context. The consequences stemming from these different interpretations on employees in the public sector also vary. For example, in some contexts this principle imposes a duty of absolute impartiality for employees in the public sector. Private sector employers have also sought to use the principle of neutrality to justify difference of treatment on the ground of religion or belief.

The UN Special Rapporteur on freedom of religion or belief has stated: "Neutrality has sometimes been portrayed as indicating a lack of state commitment in this field. Against such a misinterpretation of the concept of neutrality, however, the Special Rapporteur would point to the positive significance of that concept, which lies in the state's obligation to be fair to the members of different religions or beliefs, on the basis of equality, and to refrain from any discriminatory treatment. State neutrality in this sense can be understood as

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requirement, provided that the objective is legitimate and the requirement is proportionate."

49 Recital 23 "In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission."

50 As the European Court of Justice points out in the case *Wolf v. Stadt Frankfurt am Main*, "To examine whether the difference of treatment based on age in the national legislation at issue in the main proceedings is justified, it must be ascertained whether physical fitness is a characteristic related to age and whether it constitutes a genuine and determining occupational requirement for the occupational activities in question or for carrying them out, provided that the objective pursued by the legislation is legitimate and the requirement is proportionate", C 229/09, judgment of 12 January 2010, para36.

a normative principle deriving from the obligation of a non-discriminatory implementation of freedom of religion or belief.”<sup>51</sup>

The requirement for state officials to present an impartial and neutral appearance, to the extent of excluding the wearing of religious and cultural symbols and dress may be an objective and reasonable justification with regard to state officials, such as law enforcement agents, public prosecutors, or judges, exercising potentially coercive powers of the state. As the Council of Europe Commissioner for Human Rights has explained: “In general, states should avoid legislating on dress ... It is, however, legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some instances, this may require complete neutrality as between different political and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents.”<sup>52</sup>

### 3.2 FREEDOMS OF RELIGION OR BELIEF AND OF EXPRESSION

The rights to freedom of religion or belief and to freedom of expression are enshrined in both international and regional human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) (articles 18 and 19) and the European Convention on Human Rights (articles 9 and 10).

The UN Human Rights Committee (HRC), the body of independent experts established to monitor states’ implementation of their obligations under the ICCPR, has made clear that the right applies to theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief, and that the terms “belief” and “religion” are to be broadly construed.<sup>53</sup>

The right to freedom of religion or belief includes both the right to hold beliefs and the right to manifest them individually or in community with others and in private or public through worship, observance, practice and teaching.<sup>54</sup> The HRC underlined: “The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.”<sup>55</sup>

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51 Interim Report of the Special Rapporteur on Freedom of religion or belief to the General Assembly, 18 July 2011, A/66/156, para50.

52 Council of Europe Commissioner for Human Rights, “Human Rights in Europe: no grounds for complacency: The burqa and privacy”, p39, [http://www.coe.int/t/commissioner/Viewpoints/ISBN2011\\_en.pdf](http://www.coe.int/t/commissioner/Viewpoints/ISBN2011_en.pdf)

53 As specified by the HRC in its General Comment No. 22: the right to freedom of thought, conscience and religion, Article 18, para2.

54 See Article 18 of the ICCPR.

55 HRC, Comment No. 22, The right to freedom of thought, conscience and religion, para4.

As noted by the Special Rapporteur on freedom of religion or belief, this right has both a positive as well as a negative component: “The first component of freedom of religion or belief is freedom to positively express and manifest one’s own religion or belief, while its (negative) flip side is freedom not to be exposed to any pressure, especially from the state or in state institutions, to perform religious or belief activities against one’s own will.”<sup>56</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 morals or the fundamental rights and freedoms of others.<sup>57</sup> The HRC has pointed out that this principle should be strictly interpreted, and that the right to freedom to manifest religion or belief cannot be restricted for reasons other than those stated in Article 18(3) of the ICCPR. With regard to restrictions that might be imposed for the purpose of protecting public morals, the Committee has stated: “The concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”<sup>58</sup>

In its General Comment on freedom of expression the HRC also stated: “When a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself ... the relation between right and restriction and between norm and exception must not be reversed.”<sup>59</sup> The European Court found that the right to freedom of expression “is applicable not only to information or ideas that are favorably 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 that pluralism, tolerance and broad-mindedness without which there is no democratic society.”<sup>60</sup>

### 3.3 RELIGIOUS AND CULTURAL SYMBOLS AND DRESS

Wearing religious and cultural symbols and dress is an element of the right to freedom of expression and of the right to manifest religion or belief. Each individual should be free to decide whether or not she/he wants to wear specific symbols and dress on the basis of personal religious convictions, cultural customs or for any other reason. General rules regulating the clothing worn by women in public may involve violations of their right to

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56 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, UN Document A/HRC/16/53 of 15 December 2010, para39.

57 See, for example, Article 18.3 of the ICCPR.

58 HRC, General Comment No. 22, para8.

59 HRC, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2001.

60 *Handyside v. United Kingdom*, judgment of 7 December 1976.

freedom of expression or to manifest religion or belief if they are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression.<sup>61</sup>

Prohibitions on the wearing in public of particular forms of religious or cultural symbol or dress may violate the right to freedom of expression and the right to manifest religion or belief if such restrictions are not based on a legitimate aim and if not proportionate and necessary to the achievement of that aim. The legitimacy of any such restrictions, like any other restriction on the rights to freedom of expression and religion or belief, should be assessed on a case-by-case basis, which requires that the necessity of any such restriction should be assessed on the basis of facts rather than on assumptions or prejudices.

When imposing a restriction, the state has an obligation to demonstrate that it meets the test for permissible limitations under international law. While in specific circumstances restrictions on the wearing of religious and cultural symbols or dress could meet that test, it is likely that general bans (for example in education or employment as detailed in chapter 4) could not satisfy the test of justification and the case-by-case approach. As the former Special Rapporteur on freedom of religion or belief has stated: "The burden of justifying a limitation upon the freedom to manifest one's religion or belief lies with the state. Consequently, a prohibition on wearing religious symbols which is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual's religious freedom."<sup>62</sup>

### 3.4 THE RIGHT TO BE FREE FROM GENDER-BASED DISCRIMINATION

Women from religious minorities can be affected by multiple forms of discrimination including on grounds of gender, religion or ethnicity. As highlighted by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee): "The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them."<sup>63</sup>

Under international law, specifically articles 2 and 5a of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states are obliged to repeal discriminatory legislation, policies and practice based on gender stereotypes and involving the violation of women's rights. They also have the obligation to tackle discrimination against women by non-state actors. Of particular relevance to the issues examined in this report,

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<sup>61</sup> See HRC General Comment No.28: The equality between men and women, Article 3, 29/03/2000, para13.

<sup>62</sup> Civil and political rights, including the question of religious intolerance. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 9 January 2006, E/CN.4/2006/5 para53.

<sup>63</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, para18 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

women are to be given the same conditions available to men in access to employment and education opportunities, as set out by articles 10 and 11 of CEDAW.

Social, cultural and religious norms governing religious and cultural symbols and dress often have a disproportionate impact on women, whose appearance is subject to particular regulation because it is seen as the symbolic embodiment of the religious or cultural values of the community. This perception can be a manifestation of discriminatory attitudes and reflect an underlying desire to control women's bodily autonomy, objectifying women and their bodies. If imposed on women by coercion, whether by the state or by non-state actors, such regulation restricts women's ability to exercise their rights to freedom of expression and religion and to other rights, such as the right to work, to education and to freedom of movement.

States must take measures to protect women from being pressured or coerced by third parties to dress in certain ways, and in so far as social, cultural or religious norms prescribing dress codes are a reflection of discrimination against women, the state has a positive obligation to take steps to prevent such discrimination. This implies that state-imposed restrictions may be necessary in specific circumstances to protect women against pressure or coercion, including violence or threats of violence, by their families or communities, to force them into wearing certain religious and cultural symbols and dress.

However, to impose a general prohibition on religious and cultural symbols and dress purporting to address discrimination within a community is itself discriminatory, and compounds and reinforces the idea that discrimination can be legitimate. Moreover, such a prohibition negates the right to freedom of expression of those women who choose to wear religious and cultural symbols and dress. In addition any such general prohibition risks being counter-productive, as it may result in women being more confined to their homes and unable to exercise their rights including the rights to work and to education. As these restrictions often have a disproportionate effect on women and girls, they are also indirectly discriminatory on the ground of gender.

## 4. DISCRIMINATION ON THE GROUND OF RELIGION

Muslims in Europe can be discriminated against for many different reasons, including their religion or ethnicity. A 2008 EU-wide public opinion survey undertaken by the European Commission suggests that discrimination on the ground of religion and ethnicity affects disproportionately ethnic and religious minorities. While overall only 4 per cent of the respondents stated that they had been discriminated against on the ground of religion or ethnicity the previous year (2 per cent for each ground), 23 per cent of respondents belonging to ethnic minorities and 12 per cent of those belonging to religious minorities thought they had been discriminated against on the ground of ethnicity and religion respectively.<sup>64</sup>

A 2009 survey of the European Union Agency for Fundamental Rights (FRA) showed that migrant groups from countries with predominantly Muslim populations living in 15 EU countries experienced high levels of discrimination. In Italy, more than a half of the migrants from Northern Africa had experienced discrimination in 2008 as had 40 per cent in Spain and one third in Belgium. One third of migrants from Turkey living in Germany and one third of those in the Netherlands experienced discrimination in 2008. Of these respondents, 10 per cent associated their discriminatory experiences with religion and 43 per cent with the intersection between religion, ethnic origin and migrant status.<sup>65</sup>

According to a 2010 multinational survey on perceptions on discrimination, undertaken by the Open Society Institute<sup>66</sup>, Muslims were found to have been victims of religious and racial discrimination more often than non-Muslims. Muslim women had experienced gender-based discrimination more often than Muslim and non-Muslim males but less often than non-Muslim women,<sup>67</sup> and Muslim pupils reported having experienced discrimination on the ground of religion at school more often than non-Muslims pupils.<sup>68</sup>

This chapter provides examples of discrimination on the ground of religion affecting Muslims in countries where Amnesty International has undertaken field research. A specific focus is given to employment and education, where discriminatory practices may hinder the exercise

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64 European Commission, Special Eurobarometer 296, "Discrimination in the European Union: perceptions, experiences and attitudes: discrimination on the basis of religion and belief", p14.

65 European Union Agency for Fundamental Rights, "European Union Minorities and Discrimination Survey", Data in Focus Report, Muslims: Experiences of discrimination in the previous 12 months, 2010, p5.

66 The Open Society Institute was renamed in 2011 Open Society Foundations

67 Open Society Institute, "Muslims in Europe 2010: A report on 11 cities", tables 52, 53 and 56, pp84–5.

68 Open Society Institute, "Muslims in Europe", Table 60, p101.

of other human rights such as the rights to freedom of expression and religion or belief (see relevant international standards in chapter 3), the right to education (see relevant international standards in chapter 4.2), the rights to work and to just and favourable conditions at work (articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, ICESCR) and the right to an adequate standard of living (Article 11 of the ICESCR).

Quantitative data from secondary sources are presented here jointly with qualitative findings collected by Amnesty International. The amount of information and data available in different countries varies considerably as does the domestic machinery put in place with the aim of combating discrimination. Measures that states adopt to fulfil the right to be free from discrimination may vary according to particular challenges and other relevant circumstances in the country concerned, but they should include the following minimum requirements:<sup>69</sup>

- Prohibition of direct and indirect discrimination on all grounds and in all areas of life;
- Independent national anti-discrimination bodies to monitor and make recommendations regarding respect for non-discrimination legislation that have effective investigative powers, a mandate to examine individual complaints of discrimination in both the private and the public sector and take binding and enforceable decisions, and adequate staff and funds;
- Access to effective judicial remedies for victims of discrimination including measures such as the provision of legal aid and representation by non-governmental organizations;
- Shared burden of proof for discrimination claims in administrative and civil courts so that if persons who consider themselves wronged establish facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no discrimination;
- Effective monitoring of the impact of legislation and policies on different groups and collection of accurate disaggregated data to use in identifying and addressing discrimination.

As regards data collection, standards intended to protect personal privacy should not be read to prevent authorities from collecting data that are disaggregated by ethnicity, religion or gender. Human rights bodies have highlighted that states have to collect data and statistics with the aim of reporting on the implementation of human rights treaties.<sup>70</sup> Furthermore the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data explicitly provides that data on racial origin and the like may be routinely collected and processed when necessary for the protection of public safety or the

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69 For more information, see Amnesty International, *Dealing with Difference: A framework to combat discrimination in Europe* (Index Number EUR 01/003/2009).

70 HRC, Consolidated guidelines for state reports, CCPR/C/66/GUI/rev.2, paraC6. Committee on Economic, Social and Cultural Rights, General Comment No.1: reporting by State Parties. UN CERD Committee, General Recommendation IV concerning reporting by State Parties.

suppression of crime. In a 2006 report on data collection and EU equality law, the European Commission highlights that national and European rules on protection of privacy data do not categorically prevent the collection of data in relation to discrimination. Data collection is essential to implement the EU equality law; although some data are available to this purpose in almost all EU member states, the report concludes that this information is limited as usually collected only in relation to specific grounds of discrimination (such as ethnicity) and areas of life (such as employment).<sup>71</sup>

#### 4.1 LACK OF DATA AND EFFECTIVE REDRESS MECHANISMS

As mentioned above, states are obliged to put in place a whole set of legislation, policies and initiatives aimed at fulfilling the right to be free from all forms of discrimination. The case of Spain illustrates that effective policies to tackle all forms of discrimination, including religious discrimination, cannot be developed if data are not adequately collected and effective redress mechanisms are lacking.

The Spanish Constitution enshrines the principle of equality and a general prohibition on discrimination (Article 14). Spain has transposed the EU Framework Employment Directive, which prohibits discrimination on the ground of religion, among others, in the areas of employment and occupation. Domestic legislation prohibits discrimination in access to education (Article 84.3 of the Organic Law on Education 2/2006). However, Spain has not adopted comprehensive legislation prohibiting discrimination in all areas of life.

In 2011, the former Spanish government introduced a bill for comprehensive anti-discrimination legislation that would prohibit discrimination on the ground of religion in many areas other than employment, such as education and access to goods and services, including health, social services and housing. The Spanish Parliament was discussing the bill before the former government anticipated elections took place in November 2011. At the time of writing (February 2012), it is not clear whether the new Spanish government will support the adoption of the proposed comprehensive anti-discrimination legislation.

The former government also adopted the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 4 November 2011.<sup>72</sup> Although this Strategy acknowledges that ethnic minorities can be discriminated against on grounds other than ethnicity, including religion or belief and gender, it primarily focuses on measures to tackle discrimination on the ground of race and ethnicity. Nevertheless, the Strategy includes some positive proposals to collect further information on discrimination<sup>73</sup> and strengthen existing mechanisms, such as the Council for the Promotion of Equal Opportunities and Non-

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71 Timo Makkonen, "Measuring Discrimination: Data collection and EU equality law", European Commission, 2007.

72 See full text here: <http://www.oberaxe.es/files/datos/4ee5ba982ebe3/ESTRATEGIA-LINEA%20INTERACTIVO%208-12-2011.pdf>, accessed 30 January 2012.

73 Objectives 4.1, 4.2, 4.3, p70.

Discrimination on the Ground of Ethnic and Racial Origin (the Spanish equality body).<sup>74</sup>

There is no data collection at the state level in relation to hate crimes with a religious bias, as identified in Article 22.4 of the Penal Code on aggravating circumstances. There are no available data on hate crime complaints made to the police or on court proceedings of related cases. Therefore, it is difficult to assess the implementation of Article 22.4 of the Penal Code.<sup>75</sup> Disaggregated data are collected at the autonomous level by the Catalan police (*Mossos d'Esquadra*) and the department of the Public Prosecutor's Office of Barcelona dealing with hate crimes and discrimination: 171 offences punishable under the Penal Code and relating to hate crimes and discrimination were registered by the police in 2010 in Catalonia (from March to December), and 7 per cent of them were on the ground of religion including Islam and other religions but not Judaism as anti-Semitic crimes are registered in a separated category and amounted to 3 per cent.<sup>76</sup> Data are collected only in relation to offences punishable under the Penal Code, which includes discrimination in employment and hate crimes.<sup>77</sup>

Although some redress mechanisms exist, their competence in assisting victims and in collecting data is limited as further detailed in the chart below.

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74 Objective 1.2, p80.

75 This concern was raised by Amnesty International in its 2011 submission to the UN Committee for the Elimination of Racial Discrimination.

76 Office of the Public Prosecutor of the Barcelona Province, Service dealing with hate crimes and discrimination, Annual Report 2010. Data from the police, p30, [http://www.ub.edu/dpenal/Fiscalia\\_BCN\\_memoria%202010.pdf](http://www.ub.edu/dpenal/Fiscalia_BCN_memoria%202010.pdf), accessed 30 January 2012.

77 Data collected on offences punishable under the following articles of the Penal Code: 170.1, 174, 314, 510.1, 510.2, 511, 512, 155.5, 518, 522-525, 607, 607bis, 22.4.

Mechanism	Competence
State-level	
<u>Council for the Promotion of Equal Opportunities and Non-Discrimination on the ground of ethnic and racial origin</u>	The Council is competent only for dealing with discrimination on the ground of race and ethnicity. It has facilitated the establishment of a support network for victims of discrimination on the ground of race composed of civil society organizations already active in this field. The Council is not adequately staffed and resourced to offer appropriate support services on its own.
<u>Ombudsperson</u> : The institution acknowledges the lack of data on many forms of discrimination including religious discrimination. Seventeen complaints received in 2010 on freedom of religion, most of them are filed by Christians who want their names to be removed from Christening Registers. <sup>78</sup>	The Ombudsperson is only competent for dealing with discrimination perpetrated by public authorities.
Catalonia (one of the 17 Spanish autonomous communities)	
<u>Ombudsperson (Sindic)</u> : No complaints on religious grounds have been filed by Muslims. In 2010 the only complaint on religion was relating to a public competition scheduled on an Adventist holiday. <sup>79</sup>	It is competent only to deal with discrimination perpetrated by public authorities.
Municipal level (example of Barcelona)	
<u>Office for Non-Discrimination of the City of Barcelona</u> : It receives individual complaints on all forms of discrimination. The Office received 639 individual complaints in 2010, although very few related to religion. Data collected are not disaggregated by religion. Almost 39 per cent of the complaints are based on migrant status. The representative of the Office told Amnesty International that discrimination on the ground of religion is likely to be underreported.	It can provide support to victims but has no competence in litigation.

78 El Defensor del Pueblo, Resumen del Informe a las Cortes Generales 2010, p23.

79 Sindic de Greuges, Report to the Parliament 2010, February 2011.

## 4.2 EMPLOYMENT

Available statistics show that in many European countries the employment rates<sup>80</sup> of ethnic minorities are lower than those of the general population. Although data for employment rates disaggregated by religion are usually not collected, information is available on the employment rate of migrants coming from countries predominantly populated by Muslims or, in some cases, of European people with a migrant background.

For example, in Belgium, in 2003, the employment rate of Belgian citizens was three times higher than that of Turks and Moroccans residing in the country. The employment rate of Belgian women was five times higher than that of Turkish and Moroccan women.<sup>81</sup> In France, in 2009, the employment rate of women holding French citizenship was 60.9 per cent whereas the rate for Moroccan women living in the country was 25.6 per cent and for Turkish women 14.7 per cent.<sup>82</sup> In the Netherlands, in 2006, the employment rate of women of Turkish and Moroccan origin was very low (31 and 27 per cent respectively) compared with the rate for Dutch women who are not from ethnic minorities (56 per cent).<sup>83</sup>

Ethnic and religious minorities are at a disadvantage in European labour markets due to a wide range of factors such as lower educational attainments and language skills, but, as illustrated by the cases cited below in this report, discrimination in the workplace is also a contributing factor. Muslims can be discriminated against on many grounds, as outlined in the introduction of this chapter. In a recent Open Society Institute survey, perceptions of the discrimination experienced by Muslim women in employment varied, for instance, according to whether they were born in the place where they now live; Muslim women born in their EU country of residence more often associate a job refusal with discrimination based on their religion, while Muslim women born outside the EU country where they now reside more often thought it was due to their ethnicity.<sup>84</sup>

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80 The employment rate refers to the proportion of persons who are employed, as compared with the total population aged between 18 and 65, who are legally able to work.

81 Statistics referring to 2003, Open Society Institute, *Muslims in the EU. Belgium*, Table 4, p26, The employment rate for Belgian men is 69 per cent, for Turkish and Moroccan men 41 per cent, for Belgian women 54 per cent and for Turkish and Moroccan women 11 per cent .

82 Statistics referring to 2009, the employment rate of Algerian women is 29.4 per cent, of Moroccan women 25.6 per cent, of Tunisian women 28.1 per cent, Ministère de l'Immigration, de l'Intégration, l'Identité Nationale et du Développement Solidaire, "Rapport du SOPEMI pour la France", Table 33, p65, 2010, [http://www.immigration.gouv.fr/IMG/pdf/SOPEMI\\_2010.pdf](http://www.immigration.gouv.fr/IMG/pdf/SOPEMI_2010.pdf), accessed 31 January 2012.

83 FORUM, "The position of Muslims in the Netherlands: facts and figures," *Factbook 2008: Participation of Muslim women*, 2008, p21.

84 Open Society Institute, "Muslims in Europe: For what reasons were you refused a job?", Table 73, p282.

## HUMAN RIGHTS BODIES' CONCERNS ON EMPLOYMENT SITUATION OF MUSLIMS

"Muslims are subject to a variety of forms of racism and intolerance, as described in several sections of this report. In particular, some factions of public opinion make no distinction between terrorists, religious extremists and the Muslim population as a whole. In some cases, it is claimed that these prejudices lead to discrimination, especially in the employment sector, as Muslims are refused posts on account of the suspicion in which they are held. Women who wear the headscarf in particular encounter difficulties in access to employment, housing and goods and services available to the public."

European Commission against Racism and Intolerance (ECRI), Fourth Report on Belgium, 26 May 2009

"The Committee notes with concern that despite the measures adopted by the State party to combat discrimination in the field of employment, such as the recent adoption of Act No.2008/496 of 27 May 2008 and the signature by several private companies of the Charter of Diversity in Companies intended as an instrument to promote diversity in the workplace, nonetheless, persons belonging to ethnic, national or religious minorities – especially those with North African or Arabic names – face serious discriminatory practices that prevent or limit their equal access to employment."

UN Human Rights Committee (HRC), Concluding Observations on France, 31 July 2008

"The Committee is concerned about the high unemployment rates among particular groups such as migrants, women, and young people, especially those of foreign origin, in comparison to the mainstream groups in the State party, and that measures to address unemployment among these groups have apparently been inadequate."

UN Committee on Economic, Social and Cultural Rights, Concluding Observations on Switzerland, 26 November 2010

"While noting the measures taken with the aim of enhancing the integration of immigrant, migrant, black, Muslim and other minority women in Dutch society, the Committee continues to be concerned that those groups still face multiple forms of discrimination with respect to education, health, employment and social and political participation."

UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the Netherlands, 5 February 2010, para42

This chapter provides examples of discrimination in employment and particularly associated with the wearing of religious and cultural symbols and dress perceived to be Muslim. This form of discrimination has a specific negative impact on Muslim women who chose to manifest their religion or to express their cultural background or identity by wearing religious and cultural symbols and dress, and contributes to Muslim women living in Europe being further excluded from employment.

## 4.2.1 BELGIUM

*“The boss does not want to see headscarves in her medical laboratory. If you remove it you can sign the employment contract, if you keep it you will not get this job.”*

*“Your resume is perfect, you are already acquainted with the team. Why do withdraw into yourself? Do you experience pressure [to wear the headscarf]? If yes I can help you, I can give you the contact details of someone who can support you.”*

Two potential employers made these remarks to A., a young Muslim woman wearing the headscarf and living in Brussels. A. is trained in the biomedical sector. She applied for positions in two medical laboratories. In the first case she was told she was not allowed to wear the headscarf for safety reasons. Although she suggested wearing a surgical head covering instead, her application was turned down. In the second case she applied for a position in a university medical laboratory after completing a six-month internship. In this case the head of the laboratory did not put forward any safety reason but rather her stereotypes on women wearing headscarves. A. filed a complaint with the Belgian equality body, the Centre for Equal Opportunities and the Fight against Racism (hereafter the Centre for Equal Opportunities), which asked her to collect more evidence in order to be able to deal with her case. She did not follow up as she felt discouraged and she had the impression that no positive outcome could have been achieved. A. was directly discriminated against on the ground of her religion in both cases. The refusal to hire her constitutes a difference of treatment not based on an objective and reasonable justification. Safety could have constituted an objective and reasonable justification since she was required to work in a medical laboratory, but clearly not in this case since A. agreed to wear a surgical head-cover instead of the headscarf.

In Belgium, discrimination on the ground of religion manifests more often in employment than in other areas such as education or access to goods and services.<sup>85</sup> In 2010, Muslims filed 84 per cent of the cases of religious discrimination collected by the Centre for Equal Opportunities.<sup>86</sup> The Centre told Amnesty International that the nature of the complaints indicated women and men experience discrimination on the ground of religion differently. Cases involving Muslim men referred predominantly to accommodation of religious needs in the workplace, such as praying times or flexible working hours during Ramadan, the Islamic

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<sup>85</sup> In 2010 the Centre for Equal Opportunities and the Fight against Racism dealt with 188 complaints of discrimination on the ground of religion, representing 12.6 per cent of the overall number of cases of discrimination. The most widespread form of discrimination according to the complaints collected by the Centre is racial discrimination (42.6 per cent), 24 per cent of the cases of discrimination on the ground of religion are relating to employment, 50 per cent to discriminatory language and verbal attacks on the media, 6 per cent to education and 8 per cent to access to goods and services. Centre pour l'Egalité des chances et la lutte contre le racisme, “Discrimination Diversité: Rapport Annuel 2010”, p66, Table 10 and p71, Chart 18.

<sup>86</sup> Cases of discrimination against Jews are not recorded by the centre as cases of religious discrimination. In 2010, 57 complaints on anti-Semitism were brought to the attention of the centre. Centre pour l'Egalité des chances et la lutte contre le racisme, Rapport Annuel 2010, p69.

month of fasting. Most of the complaints introduced by women involved the wearing of religious and cultural symbols or dress.

Muslim individuals, civil society organizations<sup>87</sup> as well as the Centre for Equal Opportunities told Amnesty International that private companies – including temporary employment agencies, cleaning companies and call-centres – as well as public employers or privately-run institutions receiving public funds enforced restrictions on the wearing of religious and cultural symbols and dress.

The restrictions on wearing religious and cultural symbols and dress in the public sector are presented as being in compliance with the principle of neutrality. However, this principle is enshrined in the Belgian Constitution only in relation to education, in no way does it require civil servants and public officials to refrain from showing signs of religious affiliation in their appearance.<sup>88</sup> In contrast, the restrictions in the public sector appear to have been based on an interpretation of the principle as being incompatible with wearing symbols and forms of dress that manifest religious or political beliefs.

There have been legislative proposals aimed at introducing general bans on religious symbols in public services.<sup>89</sup> At the moment these restrictions are not applied in a uniform manner by different public authorities. For instance, some public administrations, such as the City of Antwerp, allow staff members who are not required to be in direct contact with users to display religious symbols. Teachers in Flemish public schools have been banned from wearing religious symbols since 2007<sup>90</sup> and the Parliament of the French Community is debating a similar ban on teachers.<sup>91</sup>

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87 Amnesty International representatives visited Belgium twice, in March and June 2011. They met several civil society organizations including Toutes Egales au Travail et à l'Ecole (TETE), Boss Over Your Own Head (BOEH), l'Association Belge des professionnels musulmans, l'Executif Musulman de Belgique, le Mouvement contre le racisme, l'antisémitisme et la xénophobie (MRAX) and the European Forum of Muslim Women (EFOMW).

88 Article 24.1 of the Belgian Constitution spells out the concept of neutrality in the area of education. It reads: "... La neutralité implique notamment le respect des conceptions philosophiques, idéologiques ou religieuses des parents et des élèves."

89 For instance, in 2009 two proposals to ban religious symbols for employees in public services were introduced by the Reforming Movement into the Brussels Region's Parliament. They were rejected on 11 May 2010. One proposal aimed at introducing a general ban in hospitals and Public Centres for Social Action (CPAS-Centres Publics d'Action Sociale) is still pending.

90 The Onderwijs van de Vlaamse Gemeenschap (GO!), the institution organizing public education in Flanders (see chapter 4.2.1), introduced the ban after a judgment of the Council of State confirming that GO! had competence in this domain. Judgment No. 175.886 of 18 October 2007.

91 Proposition de décret interdisant le port de signes convictionnels par le personnel des établissements d'enseignement officiel organisés ou subventionnés par la Communauté française, <http://www.pfwb.be/le-travail-du->

## THE CASE OF H. AND A PUBLIC-FUNDED PRIVATE CHARITY IN BRUSSELS

After her studies, H. passed an interview for a one-year internship with a charity providing social services in a disadvantaged area of Brussels and receiving regional and municipal funds. During the interview the director told her that users could think she was not impartial because of her headscarf. When the director eventually recruited H. he stated: "We will give it a try. It is the first time we have recruited someone wearing the headscarf."

Although some colleagues were hostile to H., in her opinion because she was wearing the headscarf, a few months later her supervisor congratulated her on how she was performing her professional tasks. When her contract was about to come to an end, her supervisor suggested she applied for a vacant post within the charity. But he warned: "Do not expect too much, you know that some of them [colleagues] do not like you." Soon after her colleagues started organizing meetings to discuss whether recruiting a woman wearing the headscarf was appropriate. In their view an employee wearing the headscarf would threaten the neutrality of the organization as she would be perceived as privileging Muslim users. H. decided to apply anyway. At an information session organized for all the applicants, the director stated openly, "We do not accept women wearing headscarves in this position; so if you are recruited you have to remove it." Then the director told H.: "Your application could be successful but you are now informed about the conditions; they [colleagues] had taken such a decision and I had to announce it." H. took her case to the Centre for Equal Opportunities as well as another civil society organization providing legal advice to victims of discrimination. However, she told Amnesty International that she did not get any feedback from these two organizations. She now works for another charity where she is allowed to wear the headscarf.

In the private sector, restrictions on the wearing of religious and cultural symbols and dress are aimed at promoting a specific corporate image or at counteracting potential negative reactions from clients. Some existing research has identified the wearing of the headscarf as a barrier to accessing employment, even more so in positions requiring direct contact with clients. Some private employers, such as banks and financial institutions, allow the display of religious symbols only for staff in back-office positions. Other employers, such as cleaning companies, restrict the wearing of religious symbols and dress to satisfy the requirements of their clients.<sup>92</sup>

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parlement/doc-et-pub/documents-parlementaires-et-decrets/documents/001305854, accessed 27 January 2012. The Council of State gave its opinion on this amendment stating that the prohibition should not apply to religious teachers, Advise 48.022/AG of 20 April 2010.

92 Nadia Ben Mohammed, "Les femmes musulmanes voilées d'origine marocaine sur le marché de l'emploi", Free University of Brussels, 2006. F. Brion & U. Manço, "Exclusion and the job market. An empirical approach to Muslim women's situation in Belgium", *Muslim Voices*, 1998, p18–19. Ilke Adam, Andrea Rea, "La diversité culturelle au travail. Pratiques d'aménagements raisonnables: adaptation du code vestimentaire", 2010, pp80–92. The study includes 71 examples of policies implemented by public and private employers and relating to the accommodation of specific forms of dress code.

## THE CASE OF R. AND PRIVATE EMPLOYMENT IN ANTWERP

A few years ago R. moved from the Netherlands to Antwerp and applied for a position of sales assistant in a clothing store. After a short interview she was told: "Everything is fine. We just would like you to remove your headscarf otherwise we cannot hire you. You know, clients do not like it." She did not want to take her headscarf off in the workplace and did not get that job.

After attending a short training course to work in the tourist sector, she started looking for an internship in a travel agency. She usually received positive feedback on the phone; sometimes she was told: "You are Dutch, you have a nice accent." Once face to face with managers she was usually asked if she was willing to remove her headscarf: "We cannot hire you for front-office positions, we do not want to lose clients." Sometimes she was told that other colleagues were not comfortable with women wearing headscarves. R. contacted more than 40 travel agencies. At some point she started mentioning the headscarf when inquiring about internship opportunities over the phone. Often she was openly told that headscarves were not accepted. She finally found an internship with an agency managed by a Moroccan person who allowed her to wear the headscarf. The Flemish Public Employment Service (VDAB) told R. that it would have been difficult for her to be recruited in a front-office position because of the headscarf. She was advised to apply for administrative positions that did not require direct contact with clients. She never filed a complaint to the Centre for Equal Opportunities or to any other organization.

One large temporary employment agency told Amnesty International it had a special unit to record requests from clients that could be at odds with anti-discrimination legislation with the aim of making those clients comply with it. In one third of such requests, clients expressed a refusal to hire Muslims in general. In the agency's view such requests often stem from a lack of awareness on diversity and non-discrimination. But the agency viewed restrictions on the display of religious symbols for its staff members as legitimate, and also considered that an employer, when recruiting, was entitled to inquire whether a candidate would be willing to remove the headscarf in the workplace. According to the agency Belgian society is not comfortable with women wearing the headscarf and it will take time to get used to it.

Even when neutrally formulated, restrictions on the wearing or display of religious and cultural symbols and dress disproportionately impacts Muslims, especially Muslim women who manifest their religious or cultural identity or beliefs by wearing specific forms of dress. The Centre for Equal Opportunities told Amnesty International that the complaints it received of discrimination against Jews were not associated with wearing or displaying of religious and cultural symbols or dress but rather with hate speech and violent attacks. A Jewish organization in Flanders told Amnesty International that in their experience the issues relating to religious and cultural symbols and dress were not a matter of concern for Jews, and that related public and political debates focused almost exclusively on the Islamic headscarf.<sup>93</sup>

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93 Meeting with Forum der Joodse Organisaties, FJO/Forum of Jewish Organisations, Antwerp, 28 June 2011.

## DOMESTIC LEGISLATION

Belgium is a federal state

Federal entities comprise communities (French community, Flemish community and German-speaking community) and regions (Flemish region, region of Brussels Capital and Wallonia).

Competences: both the federal state and the federal entities are responsible for promoting equality and combating discrimination.

The communities are responsible for education.

Equality body (at the federal level): The Centre for Equal Opportunities and the Fight against Racism, created in 1993, is authorized to deal with all grounds of discrimination excluding gender, for which the Institute for Equality between Women and Men has the remit, and in all areas including those that are the responsibility of regions and communities, such as education. The centre assists victims of discrimination and can bring cases before the courts in all the areas covered by the federal anti-discrimination.<sup>94</sup> However, it tends to primarily focus on reaching informal settlements in discrimination cases so few cases are brought to court.<sup>95</sup>

Domestic federal legislation provides protection against discrimination on the ground of religion in the areas of access to goods and services, social protection (including health), social advantages, social security and employment including internships.<sup>96</sup> Anti-discrimination provisions are also included in community and regional legislation. For instance, community legislation provides protection against discrimination in education.<sup>97</sup>

Domestic anti-discrimination legislation allows for differences of treatment based on prohibited grounds of discrimination in the area of employment. However, they must be based on a genuine and determining occupational requirement,<sup>98</sup> as also established by the

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94 The centre can not bring cases to court when relating to areas where regions and communities have exclusive competence, such as education.

95 In 2010 the Centre brought 16 cases to courts; in general these are cases involving violent attacks with a hate bias.

96 Loi du 10 Mai 2007 tendant à lutter contre certaines formes de discrimination, articles 3 and 5.

97 Decree of the French Speaking Community of 12 December 2008 relating to combating certain forms of discrimination and Framework Decree for the Flemish equal opportunities and equal treatment policy of 12 July 2008.

98 Loi du 10 Mai 2007, Article 8: “§1 ...une distinction directe fondée sur l'âge, l'orientation sexuelle, la conviction religieuse ou philosophique, ou un handicap ...peut uniquement être justifiée par des exigences professionnelles essentielles et déterminantes. § 2. Il ne peut être question d'une exigence professionnelle essentielle et déterminante que lorsque : -une caractéristique déterminée, liée à l'âge, l'orientation sexuelle, la conviction religieuse ou philosophique ou à un handicap est essentielle et déterminante en raison de la nature des activités professionnelles spécifiques concernées ou du contexte dans lequel celles-ci sont exécutées, et; -l'exigence repose sur un objectif légitime et est proportionnée par rapport à celui-ci.”

EU Framework Employment Directive,<sup>99</sup> which Belgium has transposed into its domestic legislation. The Centre for Equal Opportunities takes the position that placing restrictions on the wearing of religious and cultural symbols and dress based on the uncomfortable feelings of colleagues or clients is not consistent with Belgian domestic legislation because such difference of treatment does not stem from a genuine and determining occupational requirement. In one case, the European Court of Justice found that client preferences could not be considered as an objective and reasonable justification for a private company to hire only native Belgians. The Court found that the company in question had directly discriminated on the ground of race.<sup>100</sup> But in other cases, domestic courts have found that differences of treatment on the basis of religion that were implemented by private employers to promote a specific corporate image or ensure neutrality (in this context seen as impartiality of the employees towards clients), did not amount to discrimination.<sup>101</sup>

Belgium signed Protocol 12 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, enshrining a general prohibition of discrimination in relation to all legal rights, on 4 November 2000 but has not ratified it.

#### OTHER POLICIES

The Federation of Belgian Companies (FEB) told Amnesty International that several industries had introduced specific anti-discrimination provisions in their labour agreements and a labour agreement aimed at addressing discrimination in the temporary employment sector was being negotiated at the time of this research (September 2011). Two general collective agreements applying to all the industries already enshrine the principle of non-discrimination in all stages of employment including recruitment.<sup>102</sup>

The federal government has supported a Diversity Charter and businesses, trade unions and regional authorities have promoted similar initiatives to combat discrimination in the labour market. The Federal Ministry for Employment and Equal Opportunities told Amnesty International that all these diversity policies were not binding on private employers. However, since 2008 labour inspections undertaken by the Ministry are also aimed at monitoring

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99 Article 4.1 of Directive 2000/78/EC relating to the determining occupation requirement.

100 Judgment of the European Court of Justice of 10 July 2008, Reference for a preliminary ruling from the Labour Court of Brussels in the case *Centre for Equal Opportunities and Fight against Racism v. Firma Feryn NV*, Case C-54/07, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:223:0011:0012:EN:PDF>, accessed 27 January 2012.

101 See *Kadija Sounossi v. S.C. Multipharma*, Labour Court of Brussels, judgement of 4 November 2010, *Centre for Equal Opportunities and Opposition to Racism v. nv GAS Security Services and Samira Achbita*, Labour Court Appeal of Antwerp, judgment of 14 January 2008, and *E.F. v. Club Corp*, Labour Appeal Court of Brussels, judgment of 15 January 2008.

102 Convention Collective du Travail No. 38 Sexies, 10 Octobre 2008, <http://www.cnt-nar.be/CCT/cct-38sexies.pdf>, accessed 27 January 2012 and Convention Collective du Travail No. 95, 10 Octobre 2008, <http://www.cnt.be/CCT/cct-95.pdf>, accessed 27 January 2012.

compliance with federal anti-discrimination legislation in the area of employment.<sup>103</sup>

## CONCLUSIONS

Belgium has comprehensive legislation providing protection against discrimination on many grounds and areas of life, including discrimination on the ground of religion or belief in the area of employment. Differences of treatment on the basis of religion or belief are allowed if they are based on a genuine and determining occupational requirement. But Belgium fails to ensure that this principle is implemented in a manner consistent with international anti-discrimination standards. In particular, Belgium fails to exercise due diligence to prevent discrimination on the ground of religion or belief by private actors in the area of employment, which, according to data based on complaints to the Centre for Equal Opportunities, affects primarily Muslims. Muslim women are particularly impacted by policies and restrictions applied by private employers in relation to the wearing of religious and cultural symbols and dress. When a private employer refuses to hire, or dismisses, a Muslim woman who wears a headscarf to “protect” its corporate image, or to “please” its clients or other employees, it is an act of discrimination on the ground of her religion or belief, because these reasons do not constitute an objective and reasonable justification. Furthermore, the rights to freedom of expression and to manifest religion or belief of Muslim women are violated where internal regulations forbid the wearing of religious symbols without being demonstrably necessary and proportionate to achieve a legitimate aim, such as the protection of public safety or health.

Belgian public authorities should also refrain from introducing restrictions on religious and cultural symbols and dress in public employment with the sole aim of fostering neutrality, interpreted as an exclusive concept denying civil servants or public officials the possibility to manifest their religion or belief. This interpretation is not in keeping with the definition the UN Special Rapporteur on freedom of religion or belief has highlighted; that the state should treat members of different religions or beliefs on the basis of equality, and ensure non-discriminatory implementation of freedom of religion or belief (see chapter 3).

The Belgian State should put in place further mechanisms to raise the awareness of private employers on non-discrimination and to enforce anti-discrimination legislation in private employment. It should also undertake research on discrimination on the ground of religion in employment to increase understanding of the impact of this form of discrimination on Muslims, and more specifically on Muslim women. Such research should collect disaggregated data by religion, ethnicity and gender and be used as the basis for developing new governmental policies to combat discrimination.

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103 Inspection of Labour legislation falls within the responsibility of the Federal Ministry for Employment and Equal Opportunities. The Royal Decree of 24 October 2008 gives the competence to labour inspectors to monitor the application of the anti-discrimination legislation of 10 May 2007. According to the 2009 Report, 19 investigations have been undertaken by Labour Inspectors in 2009 on the basis of complaints received. SPF Emploi Travail et Concertation Sociale, Contrôle des Lois Sociales Rapport d'Activité 2009, p154  
<http://www.emploi.belgique.be/publicationDefault.aspx?id=34916>, accessed 26 January 2012.

### 4.2.2 FRANCE

After attending an interview for a summer job with a telemarketing agency, Um Sufiane (not her real name) was told: *“Your application was not successful; removing your headscarf is the least you could do.”*

*“I tried to look for employment in the telemarketing sector because it is where women wearing headscarves have more chances to be hired as no direct contact with clients is required. All these restrictions constrain our employment opportunities and result in segregation”* Yamina told Amnesty International

In 2009, the French equality body, the High Authority against Discrimination and for Equality (HALDE), received 259 complaints of discrimination on the ground of religion or belief.<sup>104</sup> The HALDE told Amnesty International that most of them involved Muslims. According to the data collected, discrimination on the ground of religion occurs most often in education, private employment and access to public services. A great majority of these cases involved either the display of religious symbols or the accommodation of specific religious needs (for instance, the availability of food compatible with Muslim dietary requirements in school canteens). Women filed 57 per cent of the complaints relating to religious discrimination and most of these involved the wearing of the headscarf.<sup>105</sup> A few cases were brought by Sikh men and related to the wearing of the turban.

Among the discriminatory acts collected by an NGO combating discrimination against Muslims (Collectif Contre l’Islamophobie en France, CCIF) in 2010, 10 per cent took place in the area of employment. The CCIF told Amnesty International that most of these cases referred to the wearing of the headscarf and therefore involved women. The CCIF had only ever collected a very few cases of dress-code restrictions impacting on Muslim men.<sup>106</sup>

A 2010 study highlighted the specific role of religion in discriminatory patterns against French people with a Muslim background in access to employment. The study found that a

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104 One thousand and six complaints on the ground of religion have been filed since the HALDE was set up in 2004 (until June 2011). In 2009, complaints on the ground of religion represented 2 per cent of the overall number of complaints. Haute autorité de lutte contre les discriminations et pour l’égalité, Rapport Annuel HALDE 2010, <http://www.ladocumentationfrancaise.fr/rapports-publics/114000234/index.shtml>, accessed 27 January 2012. However, in a recent survey on perceptions of discrimination, 15 per cent of the respondents indicated having been discriminated against by private employers on the ground of religion. HALDE and the International Labour Organization, “Perception des discriminations au travail: regard croisé salariés du privé et agents de la fonction publique”, December 2010, p14.

105 Forty-eight per cent of the overall number of complaints (on all grounds of discrimination) dealt with by the HALDE come from women, Rapport Annuel HALDE 2010, p123.

106 Collectif contre l’Islamophobie en France, Rapport sur l’Islamophobie en France 2010, <http://www.islamophobie.net/sites/default/files/rapport-ccif-2010.pdf>, accessed 27 January 2012. According to this report ,71 per cent of the overall number of discriminatory acts collected involves women.

French candidate with a Senegalese Christian background was two and a half times more likely to receive positive feedback when applying for a job than a French candidate with a Senegalese Muslim background.<sup>107</sup>

As in other countries, wearing religious and cultural symbols and dress, in particular the headscarf, has been identified as an important barrier for Muslim women whether they are attempting to access the labour market or already in the workplace. In a field research involving 20 big companies and focusing on the accommodation of religious needs in the workplace, the headscarf is one of the core concerns brought up by managers.<sup>108</sup> Some employers do not perceive the headscarf as a religious symbol but rather as a political claim or a symbol of gender inequality. Others see a need to enforce the principle of secularism by making a clear distinction between the public and the private spheres when manifesting religion or belief. Since the workplace is considered to be in the public sphere, the refusal of a candidate on the sole ground that she displays religious or cultural symbols or dress is not necessarily perceived as a discriminatory practice.

Restrictions on the wearing of religious and cultural symbols and dress in the workplace have a disproportionate impact on Muslims. One employer interviewed in the framework of the research mentioned above declared anonymously that wearing Jewish religious symbols in the workplace had not been a matter of concern in the past. Amnesty International was told by a Jewish students' organization that anti-Semitism in France does not primarily manifest itself through discrimination in employment or access to services but rather as verbal and physical attacks or threats against real or perceived Jews.<sup>109</sup>

## STEREOTYPING AND RESTRICTING THE HEADSCARF

Amel is a social assistant with several years of professional experience. She decided to wear the headscarf two years ago and since then she has been encountering difficulties in finding a job. She applied for several positions in not-for-profit organizations and in recruitment interviews she was constantly asked questions relating to her religious practice. For instance, on two occasions she was asked whether it was acceptable for her to be alone with an unknown man. "If it was not, I would not be looking for a job or I would be applying for positions in women-only environment. So I do not see any rationale behind these questions besides stereotyping of women wearing headscarves," she told Amnesty International. At the end of the recruitment process with a not-for-profit organization assisting women victims of domestic violence, she was openly told that her professional profile suited the requirements but that she had to remove her headscarf. When she

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107 Claire Adida, David Laitin, Marie-Anne Valfort, "Les français musulmans sont-ils discriminés dans leur propre pays? Une étude expérimentale sur le marché du travail", French-American Foundation and Institut des Etudes Politiques, 2010. Previous studies had already found discrimination against people with North African background on ground of ethnicity and nationality in access to employment. See, for instance, Emmanuel Duguet, Noam Leandri, Yannick L'Horty, Pascale Petit, "Are French young jobseekers of ethnic immigrant origin discriminated against? A controlled experiment in the Paris area", Institute for Labour Studies and Public Policies, 2009.

108 Dounia and Lylia Bouzar, "Allah-a-t'il une place dans l'entreprise?", Albin Michel, 2009.

109 Meeting with the Union Des Etudiants Juifs de France, UEJF, Paris, 5 July 2011.

asked for further explanations she was told: "We have to ensure neutrality. How would you be able to convince a Muslim woman victim of domestic violence to remove her headscarf in order to find employment and be financial independent?" When she contacted the French equality body, the HALDE, she was asked to collect more evidence to prove she had been discriminated against on the ground of religion. Amel did not follow up this request as she had no further evidence other than her declarations.

Linda and Yamina are radiologist technicians. Although they have never worn the headscarf in the workplace and they were fine with covering their heads with a surgical head covering, they have encountered problems on several occasions because they did not want to work bareheaded. Linda's manager once told her: "You cannot wear the head covering, we are in France here, not in Syria." The management made clear that she could have been dismissed for gross misconduct if she did not remove the head covering. The matter was resolved and Linda was able to continue wearing the surgical head covering upon the intervention of the trade union.

Restrictions on religious and cultural symbols and dress in public employment are based on the interpretation of the principle of neutrality in public employment whereby employees should not manifest their religion or belief although they are protected against discrimination on the ground of religion in access to employment. In some cases, however, restrictions can go so far as to affect whether a woman wears a headscarf in her private life.

## A DEMAND FOR 'NEUTRALITY' OUTSIDE THE WORKPLACE

Ipticem had been working with the Municipality of Gennevilliers (Parisian region) for several years as cultural and social development officer. She had never worn the headscarf in the workplace abiding by the prevailing interpretation of the principle of neutrality in the public services. "I have never worn it even on my way to the town hall, I usually wore a hat." Her colleagues became more hostile after her marriage; they were surprised not to be invited to the wedding and they also made negative comments that since her marriage she dressed more modestly and she preferred not to greet her colleagues by kissing them. She complained to her director who said her colleagues did not fully understand her religious values, and suggested moving her to another position with responsibility for a youth club. However, the mayor was reportedly against having a woman who wore the headscarf outside the workplace working in direct contact with young people. Ipticem contacted the trade union, which organized a meeting with a senior director. He expressed the view that wearing the headscarf was not compatible with a public function requiring direct contact with users because in this case Ipticem lived and worked in the same city and thus citizens knew that she was wearing the headscarf outside the workplace. She was then offered a position as a training officer, which did not require any contact with users. She occupied that position for three months until April 2011 when she decided not to extend her contract as the position did not fulfil her professional expectations.

### DOMESTIC LEGISLATION

The French Constitution of 1958 enshrines in its first article the principle of equality of citizens without any distinction on the basis of origin, race or religion. The law of 9 December 1905 on the separation of Church and State ensures the right to freedom of religion or belief (Article 1) but enshrines a strict separation implying that the state neither recognizes nor funds any religion (Article 2). The French Republic is also defined as secular (*laïque*) by Article 1 of the 1958 Constitution. The principle of secularism (*laïcité*) has been interpreted

by the Council of State as implying strict neutrality for employees in public services.<sup>110</sup>

French civil legislation provides protection against discrimination on the ground of religion in the area of employment, including access, training, conditions, professional advancement and trade union membership.<sup>111</sup> Differences of treatment on the ground of religion are allowed if stemming from a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. Protection against discrimination on the ground of race, enshrined by French civil law, is wider and besides employment covers social protection, social advantages, education, health and access to goods and services.<sup>112</sup> Discrimination on the ground of religion, among a number of other grounds, in access to goods and services and employment is also punishable under the French Penal Code.<sup>113</sup>

The High Authority against Discrimination and for Equality (HALDE) was created in 2004 with the mandate to deal with all the forms of discrimination forbidden by domestic legislation and competency to assist victims, investigate cases of discrimination and issue recommendations. In March 2011, the HALDE was merged with three other institutions, with the aim of setting up a single rights protection body, the Defender of Rights.

The French Labour Code includes clear principles relating to the conditions under which employers may restrict the human rights of employees. Article 1321-3 of the Code states that “Internal regulation cannot include provisions restricting individual and collective rights and freedoms unless these restrictions are justified by a professional requirement and are proportionate to the objective sought.”<sup>114</sup> On the basis of this provision, for instance, the Council of State has found an internal regulation prohibiting political and religious discussions in the workplace unjustified and thus exceeding the legitimate restrictions an employer may impose on the rights of employees.<sup>115</sup>

The High Council for Integration, an advisory body to the government on integration policies targeting foreigners or French citizens of foreign origin, told Amnesty International it should be possible for private sector employers to restrict the wearing of specific forms of religious

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110 See, for instance, Council of State, advise no. 217017 of 3 May 2000 (Mlle Marteaux), <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000400740&dateTexte=>, accessed 27 January 2012.

111 Law no. 2008-496 of 27 May 2008 concerning several dispositions transposing community law in the field of combating discrimination (Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations), Article 2.2.

112 Law no. 2008-496, Article 2.1.

113 French Penal Code, articles 225.1 and 225.2.

114 See also Article 1121-1 of the French Labour Code.

115 Council of State, judgment of 25 January 1989, Société Teinture et Apprêts.

and cultural symbols or dress for business related purposes such as promoting a specific corporate image or with the aim of fostering the principle of neutrality.<sup>116</sup> The majority party, the Union for a Popular Movement (UMP), supports the introduction of an amendment to the Labour Code, which could allow employers to introduce internal restrictions on the wearing of religious and cultural symbols and dress, with the aim of promoting religious neutrality in private companies.<sup>117</sup>

A bill aimed at imposing respect for the principle of religious neutrality in private child-care facilities was introduced to the Senate in October 2011 following the case of an employee of a private kindergarten who was dismissed because she refused to remove her headscarf.<sup>118</sup> The bill was adopted by the Senate on 17 January 2012 and transmitted to the National Assembly.<sup>119</sup>

France has not signed Protocol 12 to the European Convention on Human Rights, enshrining a general prohibition of discrimination.

#### OTHER POLICIES

Some initiatives have been put in place with the aim of promoting diversity and non-discrimination in private employment. Since 2004, businesses can voluntarily commit to

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116 In its opinion "Religious manifestation and secularism in the business sector" of 1 September 2011 the High Council for Integration suggests amending the Labour Code to allow private employers to regulate the wearing of religious symbols and/or other manifestations of religion, p20, <http://www.hci.gouv.fr/IMG/pdf/HCI-Avis-laicite-entreprise-DEFINITIF-09-2011.pdf>, accessed 31 January 2012. In the Republican Pact adopted by the UMP in April 2011, the proposition to amend the Labour Code is put forward. On 1 June 2011 the National Assembly adopted the resolution, "Commitment to respecting the principles of secularism and religious freedoms", which also includes the possibility to enforce religious neutrality in companies (point 10).

117 Meeting with the Cabinet of the Secretary General of the Union pour un Mouvement Populaire (UMP), Jean-François Copé, Paris, 30 June 2011.

118 On 13 December 2010, a first-degree Tribunal found that the dismissal of an employee by Baby Loup, a child day-care facility, following her refusal to remove her headscarf was not discriminatory. The judgment was confirmed by the Court of Appeal of Versailles in October 2011. After having taken a parental leave, the employee returned to work in December 2008 wearing the headscarf. According to the internal regulation of the institution, employees are required to be neutral in relation to the clients' political and religious beliefs.

119 Proposition de loi visant à étendre l'obligation de neutralité aux structures privées en charge de la petite enfance et à assurer le respect du principe de laïcité, [http://www.senat.fr/interventions/crisesume\\_ppl11-056\\_1.html](http://www.senat.fr/interventions/crisesume_ppl11-056_1.html), accessed 18 January 2012. The Bill was introduced by MP Françoise Laborde on 25 October 2011. The bill aims at extending the duty of neutrality to private child-care facilities with the exception of faith-based facilities. The bill also aims at introducing a duty of neutrality to structures hosting minors put under State protection and to childminders (*assistants maternels*).

respecting equality and combating discrimination by signing the Diversity Charter.<sup>120</sup> The Ministry of Employment and the National Association of Human Resources Directors (ANDRH) has also promoted a diversity label. This label is not granted to businesses on the sole basis of good intentions but requires concrete action, such as recruitment policies aimed at increasing diversity within the company or the introduction of an anonymous curriculum vitae in the recruitment process. The Deputy President of the ANDRH told Amnesty International that although religious symbols should not be the object of a general prohibition in private employment, it was crucial to develop a flexible framework aimed at appropriately addressing the needs of both employers and employees.

In 2006, employer organizations and trade unions signed an agreement aimed at fostering diversity within companies across different industries. The agreement anticipates several steps including a commitment to fight against stereotypes and prejudices affecting recruitment processes. However, this agreement focuses only on some grounds of discrimination including race, ethnicity, national identity, physical appearance, name and place of residence,<sup>121</sup> but it is not explicit on covering religion or belief.

## CONCLUSIONS

According to the data relating to complaints filed to the HALDE, Muslims are particularly affected by discrimination on the ground of religion or belief. Muslim women wearing religious symbols are disproportionately affected by policies and regulations restricting the wearing of religious and cultural symbols and dress in the workplace.

French civil legislation provides only partial protection against discrimination on the ground of religion or belief, which is limited to the area of employment. According to domestic legislation, differences of treatment on the ground of religion or belief in employment do not constitute discrimination if they are based on a determining occupational requirement. But the French state fails to ensure that its domestic legislation is interpreted according to international standards. In particular, France fails to exercise due diligence in order to ensure that non-state actors such as private employers do not discriminate on the ground of religion or belief. Enforcing the principle of secularism and neutrality cannot be seen as a reasonable and objective justification to introduce restrictions on the wearing of religious and cultural symbols and dress in private employment. Proposals aimed at introducing changes to the Labour Code and at enforcing the principle of secularism in private institutions such as child-care facilities would turn discriminatory practices into the norm and should thus be dropped.

Although France has supported some initiatives to combat discrimination and promote diversity in the area of employment, Amnesty International is concerned that employers are still excluding Muslims from employment on the basis of stereotypes and prejudices, and that this impacts disproportionately on Muslim women. The HALDE has been playing an

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<sup>120</sup> Further information on the Diversity Charter can be found here: <http://www.assemblee-nationale.fr/13/ta/ta0672.asp>, accessed 27 January 2012.

<sup>121</sup> Accord national interprofessionnel relatif à la diversité dans l'entreprise, signed on 12 October 2006, <http://www.charte-diversite.com/fiche-outil.php?id=24>, accessed 28 January 2012.

important role in providing guidance to employers on anti-discrimination legislation and lawful restrictions on the wearing of religious and cultural symbols and dress. Its successor body, the Defender of Rights, should pursue this role by providing guidance to employers on the implementation of domestic anti-discrimination legislation and by assisting victims of discrimination on the ground of religion as well as on any other ground.

#### 4.2.3 SWITZERLAND

*“I was told by the Regional Employment Office that I should have moved to Zurich if I wanted to find a job where I am allowed to wear the headscarf. They told me that employers sometimes explicitly refused to hire women wearing the headscarf. The problem is also that CVs are not anonymous so employers see that I have a foreign name and that I wear the headscarf in my picture. I had several negative recruitment experiences where employers made me feel uncomfortable with their comments and questions. I am happy because I have now finally found a job as an accountant with a not-for-profit organization where I can wear the headscarf.”*

P., 28 years old, Lugano, Ticino Canton

In 2008 the UN Committee on the Elimination of Racial Discrimination (CERD Committee), in commenting on Switzerland, pointed to “the lack of substantial progress made by the state party in combating racist and xenophobic attitudes towards some minorities, including black persons, Muslims, travellers, immigrants and asylum-seekers. It is particularly concerned at the hostility resulting from the negative perception of foreigners and certain minorities by part of the population, which has resulted in popular initiatives questioning the principle of non-discrimination.”<sup>122</sup>

Data on discrimination and more specifically on religious discrimination are not systematically collected in Switzerland where, unlike France and Belgium, there is no established equality body tasked to monitor anti-discrimination legislation. One body that does collect some information is the Federal Commission against Racism (hereafter the Commission), which is responsible for monitoring implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and compiles information on violations of Article 261 of the Penal Code, punishing incitement to discrimination and hatred. According to the data collected by the Commission, in 2009 one case of discrimination against a Muslim person was prosecuted on the basis of this Article.<sup>123</sup>

Some information is also collected in the framework of a project providing support to victims of discrimination. The project is jointly co-ordinated by the Commission and the Information Platform Humanrights.ch. In 2010, 23 cases of “racism against Muslims” were brought to the attention of civil society organizations acting as support centres for victims and

<sup>122</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Switzerland, CERD/C/CHE/CO/6, 23 September 2008, para7, <http://tb.ohchr.org/default.aspx>, accessed 29 January 2012.

<sup>123</sup> In the period 1995–2009, 2.7 per cent of cases prosecuted under Article 261bis involved Muslim victims; 26 per cent of cases involved Jewish victims. <http://www.ekr.admin.ch/dienstleistungen/00169/00172/00179/index.html?lang=it>, accessed 29 January 2012.

participants in the project; most of these cases involved verbal attacks or threats of violence.<sup>124</sup> According to both the Commission and the Information Platform Humanrights.ch, it is difficult to draw conclusions on how discrimination against Muslims manifests itself given the small amount of complaints received overall (178 cases relating to all forms of discrimination in 2010). They cited lack of awareness of the complaints system, including the possibility of referring incidents of discrimination to a support centre, as one cause for the low numbers, and like other organizations Amnesty International spoke to, they emphasized the under-reporting of incidents of discrimination on the grounds of ethnicity and religion in employment. In addition, foreign nationals who experienced discrimination might fear losing their job as a consequence of reporting the incident, or be fearful of being confronted with further barriers when seeking to renew their residence permits (only 0.6 per cent of Muslims living in Switzerland held Swiss citizenship in 2000).<sup>125</sup>

According to the information available to Amnesty International, some companies restrict the wearing of religious and cultural symbols and dress, in particular the headscarf. For instance, in 2004 MIGROS, one of the biggest Swiss companies and the biggest supermarket chain in the country, considered introducing a general ban on headscarves and other religious symbols and dress for its employees. MIGROS ruled out a general ban and opted instead for a case-by-case approach where the interests of employers, employees and clients should be balanced.<sup>126</sup> In practice, however, employees in contact with clients have to wear a uniform, which excludes the possibility to wear religious and cultural symbols and dress. COOP, another big Swiss supermarket chain, applies a similar policy regarding uniforms. According to COOP, this policy aims to “uphold” its corporate image. Back-office employees are not required to comply with any dress-code regulation except where necessary for hygiene or safety reasons.<sup>127</sup>

Switzerland’s inter-professional trade union, the UNIA, has occasionally provided individualized support to employees who experienced discrimination on the ground of religion or belief, for instance in relation to the prohibition of headscarves enforced by private companies in the cleaning sector. Anti-discrimination provisions are included in some collective labour agreements negotiated by trade unions and employer organizations.<sup>128</sup>

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124 Réseau de centres de consultation pour les victimes du racisme, “Incidents racistes traités dans le cadre des consultations, Janvier-Décembre 2010”, Bern, June 2011, p17, <http://www.ekr.admin.ch/dienstleistungen/00159/00265/index.html?lang=fr>, accessed 29 January 2012.

125 Meeting with SOS-Racism, Zürich, 7 September 2011; meeting with SOS-Ticino (Swiss Labour Relief), Lugano 9 September 2011. The 2000 census included for the first time a question relating to religion. According to that census, 310,807 of the total Swiss population were Muslims (4.3 per cent of which only 0.6 per cent held Swiss citizenship).

126 MIGROS press release “Kein generelles Kopftuch-Verbot – Entscheid im Einzelfall” of 18 November 2004, MIGROS confirmed to Amnesty International by email that the same policy is currently being applied.

127 Email communication between COOP and Amnesty International, 31 August 2011.

128 Some examples can be found here by researching via the word “discrimination/ Diskriminierung/ discriminazione” (according to language chosen): <http://www.gavservice.ch/Search.aspx>: <http://www.gav-service.ch/Search.aspx>.

Although trade unions are competent to monitor employer compliance with these agreements, UNIA told Amnesty International that most of the issues brought to its attention by employees relate to non-compliance with remuneration conditions set forth in the agreements rather than with the prohibitions related to discrimination.<sup>129</sup>

## THE DISMISSAL OF MR. AHMED

Mr. Ahmed is a Swiss citizen originally from North Africa and living in the French-speaking part of Switzerland. He has been working in the same sector for more than 30 years and employed in the same institution for 15 years. “I am a Muslim who discreetly lives his faith, I have never asked for special leave to celebrate Muslim holidays, I have never prayed in the workplace. Sometimes I have declined invitations from colleagues to social events in bars where alcohol is served. After a while I noticed that my colleagues became suspicious and distant. When a new colleague joined the team, things got worse as she was openly anti-Arab and anti-Muslim.” When Mr. Ahmed let his beard grow slightly, he was subject to hostile comments from colleagues such as “You are scary” and “You look like Bin Laden”.

In 2010 Mr. Ahmed took a short sick leave. A few days after his return to work, the director told him that his contract was to be terminated immediately. He was not given any reason. The letter of dismissal does not include any justification for the dismissal, stating only that the reasons were communicated orally to Mr. Ahmed. The director said he would provide a reference for another job if needed. A few months later Mr. Ahmed received a letter acknowledging he had good relations with his colleagues. He had received an increase in his salary the year before his dismissal and a bonus a few months prior to that. According to him, his manager and his colleagues orchestrated the dismissal; he alleged a case of discrimination on the grounds of religion and race. He did not report the case to his trade union because as he did not think it was an efficient mechanism for redress. After having a nervous breakdown, Mr. Ahmed referred his case to a lawyer. Should Mr. Ahmed be willing to bring his case to court, it would be up to him to prove that he had been discriminated against; since there is no written evidence to support his case (as in the case of APS Reinigungen GmbH reported below) the chances for Mr. Ahmed obtaining redress would be very slim.

Given that the burden of proof is not shared (see domestic legislation) and the existing protection gaps, it has been difficult for those who have experienced discrimination to bring civil cases to court unless, for example, an employer openly discriminates, as in the following case.

## AN EXAMPLE OF REDRESS OBTAINED

A Swiss citizen of Macedonian origin was advised by the Regional Employment Office of Zurich to apply for a cleaning position with APS Reinigungen GmbH. The company sent an email to the office stating that it did not employ people from the Balkans, and Muslims and headscarves were not welcomed. The message concluded, “I am upset that you do not understand that we do not hire people wearing headscarves.” The trade union UNIA supported the victim to file a complaint. In 2006 the Court found a violation of Article 28 of the Civil Code (protection of personality).

Tribunal des Prud-Hommes de Zurich, 2 Abteilung, Geschäft Nr. AN 050401/U 1 of 13 January 2006.

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<sup>129</sup> Meeting with UNIA, Bern, 6 September 2011.

## DOMESTIC LEGISLATION

Article 8.2 in the Swiss Federal Constitution enshrines the principle of equality and the prohibition of discrimination on several grounds including race, religious beliefs and lifestyle. Similarly, the right to freedom of religion or belief is protected by Article 15 of the Constitution.

However, Switzerland has not adopted general anti-discrimination legislation. Provisions aimed at combating discrimination are included in different codes. The Civil Code enshrines the principle of personality protection, which can be referred to when access to employment is denied on the ground of race or religion.<sup>130</sup> The Code of Obligations encompasses the same principle (Article 328) and clarifies circumstances where a dismissal is to be considered as illegitimate including when resulting from reasons intrinsically connected with the personality of the employee (Article 336). The Penal Code punishes discrimination on the grounds of religion, race and ethnicity in access to services.<sup>131</sup> However, the Commission against Racism noted that this provision had been interpreted restrictively and thus had not been resorted to in cases of discrimination perpetrated by private service providers. Swiss civil legislation does not recognize the sharing of the burden of the proof in cases of discrimination, except on the ground of sex.<sup>132</sup>

The Federal Commission against Racism was created in 1995 by the Federal Council (government) with the aim of implementing the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Commission is competent to provide advice to public authorities in all matters relating to racism, raise awareness, undertake research, carry out monitoring activities and provide support to persons subjected to racism. Although the Commission cannot bring cases to court, its mandate is broad and it focuses on several forms of racism, including racism affecting Muslims.

In 2007, the National Council (federal Parliament) debated an anti-discrimination legislative proposal without eventually adopting it. Federal authorities told Amnesty International that existing legislation could be better implemented. They said there was no political consensus to enhance anti-discrimination and that such a move would be fiercely opposed by the

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130 Article 28 of the Civil Code reads: "1. Celui qui subit une atteinte illicite à sa personnalité peut agir en justice pour sa protection contre toute personne qui y participe. 2. Une atteinte est illicite, à moins qu'elle ne soit justifiée par le consentement de la victime, par un intérêt prépondérant privé ou public, ou par la loi."

131 Article 261bis of the Penal Code: "... any person who refuses to provide a service to another on the grounds of that person's race, ethnic origin or religion when that service is intended to be provided to the general public, shall be liable to a custodial sentence not exceeding three years or to a monetary penalty."

132 Article 6 of the 1995 federal Law on Equality between women and men reads: "L'existence d'une discrimination est présumée pour autant que la personne qui s'en prévaut la rende vraisemblable; la présente disposition s'applique à l'attribution des tâches, à l'aménagement des conditions de travail, à la rémunération, à la formation et au perfectionnement professionnels, à la promotion et à la résiliation des rapports de travail."

business sector.<sup>133</sup> According to the Federal Council, existing domestic and international standards provide adequate protection against discrimination although there should be further efforts to raise awareness on existing legal provisions which could be resorted to in cases of discrimination.<sup>134</sup>

In 2010 the UN Committee on Economic, Social and Cultural Rights recommended Switzerland adopt comprehensive anti-discrimination legislation given the existing legislative gaps.<sup>135</sup> Switzerland has not signed Protocol 12 to the European Convention on Human Rights.

## CONCLUSIONS

Switzerland has not implemented recommendations from human rights treaty bodies for the adoption of comprehensive anti-discrimination legislation. The Swiss government has recently reiterated that further legislation is not necessary. Although some provisions in the Civil and Labour Codes, such as the protection of personality, could be interpreted as providing protection against discrimination, civil and administrative law does not include a definition of direct and indirect discrimination. As the burden of the proof is not shared, it is difficult for persons who experience discrimination on the ground of religion to collect sufficient evidence to initiate civil procedures. Although the Federal Commission can provide advice to victims, it cannot bring cases to court.

Company policies that restrict the display of religious and cultural symbols and dress in order to promote a specific corporate image or on the presumption that clients and/or colleagues do not like headscarves being worn, are not based on a reasonable and objective justification and are therefore discriminatory. Such policies also violate the rights to freedom of expression and religion of Muslims and other religious minorities who wish to manifest their religion or cultural background by wearing specific symbols or forms of dress. Yet Switzerland fails to exercise due diligence to put an end to these practices.

Although the role of the Federal Commission in monitoring discrimination has been important, there is insufficient data on discrimination in Switzerland and how it affects religious and ethnic minorities. Indeed, it is not clear on what grounds the Swiss government bases its claims that stronger legislation is not necessary. It is therefore necessary to step up data collection and research on discrimination and its impacts on religious minorities. Centres that work with persons who have been subjected to discrimination need more

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133 Meeting with representatives of the Office Fédéral des migrations (ODM), Office de Justice (OJ), Service de lutte contre le racisme (SLR) and Commission Fédérale Migration, Berne, 8 September 2011.

134 Federal Council, Report on the development of the Confederation's integration policy: strengthen protection against discrimination, 5 March 2010, p47.  
<http://www.bfm.admin.ch/content/dam/data/migration/integration/berichte/ber-br-integrpolitik-f.pdf>, accessed 29 January 2012.

135 Committee on Economic, Social and Cultural Rights, Concluding observations: Switzerland, E/C.12/CHE/CO/2-3, 26 November 2010, para7.

support, and integration campaigns and initiatives should focus more on raising awareness on existing support mechanisms among religious and ethnic minorities. Awareness-raising initiatives should similarly target employers and public administrations.

#### 4.2.4 THE NETHERLANDS

*“Many companies do not accept employees or trainees with headscarves, mostly for reasons of ‘neutrality’ or ‘representability’, both in the market sector and in the public sector. There is an increasing number of companies that include a headscarf in their dress code or work wear, such as supermarkets, but a different tendency is moving in the opposite direction: more and more companies and organizations implement new regulations and decide to introduce a restrictive dress code, whereas they used to consider clothes a matter of personal choice. Both incidental bans on headscarves and (new) general formal dress codes make it more difficult for Muslim women wearing a headscarf to gain access to the labour market.”*

Equal Treatment Commission, 2009<sup>136</sup>

In 2010, 6 per cent of the overall number of opinions issued by the Dutch equality body, the Equal Treatment Commission (hereafter the Commission) related to religion. Although the overall number of requests and opinions on discrimination on the ground of religion is small compared with other grounds<sup>137</sup> and data are not disaggregated by religious denomination, the Commission told Amnesty International that almost all the religion-related complaints come from Muslims. Many involve the wearing of religious and cultural symbols or dress and are filed by women. A very few men have allegedly faced discrimination because of their beard, but in general complaints made by men tend to relate to issues other than dress, such as praying time at work or the refusal to shake hands with women. The Commission issued very few opinions on the matter of shaking hands; however, this issue received such prominent media coverage that Muslims are now more likely to be questioned about their willingness to shake hands with people of the opposite sex in job interviews.<sup>138</sup>

Municipal anti-discrimination bureaus, which support victims of discrimination at the local level (see domestic legislation), received 401 complaints on the ground of religion in 2010, which represented 6.6 per cent of the overall number of complaints. Most were related to

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136 Equal Treatment Commission, “Comments on the combined fourth and fifth Dutch report on The implementation of the International Covenant on Economic, Social and Cultural Rights: the headscarf and access to the labour market”, November 2009, p8.

137 In 2010, 16 per cent of the requests for an opinion were relating to the ground of gender, 14 per cent race and 21 per cent handicap/illness. The overall number of opinion delivered by the Commission in 2010 amounts to 203;13 of them were relating to the ground of religion. Equal Treatment Commission, Annual Report 2010 (Figures and justification), <http://www.cgb.nl/english/publications/reports>, accessed 30 January 2012.

138 Meeting with the Muslim women's organization Al-Nisa (22 September 2010) and SMN (Samenwerkingsverband van Marokkaanse Nederlanders, 24 March 2010).

Islam.<sup>139</sup>

According to the data provided by the regional Anti-Discrimination Bureau (RADAR),<sup>140</sup> 52 complaints on the ground of religion were filed in the region of Rotterdam-Rijnmond in 2010. Forty-three of them involved Muslims and of these 18 involved the wearing of religious and cultural symbols and dress in different areas of life, mostly filed by Muslim women.

Research undertaken by the Netherlands Institute of Social Research in the field of employment has helped to identify some of the underlying discriminatory attitudes of recruitment officers. In particular, the appearance of a candidate has been identified as an important factor influencing recruitment officers during job interviews. Headscarves and beards have been considered problematic especially for positions requiring direct contact with clients but also for back-office positions.<sup>141</sup>

The Dutch Penal Code punishes several forms of discrimination including discrimination perpetrated by employers on the ground of religion or belief.<sup>142</sup> Data on discrimination-related offences punishable under the Penal Code are collected by the National Expertise Centre on Discrimination (LECD).<sup>143</sup> Seven per cent of the cases prosecuted in 2010 were relating to discrimination on the ground of religion or belief.<sup>144</sup> All these cases involved discrimination against Muslims.<sup>145</sup> Few discriminatory offences committed by employers have been prosecuted.<sup>146</sup> The LECD told Amnesty International that most victims choose the Equal

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139 Marcel Coenders, *Klachten en meldingen over discriminatie in 2010: Landelijk overzicht van klachten en meldingen geregistreerd door gemeentelijke antidiscriminatievoorzieningen*, Universiteit Utrecht, November 2011, p7.

140 Regional Anti-Discrimination Bureau operating in three regions: Midden en West Brabant, Rotterdam Rijnmond and Zuid Holland Zuid.

141 Social en Cultureel Planbureau, *Discrimination Monitor 2010: non-Western migrants on the Dutch labour market (Discriminatiemonitor niet-westerse migranten op de arbeidsmarkt 2010)*.

142 Criminal offences regarding discrimination are included in the following articles of the Dutch Penal Code: 137c, 137d, 137e, 137f, 137g, 429 quater.

143 Since 1998, the National Expertise Centre on Discrimination (LECD) is the expertise centre of the Public Prosecutor's Office tasked to monitoring and implementing the criminal anti-discrimination legislation.

144 Some cases are relating to several grounds of discrimination. Seven per cent of the cases were relating either only to the ground of religion or belief or to this ground compounded with one or more other grounds. In 2010, 170 discrimination cases were prosecuted as discrimination offences punishable under the Penal Code. In 16 cases discrimination was committed also on the ground of religion (each case could be associated with up to three grounds).

145 Data provided to Amnesty International by LECD of the Public Prosecutor's Office. Meeting with the LECD, The Hague, 22 September 2011.

146 Article 429quater, para1, of the Dutch Penal Code reads: "Whoever discriminates against persons because of their race, religion, way of life, gender or their hetero- or homosexual orientation while exercising a public duty, profession or

Treatment Commission to file a complaint about discrimination cases in the areas of employment and access to good and services. Unlike the General Equal Treatment Act (GETA), the Penal Code does not foresee the shared burden of the proof as a criminal prosecution is considered to be a measure of last resort to tackle discrimination.

In 2010, the UN Committee on the Elimination of Discrimination against Women recommended that the government of the Netherlands "...intensify its efforts to eliminate discrimination against immigrant, migrant, black, Muslim and other minority women. It encourages the adoption of proactive measures to further increase their participation in the labour market, improve their awareness of availability of social services and legal remedies and ensure protection against victimization. The Committee also calls upon the state party to conduct regular and comprehensive studies on discrimination against immigrant, migrant and minority women, to collect statistics on their employment, education and health situation and to report them in its next report."<sup>147</sup>

For women from ethnic and religious minorities, discrimination on the ground of religion compounds other forms of discrimination, such as racial and gender-based discrimination, and contributes to exacerbating several existing challenges, such as low participation in the Dutch labour market.<sup>148</sup> In its 2009 European Union Minorities and Discrimination Survey, the European Union Agency for Fundamental Rights found that only a minority of people with Turkish, North African or Surinamese background in the Netherlands reported incidents of discrimination.<sup>149</sup>

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business will be punished with maximum two months' detention or a Category Three fine". Three cases have been prosecuted under this article in 2010.

147 UN Committee on the Elimination of Discrimination Against Women, Concluding observations: The Netherlands, CEDAW/C/NLD/CO/5, 5 February 2010, para43.

148 Only 27 per cent of women with Moroccan origin and 31 per cent of women with Turkish origin participate into the labour market. The share of women of Moroccan and Turkish origins with a low level of education is considerably higher than the one of Dutch women (67 per cent to 20 per cent respectively), FORUM (Institute for Multicultural Affairs), "The position of Muslims in the Netherlands, Fact and Figures 2008: participation of Muslim women", p21.

149 European Union Agency for Fundamental Rights, "European Union Minorities and Discrimination Survey", overall reporting rates of discrimination incidents suffered, p51. Twelve per cent of people with Surinamese origin, 14 per cent of those with North African origin and 22 per cent of those with Turkish origin reported discrimination cases experienced in the previous 12 months.

## EXAMPLES OF CASES OF DISCRIMINATION ON THE GROUND OF RELIGION

In 2008, the Immigration Service, which falls under the Ministry of the Interior, refused to hire a Muslim man of Pakistani origin for a position of asylum officer. In answer to a question during the recruitment interview, the man confirmed that he let his beard grow to length for religious reasons. The Immigration Service turned down his application because it believed the religious convictions of the candidate were incompatible with the necessity to provide asylum seekers with a neutral and safe setting for hearings to take place. The Immigration Service stated that the appearance of the candidate was the only reason he was not hired. The Equal Treatment Commission found direct discrimination on the ground of religion as the defendant relied on an opaque, subjective and unverifiable assumption of the circumstances that could intimidate an asylum-seeker in an application hearing (Equal Treatment Commission, Opinion 2010–10).

In 2010, a Muslim woman wearing the headscarf applied for a position as a junior assistant with a notary firm. She was asked during the job interview whether she was wearing the headscarf because of her religion. The interviewer told her that the headscarf might cause problems because the position required contact with clients and thus absolute impartiality. When she was notified that her application was unsuccessful, she complained to the employer who confirmed it was based on the duty of impartiality attached to the position. The employer told the Equal Treatment Commission that the firm's dress code rules, although never put in writing, prohibited tattoos, slippers and symbols displaying religious convictions. Although the position required some contact with clients, it mainly involved administrative tasks. However, according to the employer all the employees were contributing to the ultimate aim of the firm and therefore everyone should abide by the dress code no matter their position. Although the employer said the application was turned down because another candidate was more qualified, the Equal Treatment Commission noted that direct references to the religious convictions of the candidate were made during the interview. The Commission found that the employer in this case failed to prove that the rejection of the application was not based on an unjustified difference of treatment on the ground of religion or belief (Equal Treatment Commission, Opinion 2010–182).

### DOMESTIC LEGISLATION

The 2004 General Equal Treatment Act (GETA)<sup>150</sup> provides protection against discrimination on the ground of religion or belief, political opinion, race, sex, nationality, sexual orientation and civil status in the areas of employment and occupation (Article 5), education and access to goods and services (Article 7).

The GETA transposes European Directives 2000/43/EC (Race Directive) and 2000/78/EC (Framework Employment Directive) into domestic legislation. Dutch legislation establishes that indirect discrimination is not forbidden if "...objectively justified by a legitimate aim where the means to achieve that aim are appropriate and necessary" (Article 2.1). Furthermore, when the employer is an institution founded on religious, ideological or political principles, it can establish recruitment requirements aimed at preserving those principles (Article 5.2 c). For example, a Catholic school could lawfully reject hiring a non-Catholic individual for a teaching position if it were deemed necessary to preserve the Catholic principles it upholds. However, according to Article 5.2 c these requirements "...may not

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<sup>150</sup> Algemene wet gelijke behandeling, AWGB. General Equal Treatment Act (GETA), [http://www.cgb.nl/english/legislation/equal\\_treatment\\_act](http://www.cgb.nl/english/legislation/equal_treatment_act), accessed 30 January 2012.

lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status". In practice this principle has resulted in some faith-based schools not hiring homosexual teachers on the ground that their sexual orientation was considered to be contrary to the religious ethos they were upholding.

The EU Framework Employment Directive (2000/78) foresees the possibility for employers whose ethos is based on religion and belief to establish differences of treatment on the ground of religion when recruiting only insofar as "a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos" (Article 4.2). An infringement procedure against the Netherlands has been opened by the European Commission in 2008 in relation to the incorrect transposition of the Employment Directive.<sup>151</sup> The Commission formally called on the Netherlands to address a number of shortcomings in its anti-discrimination legislation including the definition of direct and indirect discrimination and the exception to the general principle of non-discrimination granted to religious, political and ideological entities (Article 5.2 of the GETA) as it is not consistent with Article 4.2 of the Directive.

A new law amending the GETA (as well as other equality acts) has come into force on 8 November 2011.<sup>152</sup> This law addresses some of the shortcomings identified by the European Commission; however, it does not amend article 5.2 of the GETA.<sup>153</sup>

The GETA established the Equal Treatment Commission to implement the equal treatment legislation. The Commission deals with individual complaints from anyone who believes they have been discriminated against on a prohibited ground. The service is free of charge and does not require the assistance of a lawyer. The Commission has investigative powers to establish whether a given act constitutes a violation of the equal treatment legislation but its opinions are not binding.<sup>154</sup>

The Municipal Anti-Discrimination Services Act, which entered into force in 2010, provides

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151 Infringement number 2006/2444. The European Commission sent a reasoned opinion to the government of the Netherlands on 31/1/2008. The Equal Treatment Commission issued an advisory opinion in March 2008, [http://www.equineteurope.org/advisory\\_opinion\\_2008\\_02\\_formal\\_notice\\_ec\\_\\_2\\_.pdf](http://www.equineteurope.org/advisory_opinion_2008_02_formal_notice_ec__2_.pdf), accessed 4 February 2012.

152 Staatsblad 2011-544, [http://www.eerstekamer.nl/wetsvoorstel/31832\\_aanpassing\\_definities\\_van?zoekrol=vgh5mt4dsdk1](http://www.eerstekamer.nl/wetsvoorstel/31832_aanpassing_definities_van?zoekrol=vgh5mt4dsdk1), accessed 31 January 2012.

153 Another draft bill proposed by MP Van der Ham and others includes proposals to amend articles 5 in order to make the exception granted to religious, political and ideological entities stricter and to avoid discrimination on the ground of sexual orientation or other grounds. Van der Ham and others, 2009–2010, 32476 nr.3, 7 September 2010, <https://zoek.officielebekendmakingen.nl/kst-32476-3.html>, accessed 30 January 2012.

154 On 22 November 2011 the Dutch Parliament approved a law to establish the National Human Rights Institution, which will take on board the full competences of the Equal Treatment Commission in matters related to discrimination.

that individuals who feel they have been discriminated against can seek independent assistance to file a complaint. The act requires every municipality to provide its inhabitants with access to a readily available anti-discrimination service. In 2010, most municipalities implemented this requirement so that the great majority of people in the Netherlands now have access to an anti-discrimination service in or through their municipalities.

#### OTHER MEASURES

The government published a list of measures aimed at fighting discrimination on 7 July 2011. This policy initiative included for instance an increased penalty for violent crimes perpetrated with a discriminatory intent.<sup>155</sup>

However, the government views its role as supportive and has stated: "It is primarily up to citizens of this country to free themselves from discrimination and prejudices... countering discrimination is a civic duty."<sup>156</sup> It confines itself to ensuring registration of discrimination complaints, criminal sanctioning and, when needed, enforcement of non-discrimination laws. The government does not undertake or fund any major campaigning or awareness-raising initiatives. Officials from the Ministry of the Interior told Amnesty International<sup>157</sup> that it was debating options in relation to governmental initiatives to monitor discrimination.<sup>158</sup> There were no specific measures to deal with discrimination in the area of employment in the 7 July policy letter.

According to information the Ministry of Social Affairs and Employment made available to Amnesty International,<sup>159</sup> 30 per cent of collective labour agreements prohibit discrimination and 37 per cent include a general provision on diversity. The 2009 Health and Safety Act includes a provision on non-discrimination and places a duty on employers to respect it. Employees can file complaints of discrimination to labour inspectors who are able to fine employers who have not undertaken sufficient measures to fight against discrimination in the workplace. However, labour inspectors receive only a small number of complaints, in 2010 only 13 on all grounds of discrimination. A representative of the National Christian trade union (Christelijk Nationaal Vakverbond-vakmensen) told Amnesty International that the union does not thoroughly monitor the anti-discrimination provisions in labour collective

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155 Brief Tweede Kamer: aanscherping bestrijding discriminatie, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/07/08/brief-tweede-kamer-aanscherping-bestrijding-discriminatie.html>, accessed 30 January 2012.

156 Minister of Security and Justice and the Interior and Kingdom Relations, Policy letter on anti-discrimination, July 7th 2011, p3. (Tweede Kamer, vergaderjaar 2010-2011, 30 950 nr. 34.).

157 Meeting with representatives of the Ministry of Security and Justice, the Ministry of Interior and Kingdom Affairs, the Ministry of Education, Culture and Science, The Hague, 22 September 2011.

158 Two monitoring studies focusing specifically on discrimination on the ground of race were undertaken in 2005 and 2009 and received public funding. Landelijk expertisecentrum van art.1, Anne Frank Stichting, Universiteit Leiden, Monitor Rassendiscriminatie, 2009.

159 Meeting with the Ministry of Social Affairs and Employment, The Hague, 20 September 2011.

agreements but they can support employees who experience discrimination and request assistance.

## CONCLUSIONS

The Dutch anti-discrimination legislation provides protection against discrimination on the ground of religion in the area of employment. Differences of treatment on the ground of religion are lawful “if justified by a legitimate aim and when the means to achieve it are appropriate and necessary”. The Equal Treatment Commission and other support mechanisms available to victims of discrimination have raised concerns on regulations applied by some private employers to restrict the wearing of religious and cultural symbols and dress. According to the data available to these mechanisms, such restrictions have a disproportionate impact on Muslims and particularly on Muslim women. The Dutch government should ensure that the justifications included in Article 2 of the GETA that allow for differences of treatment on the ground of religion are interpreted and implemented according to international non-discrimination standards. These standards stipulate that these differences are only permissible if they based on an objective and reasonable justification.

The Dutch government has an international obligation to exercise due diligence in order to prevent discrimination perpetrated by private actors. Although effective mechanisms of redress are made available to alleged victims of discrimination, like the anti-discrimination bureaus, the Dutch government should undertake further efforts to ensure that private employers do not restrict the wearing of religious and cultural symbols and dress unless the restriction is demonstrably necessary and proportionate with respect to one of the aims permissible under international human rights law, such as protecting public safety or health or the rights of others. Restrictions going beyond this are likely to entail indirect discrimination against Muslims and, in particular, may constitute a further barrier for Muslim women to access the employment market.

The Dutch government is responsible for upholding its international commitments to protect, respect and fulfil the principle of non-discrimination. Awareness-raising initiatives and monitoring discriminatory practices are key in that respect. Amnesty International is concerned that the Dutch government publicly places the main responsibility to tackle discrimination with citizens and civil society organizations. Awareness of discrimination among ethnic and religious minorities is very low and further initiatives should be undertaken by the government to address this issue.

The Dutch government should ensure that its domestic anti-discrimination legislation is in line with international standards. The exceptions included in Article 5.2 of the GETA to allow institutions founded on religious, political or ideological principles to preserve their character should abide by the general framework established by international and regional standards. A religious institution may treat candidates differently on the ground of religion, in the context for instance of a recruitment process, only if the religion of the candidate is a determining occupational requirement. No differences of treatment are justified on other grounds. The Dutch government should therefore amend Article 5.2 to bring the GETA in line with European equality directives.

## 4.3 EDUCATION

*“Without prejudice to contextual specificities, however, there are nevertheless good reasons to start with a general presumption of the students’ right to wear religious symbols in the school.”*

Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief<sup>160</sup>

The wearing of religious and cultural symbols and dress in educational institutions has been an issue of controversy in several European countries. Practices across Europe are very diverse; in France students are not allowed to wear conspicuous religious and cultural symbols and dress in any public school whereas in the Netherlands or Spain individual schools make their own policy. In the last decade, there have been cases of students forbidden to wear the headscarf or other religious and cultural symbols and dress at school in many countries including Belgium, France, the Netherlands, Switzerland, Spain, Turkey and the United Kingdom.

Educational systems vary a great deal across Europe. In some countries such as Belgium (Flanders) or the Netherlands, faith-based schools are completely publicly funded and represent the majority of the overall number of schools. In other contexts, the state does not fund faith-based schools, or at least not to the same extent as it funds public schools.

The wearing of particular symbols or forms of dress can be an aspect of the right to manifest religion or belief. International law permits certain restrictions to be placed on this right but only where three conditions are fulfilled: the restriction must be provided by law; it must be for one of the aims recognized as legitimate under international law, that is, to protect public safety, order, health, or morals or the rights and freedoms of others; and it must be demonstrably necessary and proportionate to the achievement of that aim. In the area of education there are a number of complex elements that need to be taken into account in order to assess whether such a restriction is permissible. As Heiner Bielefeldt, the current UN Special Rapporteur on freedom of religion or belief has pointed out, the starting point should be a general presumption of the students’ right to wear religious and cultural symbols and dress at school. The former Special Rapporteur on freedom of religion or belief, Asma Jahangir, developed criteria to assess restrictions on such symbols and dress applying to pupils and students. She stressed that “any limitation must be based on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others, it must respond to a pressing public or social need, it must pursue a legitimate aim and it must be proportionate to that aim. Furthermore, the burden of justifying a limitation upon the freedom to manifest one’s religion or belief lies with the State. Consequently, a prohibition on wearing religious symbols which is based on mere speculation or presumption rather than

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160 HRC, Report of the UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/16/53, 15 December 2010, para43, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-53.pdf>, accessed 30 January 2012.

on demonstrable facts is regarded as a violation of the individual's religious freedom."<sup>161</sup>

Any restriction on the wearing of religious and cultural symbols and dress in school should be precisely assessed on a case-by-case basis. General bans do not allow this approach. An important factor to be taken into consideration is the general dynamics of majority and minority religious groupings in society at large or within a particular school situation. In some contexts, restrictions may be justifiable in order to protect students from pressure exercised by schoolmates or their community. But there is no general blueprint applicable to all situations. The goal must always be to equally protect the positive and negative aspects of freedom of religion or belief – that is, the freedom to manifest one's belief and the freedom not to be exposed to pressure to perform religious duties. In any case, any restrictions on wearing religious and cultural symbols and dress must be formulated in a non-discriminatory manner.

With regard to the expression of religion or belief by children, the Convention on the Rights of the Child clarifies that parents are entitled to provide guidance to their children in matters relating to the exercise of their human rights (including the right to freedom of religion or belief) but that the evolving capacities of the child should be duly taken into account.<sup>162</sup> The best interest of the child should be a primary consideration in all actions concerning children.<sup>163</sup> In order to ensure that this principle is respected, restrictions on religious and cultural symbols and dress should be adopted only after thorough consultation with parents and students and appropriate consideration of other measures that could achieve the same aim sought by the restriction.

States, including Belgium (Flanders) and France (as further detailed in this chapter), have sought to justify applying general bans on religious and cultural symbols and dress to students, on the basis of the need to counteract coercion from parents or sexist bullying of girls not wearing the headscarf. As regards the former justification, even if were clear that such coercion existed in some cases, it is not clear how it could be adequately addressed by a general ban in the absence of other measures to tackle pressure and coercion exercised on children outside schools. A general ban would also interfere with the rights of those students who, without any such coercion, wish to wear religious and cultural symbols and dress. Likewise, a ban aimed at counteracting sexist bullying of girls not wearing the headscarf may not be demonstrably necessary and proportionate, particularly in the absence of a strong policy to counter the bullying itself and if such bans lead to girls dropping out of education.

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161 Commission on Human Rights, Report of the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, 9 January 2006, EC/N.4/2006/5, para53.

162 Article 14.2 of the CRC: "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

163 Article 3.1 of the CRC, Committee on the Rights of the Child General Comment No. 5 (2003) on Article 3.1 of the CRC.

While it may be possible to justify specific restrictions in some instances, depending on the age and maturity of the children concerned, the social and educational context, the need to protect them from pressure and coercion within and outside the school context, and the alternatives available to them to pursue their education, it is harder to justify such restrictions on adult students. As the former UN Special Rapporteur on freedom of religion or belief pointed out, "... schoolchildren are generally considered vulnerable in view of their age, immaturity and the compulsory nature of education... University students, however, have normally reached the age of majority and are generally considered to be less easily influenced than schoolchildren, and parental rights are usually no longer involved."<sup>164</sup>

The cases described below focus on restrictions on religious and cultural symbols and dress applying students. However, in some countries such prohibitions are also applied to teachers, which raises different considerations in assessing whether they are compatible with the criteria stipulated by international human rights law. As the current UN Special Rapporteur has noted, the school is a place in which authority is exercised and, especially for young children, the teacher may represent an authority with enormous influence;<sup>165</sup> a teacher wearing religious symbols in the class may have an undue impact on the students, but this will depend on the general behaviour of the teacher, the age of the students and other factors.<sup>166</sup> So, any restrictions must likewise be assessed on a case-by-case basis based on the factual situation, and will only be permissible if they are demonstrably necessary and proportionate and for a legitimate aim under international human rights law. The requirement on teachers to carry out their professional duties impartially does not mean that it is thereby legitimate to prohibit them from wearing religious and cultural symbols and dress in all circumstances. In general, educational authorities should focus on ensuring that teachers perform their duties in a way compatible with their pedagogical function, including respecting the religious or other beliefs of their students, notwithstanding their own religious, political or any other ideological opinions or beliefs.

#### 4.3.1 BELGIUM

Education in Belgium is a competence of the three linguistic communities (Flemish, French and German-speaking), which have a duty to organize neutral education.<sup>167</sup> The concept of neutrality is enshrined in the Belgian Constitution in relation to education (Article 24.1) and it implies respect for the religious, ideological and political convictions of both pupils and their parents. However, neutrality is not given a strict definition in the Constitution; according

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164 Report of the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, 9 January 2006, EC/N.4/2006/5 para56.

165 A/HRC/16/53 para23.

166 A/HRC/16/53 para44.

167 Article 24.1 of the Belgian Constitution: "...La communauté organise un enseignement qui est neutre. La neutralité implique notamment le respect des conceptions philosophiques, idéologiques ou religieuses des parents et des élèves".

to the Flemish Ministry of Education, its definition evolves according to social needs.<sup>168</sup>

Private actors can provide education as long as basic requirements established by the communities are met. For instance, in Flanders, the main education providers are the Flemish Community – which entitled the Board of Education of the Flemish Community (GO!) to provide neutral, non-denominational, education on its behalf – provinces, municipalities and the Catholic Church. All schools receive equal public funding, no matter which provider they depend on.

#### THE BAN ON RELIGIOUS SYMBOLS IN SCHOOLS RUN BY THE BRUSSELS MUNICIPALITY

The Francisco Ferrer High School is an institution run by the Brussels municipality and providing both short-term and long-term higher education to adult students in different areas including the arts, economics and translation. The 2011–12 internal regulation of the municipality of Brussels (Article 1.5.1.1) prohibits students from wearing symbols or forms of dress showing religious, political or philosophical opinions or identities.<sup>169</sup>

A. shared an experience of the strict interpretation of the regulation with Amnesty International: *“I knew that students are not allowed to wear religious symbols. Once I went there with a friend who was studying there and who wanted to check her exam results. Although I clarified that I was not a student, I was told by the staff to leave the school premises as I was wearing the headscarf and this was forbidden by the regulation”*.

S., who is employed with a not-for-profit organization aimed at promoting youth participation, was barred from conducting a gender awareness-raising training with students at a school run by the municipality of Brussels because of the internal regulation prohibiting the display of religious, political and ideological symbols. This regulation is applied to everyone within school premises and in the contexts of both indoor and outdoor activities.<sup>170</sup>

*“I am the same person no matter whether I wear the headscarf or not. If I am threatening and unprofessional because I am Muslim, I will be perceived like that anyway even if I remove the headscarf,”* S. said to Amnesty international.

General bans restricting the wearing of religious and cultural symbols and dress applied to adult students are contrary to international human rights law and violate the rights to freedom of expression and freedom of religion or belief. The municipality of Brussels justified this restriction on the basis of respect for neutrality. However, according to international human rights law, neutrality is not a legitimate basis to restrict the rights to freedom of

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168 Meeting with the Flemish Ministry of Education and Training, Brussels, 24 June 2011.

169 <http://www.he-ferrer.eu/wp-content/uploads/documents-officiels/etudier-a-ferrer/REE-11-12.pdf>;, accessed 2 February 2012.

170 Internal Regulation, Municipality of Brussels, Article 2: Declaration of Principle, Article 7.4: respect of neutrality [http://www.jacqmain.be/index.php?option=com\\_content&view=article&id=256:roi-ville-de-bruxelles&catid=34:reglements&Itemid=393](http://www.jacqmain.be/index.php?option=com_content&view=article&id=256:roi-ville-de-bruxelles&catid=34:reglements&Itemid=393), accessed 30 January 2011.

religion or belief and freedom of expression. Furthermore, as highlighted by the UN Special Rapporteur on freedom of religion or belief, neutrality of the state should not be interpreted in an exclusive way but rather as a principle guaranteeing diversity and equal opportunities for everyone. As stressed by the Belgian Constitution, the principle of neutrality should guarantee respect for the right to freedom of religion or belief of students.

#### THE GENERAL BAN IN FLEMISH PUBLIC EDUCATION

*“Public schools should be open to everyone. Muslims are part of our society, they have the right to attend public education without having to compromise on their right to freedom of religion. In Belgium, Muslim organizations could run publicly funded Muslim schools but one can wonder if that is a good way to achieve active pluralism. I think it is completely against the spirit of active pluralism if you say to a community: ‘If you don’t like it, go make your own school.’”*

Yasmina Akhandaf, Boss Over Your Own Head (BOEH)<sup>171</sup>

Among students in Flanders, approximately 16 per cent attend schools run by GO!,<sup>172</sup> whereas 68 per cent are educated in privately run institutions, mostly managed by Catholic not-for-profit organizations.<sup>173</sup> GO! is tasked to provide non-denominational education, fully funded by the Flemish Community but managed independently from the Ministry of Education.

Until 2009 each school run by GO! was authorized to establish its own rules on the display of religious and cultural symbols and dress for pupils. Many schools adopted internal regulations prohibiting the wearing of head coverings in general or of religious and cultural symbols and dress in particular. GO! told Amnesty International that although data were not collected, approximately seven out of 10 of its schools had introduced some form of dress-code restrictions. For instance in 2009 only three schools allowed the wearing of religious and cultural symbols and dress in Antwerp, the biggest city in Flanders with a large Muslim community. GO! ran two of them (Koninklijk Atheneum Antwerpen and Koninklijk Atheneum Hoboken) and the City of Antwerp ran the other (Leonardo Lyceum Pestalozzi). In 2009 the two GO! schools decided to introduce a ban on religious and cultural symbols and dress. Pupils affected by the ban contested it before the Council of State. On 9 September 2009 the Auditor of the Council of State advised that such a ban should be introduced by GO! rather than by individual schools. On 11 September 2009, the Board of GO! introduced a general ban prohibiting the display of religious and philosophical symbols, applying to pupils, teachers and anyone charged with pedagogical tasks within its schools. GO! had already introduced a general prohibition applying to all teachers except for teachers of religion in 2007.

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171 Meeting with BOEH, 27 June 2011, Antwerp, BOEH is a grass-rooted organization involving Muslim and non-Muslims individuals. It was created in 2007 in order to oppose the ban on religions symbols implemented by the City of Antwerp for its employees.

172 Source: GO!, meeting with GO!, Brussels, 27 June 2011.

173 Source: Flemish Ministry of Education and Training [see endnote 171], meeting 24 June 2011. 16.5 per cent of pupils are educated in schools run by provinces and municipalities.

Raymonda Verdyck, director of GO!, told Amnesty International that: *“An increasing number of students chose to attend GO! schools solely because the display of religious and philosophical symbols was still allowed. Our schools started to attract pupils not because of our pedagogical project but for the mere fact that we did not forbid religious symbols. This resulted in a concentration of religious groups in some of our schools, which is at odds with the principle of diversity, an essential element of our pedagogical project. Furthermore, there was group pressure against youngsters who did not want to wear religious symbols and dress.”*

The general ban has a disproportionate impact on Muslim pupils who wish to exercise their rights to freedom of religion or belief and to freedom of expression. The decision to ban religious and cultural symbols and dress applied by the two GO! schools and by other schools in the past resulted from cases of pupils wearing the headscarf. As confirmed by GO! to Amnesty International, no other religious symbols have sparked significant controversies. This may be due to additional factors; in Antwerp, for example, the majority of Jewish pupils wearing religious symbols attend Jewish schools.<sup>174</sup> As confirmed by the Flemish Ministry of Education, there are no Muslim denominational schools in Flanders.

Muslim pupils wearing religious symbols can attend Catholic schools that have not prohibited the wearing of non-Christian forms of symbols and dress. However, although a general ban on non-Christian religious symbols has not been introduced, Catholic schools may introduce a ban at the individual level. Flemish anti-discrimination legislation allows that institutions based on a religious or philosophical ethos may implement differences of treatment on the ground of religion provided that they are “genuine, legitimate and justified”.<sup>175</sup> There are apparently no statistical data on the number of Catholic schools that have introduced individual bans, although many have allegedly done so.<sup>176</sup> In any case, it is not an optimal solution if a Muslim pupil has to attend a Catholic school solely because the display of religious and cultural symbols and dress is not allowed in public schools. Where the state provides non-denominational education, every pupil should have access to it irrespective of his or her choices to manifest his or her religion or belief.

After the ban introduced by GO! schools in Antwerp, a few pupils who wanted to wear the headscarf opted for home education, but after six months half of them reintegrated into the school system.<sup>177</sup> In Belgium compulsory education does not necessarily mean compulsory school attendance. Parents opting for home education must inform the Flemish Ministry of

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174 Meeting with with Forum der Joodse Organisaties (FJO/Forum of Jewish Organizations), Antwerp, 28 June 2011.

175 Article 20, Decree on a framework for the Flemish equal opportunities and equal treatment policy (Decreet houdende een kader voor het Vlaamse gelijkekaanse en gelijkebehandelingsbeleid), 10 July 2008, <http://www.elfri.be/print/3626>, accessed 3 February 2012.

176 Email communication with the Flemish Secretariat for Catholic Education (VSKO, Vlaams Secretariaat van het Katholiek Onderwijs), 17 November 2011.

177 Meeting with the Municipality of Antwerp, 27 June 2010.

Education and they must also allow the government to control quality. However, home education could be at odds with the principle of the best interest of the child as the pupil is kept segregated from her/his peers and lacks all the social opportunities a school environment could provide. As the UN Special Rapporteur on freedom of religion or belief has stated: “Besides providing students with the necessary knowledge and information in different disciplines, school education can facilitate a daily exchange between people from different ethnic, economic, social, cultural and religious backgrounds. The possibility of having face-to-face interaction of students on a regular basis is not less important than the development of intellectual skills, because such regular interaction can promote a sense of communality that goes hand in hand with the appreciation of diversity, including diversity in questions of religion or belief.”<sup>178</sup>

According to GO! the ban has not led to major problems; it has on the contrary contributed to decreasing tensions and to avoiding de-facto segregation. Boss Over Your Own Head (BOEH), a women’s organization with Muslim and non-Muslim membership, told Amnesty International that “Even if most girls do take off their headscarf in order to go to school, they do feel discriminated against and do not consider themselves as fully accepted citizens. A small number of girls is not attending school anymore and are home educated”. Furthermore, the organization highlighted the failure to either inform or consult with pupils ahead of the introduction of the ban.

Following the initiation of legal proceedings by a student affected by the ban, on 18 March 2010 the Council of State temporarily suspended the general ban introduced by GO!.<sup>179</sup> However, in seeking clarification on the competence from the Constitutional Court, the Council of State was informed that GO! has the authority to introduce a ban on religious and cultural symbols and dress for pupils on the basis of the principle of neutrality in education.<sup>180</sup> In response the Council of State lifted the temporary suspension on 8 September 2011. At the time of writing (February 2012), the judgment of the Council of State on the merits of this issue is still pending.

## CONCLUSIONS

The general ban on religious symbols introduced by GO! has a disproportionate impact on Muslim girls who wish to wear headscarves and discriminates against them in the exercise of their rights to freedom of religion or belief and to freedom of expression. Even if some of the aims of GO! in imposing the ban could be considered legitimate, the proportionality and necessity of the ban are extremely doubtful. For instance, the aim of protecting pupils who chose not to wear headscarves from pressure is a legitimate one, but in so far that this problem exists, it could be tackled by strengthening anti-bullying policies – if such policies

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178 Human Rights Council, Report of the UN Special Rapporteur on Freedom of Religion and Belief, 15 December 2010, para21.

179 Council of State, Judgment No. 202.039 of 18 March 2010, 194.399/XII-6002, [http://www.mensenrechten.be/bestanden/uploads/pdf/GO\\_-\\_Arrest\\_Raad\\_van\\_State\\_18\\_maart\\_2010.pdf](http://www.mensenrechten.be/bestanden/uploads/pdf/GO_-_Arrest_Raad_van_State_18_maart_2010.pdf), accessed 31 January 2011.

180 Judgment 40/2011 of 15 March 2011.

turned out to be ineffective it might then be justified to impose such bans at the individual school level.

GO! also stated that it was necessary to impose the general ban because of a threat to diversity in those schools that were still allowing the wearing of religious and cultural symbols and dress. Diversity is not explicitly mentioned in international human rights law as a legitimate aim that may justify imposing restrictions on the rights to freedom of religion or belief and to freedom of expression. But lack of diversity in a school could be an indicator of pressure to conform, and if that were the case it could be legitimate to impose such restrictions if they were necessary and proportionate to protect the rights of those girls who chose not to wear the headscarf. Instead of adopting a general ban, GO! could have issued guidelines to schools clarifying the circumstances in which they could, if necessary and proportionate, impose restrictions on the wearing of religious and cultural symbols and dress. GO! could also have contributed to promoting changes in school policies that would ensure they did not impose unnecessary or disproportionate restrictions on the right to freedom of religion or belief and to freedom of expression of those girls who wish to wear the headscarf.

In the past the Flemish Ministry of Education did not take a position on restrictions on religious and cultural symbols and dress in public schools, believing that the issue was better tackled at the level of each individual school.<sup>181</sup> The Ministry has not taken a stand on the introduction of a general ban on religious and philosophical symbols applying to pupils. However, the Flemish government is responsible for ensuring that the rights of the pupils to freedom of expression and to freedom of religion or belief are protected, respected and fulfilled, as well as for the organization of public education in Flanders. It has to ensure equal opportunities and treatment in all areas, including education, as foreseen by the Decree on Equal Opportunities and Treatment, adopted by the Flemish Community on 8 July 2010, which enshrines the prohibition against discrimination on the ground of religion or belief in several areas of life including education.<sup>182</sup>

### 4.3.2 FRANCE

Pupils cannot display conspicuous symbols expressing their religion in any French public schools (including primary, secondary and high schools).<sup>183</sup> The debate on the display of religious and cultural symbols and dress at school reached public attention in 1989, when three girls were temporarily suspended from school because they refused to remove their headscarves. Prior to the introduction of the general ban in 2004, the Commission of Reflection on the Application of the Principle of Secularism in the Republic (Stasi Commission) highlighted the challenges experienced by girls in their everyday life, including outside school, in relation to dress code and in particular the rising pressure and violence on

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181 Meeting with the Flemish Ministry of Education, Brussels, 24 June 2011.

182 Decree of the Flemish Community on Equal Opportunities and Treatment, Article 20.

183 Legislation 2004-25 introduced Article L141-5-1 in the Code of Education "Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit".

girls who did not dress modestly or did not wear the headscarf. The Commission concluded that the prohibition of conspicuous religious and cultural symbols and dress in schools was one appropriate measure to counteract sexist bullying and violence against Muslim girls.<sup>184</sup> The Commission also stressed the increasing level of anti-Semitism resulting in violence against Jewish pupils wearing religious symbols. The Commission highlighted that, besides the issue relating to religious and cultural symbols and dress, religious or cultural practices, such as praying or fasting, were becoming more commonplace in schools and that accommodating them was posing challenges to the educational system.<sup>185</sup>

The legislation, although generally applicable, has a disproportionate impact on Muslim girls wearing religious and cultural symbols and dress. According to the 2005 official report on the application of the law, 639 cases of the display of religious and cultural symbols and dress were reported in the academic year 2004–05. The large majority of these cases, 626, involved the headscarf, 11 involved the Sikh turban and two involved big crosses. One year after the ban entered into force, 96 pupils opted for alternative solutions to avoid expulsion: they enrolled in private schools, dropped out or enrolled into long-distance education (50 pupils). Forty-seven pupils, including 44 Muslim girls wearing the headscarf and three Sikh pupils wearing the turban were expelled; among these, 21 opted for long-distance education and the others either dropped out or were enrolled in private schools.<sup>186</sup>

The Union of Jewish Students in France told Amnesty International that the impact of the prohibition on Jewish pupils was not significant because the great majority of those wearing religious symbols were enrolled in private Jewish schools. The prohibition on conspicuous religious symbols does not apply to private schools. Although official statistics are not available, there are very few Muslim schools in France, as highlighted by experts and civil society organizations in discussions with Amnesty International.

The Ministry of Education told Amnesty International that the legislation was being successfully implemented and that most of the conflicts arising from its implementation were addressed by dialogue and non-punitive measures. However, Amnesty International noted that the only official evaluation of the legislation was carried out in 2005 and did not examine the effect of the legislation in promoting equality between boys and girls and in counteracting sexist bullying. The report concluded that the ban was necessary to reaffirm the principle of secularism in education, which it said was threatened by the number of pupils wearing the Islamic headscarf at school. However, according to field research undertaken by an anthropologist with whom Amnesty International spoke, this legislation has not contributed to curbing requests to accommodate other religious and cultural needs such

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184 Commission of reflection on the application of the principle of *laïcité* in the Republic, "Report to the President of the Republic: the serious worsening of the situation of girl" 11 December 2003, p46.

185 Report to the President of the Republic: at school, p41.

186 Ministère de l'éducation nationale, de l'enseignement supérieur et de la recherche. "Application de la loi 2004 sur le port des signes religieux ostensibles dans les établissements d'enseignement publics", pp34–41, July 2005, <http://media.education.gouv.fr/file/98/4/5984.pdf>, accessed 30 January 2012.

as praying times and examinations scheduled to accommodate fasting.<sup>187</sup>

#### THE SCOPE OF THE LEGISLATION

### PROHIBITIONS APPLIED TO ADULT STUDENTS

After having completed secondary education, Um Sufiane won entry to a school of midwifery in Paris. At the beginning of the year the director told her that she had to remove her headscarf because of an internal regulation prohibiting religious and philosophical symbols. As she continued to wear a headscarf the director summoned her again and told her she would be expelled if she refused to comply with the internal rules.

After completing high school, Linda B. was successful in her applications to two colleges to study radiology. The director of one of the two institutions told her before she had enrolled, that she would have to remove her headscarf when doing practical exercises. Linda B. chose to attend the other school where she was allowed to wear a bandana. "I have the impression that we always have to negotiate. I often think about the most appropriate way to wear my headscarf depending where I am going. I feel like I have to hide myself because I am doing something wrong."

The Minister of Education clarified the material scope of the prohibition in 2004 by a Circular. The prohibition applies to all students enrolled in a public school, including adult students who have completed their secondary education and are enrolled in technical training courses or in preparatory training to access higher education institutions taking place on the premises of secondary schools. However, the prohibition does not apply to the parents of pupils, to candidates taking exams held in public school buildings or to university students.<sup>188</sup> Nevertheless, the prohibition has been on some occasions applied to adults enrolled in life-long learning courses run by GRETA (a network of public and adult educational centres). Similarly, the ban has been applied to students enrolled in vocational training taking place outside public school premises. When challenged before the High Authority for the Fight against Discrimination and for Equality (HALDE) or before the courts, this application of the legislation has been acknowledged as inconsistent with its material scope.<sup>189</sup>

A few cases of Muslim students experiencing problems because they were wearing long skirts have been reported. School authorities have in such cases categorized long skirts as a dress

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187 Dounia and Lylia Bouzar, "La république ou la burqua. Les services publics face à l'Islam manipulé", January 2010.

188 Circular N°2004-084 of 18 May 2004, Points 2.2 and 2.3, <http://www.education.gouv.fr/bo/2004/21/MEN0401138C.htm>, accessed 30 January 2012.

189 Collectif Contre l'Islamophobie en France (CCIF) collected at least 10 cases in 2010. On 5 November 2010 the Administrative Tribunal of Paris found that the exclusion of an intern from an English course organized by the GRETA (network of public and adult educational centres) in a public high school was discriminatory. On 8 June 2010 the Appeal Court of Paris found that the prohibition to wear the headscarf enforced by a vocational training institution (CFA) was discriminatory.

ostensibly manifesting the Muslim faith of these students.<sup>190</sup>

## PARENTS ON SCHOOL OUTINGS

In November, 2010, R. was told by the management of the school where her child is enrolled, in the Parisian region, that she could not take part in a school outing if wearing her headscarf. The teacher responsible for the outing justified this on the basis of the 2004 legislation. The director stated that the restriction was based on the principle of neutrality and concern that the children might be disturbed by her headscarf.

In June 2011, F. was asked by her child's teacher if she intended to remove her headscarf for the school outing scheduled at the end of the month. Upon F.'s negative answer, the teacher told her that she could not take part in the outing. The school's director told F. that the prohibition was enshrined in a new public decree, but that the text of the decree was not yet available. F. contacted an organization fighting against racism, which got in contact with the director on the same day. The director reiterated the existence of a new decree. The day after, the teacher told F. that she could not take part into the school outing because there were no more places available. Then the teacher asked F. why she wore the headscarf and expressed her view that the headscarf was a symbol of gender inequality.

According to the Minister of Education, when parents accompany children on school outings, they actively contribute to the organization of a public service and thus should abide by the principle of neutrality.<sup>191</sup> This requirement has been upheld by the National Assembly in a resolution adopted in May 2011.<sup>192</sup> The Cabinet of Mr. Jean-François Copé, Secretary-General of the Union for a Popular Movement (UMP), equally told Amnesty International that parents accompanying children in school outings were subject to a duty of neutrality.<sup>193</sup>

## CONCLUSIONS

The French state should periodically review the implementation of legislation banning religious and cultural symbols and dress in schools. Only one official implementation report, shortly after the ban was introduced, has been issued to date. As the UN Special Rapporteur on the right to freedom of religion or belief has noted, it is the responsibility of the state when implementing a restriction to provide justification on the basis of international law. Protecting secularism is not a lawful justification to introduce a blanket prohibition on religious and cultural symbols and dress applying to students. Protecting the rights of the others, in this case the right of girls not to wear religious symbols and dress, may be a legitimate aim. However, regular implementation reports, undertaken by an independent authority, should spell out if and how this aim has been achieved and whether a general ban on conspicuous religious symbols is the most effective way to counteract bullying and

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190 See, for example, the case in a high school in Saint-Ouen (Parisian region) [http://www.lexpress.fr/actualite/societe/des-eleves-en-robe-traditionnelle-seraient-menacees-d-exclusion\\_975315.html](http://www.lexpress.fr/actualite/societe/des-eleves-en-robe-traditionnelle-seraient-menacees-d-exclusion_975315.html).

191 Letter of Luc Chatel, dated 2 March 2011, <http://laic.info/2011/03/national/luc-chatel-pas-de-femmes-voilees-lors-des-sorties-scolaires>, accessed 31 January 2012.

192 Resolution No. 672 of 31 May 2011, para7.

193 Meeting with the Cabinet of Mr. Jean François-Copé, Paris, 30 June 2011.

harassment experienced by Muslim girls who do not wish to manifest their religion by wearing the headscarf or any other religious or cultural symbol or dress. These reports should include data on the potential side effects of this legislation including figures on drop-out rates, home educated students and trends relating to the establishment of private religious schools, which might lead to a de facto segregation or marginalization of pupils from religious minorities. If the updated reports confirm that this legislation has a disproportionate impact on Muslim girls and/or on pupils from other religious minorities, it should be repealed and alternative measures should be put in place.

In its concluding observations on France, the UN Committee on the Rights of the Child recommended that “the State party, when evaluating the effects of the legislation, use the enjoyment of children’s rights, as enshrined in the Convention, as a crucial criterion in the evaluation process and also consider alternative means, including mediation, of ensuring the secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation. The dress code of schools may be better addressed within the public schools themselves, encouraging participation of children. The Committee further recommends that the State party continue to closely monitor the situation of girls being expelled from schools as a result of the new legislation and ensure they enjoy the right of access to education.”<sup>194</sup>

In 2007, the UN Independent Expert on minority issues reiterated the recommendations suggested by the UN Special Rapporteur on freedom of religion and belief: “Law 2004–228 of 15 March 2004 on ‘*laïcité*’ and the wearing of conspicuous religious symbols in public schools constitutes a limitation of the right to manifest a religion or a belief ... and has mainly affected certain religious minorities, and notably, people of a Muslim background.” The independent expert supports the Special Rapporteur’s recommendation that the government should closely monitor the way that education institutions are implementing the law and adopt a flexible implementation of the law which would accommodate schoolchildren for whom the display of religious symbols constitutes an essential and freely chosen element of their faith.”<sup>195</sup>

As mentioned earlier, a prohibition on religious and cultural symbols and dress in schools could be justified in some circumstances, such as ensuring the right of children not to be pressured to wear specific forms of religious and cultural symbols and dress. But, as the UN Special Rapporteur on freedom of religion and belief pointed out, it is more difficult to justify applying the ban to adult students, who are less easily influenced than children. The application of the 2004 legislation to adult students or to parents contravenes the lawful limits established by international human rights law to restrict the rights to freedom of expression and to freedom of religion or belief.

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194 Committee on the Rights of the Child. Concluding observations: France, CRC/C/15ADD.240, 30 June 2004, para26.

195 HRC, “Report on the Independent Expert on Minority Issues, Mission to France (19–28 September 2007)”, 4 March 2008, A/HRC/7/23/add., 2 para94.

### 4.3.3 SPAIN

Responsibility for education falls primarily within the remit of autonomous communities.<sup>196</sup> However, the state has to ensure basic conditions guaranteeing equal exercise of rights for all the citizens.<sup>197</sup> The state framework legislation on education forbids discrimination on the ground of religion in access to education (Law 2/2006).<sup>198</sup> Non-discrimination is also an overarching principle governing how education should be organized.<sup>199</sup> Autonomous communities adopt legislation and policies in the field of education, establishing a framework that individual schools should take into account when developing internal regulations.

Although there are no general restrictions on religious and cultural symbols and dress, in recent years there have been several cases of girls who were forbidden to wear the headscarf at school. According to public opinion polls, more Spaniards accept Catholic than non-Catholic religious and cultural symbols and dress in education; less than 30 per cent agreed with the wearing of the headscarf, or the kippa (skullcap, also known as a yarmulke, traditionally worn by Jewish men and boys) whereas almost half of them accept crosses.<sup>200</sup> The percentage of Spaniards who agree that pupils who wear the headscarf should be expelled from school increased from 28 per cent in 2008 to 37 per cent in 2009.<sup>201</sup>

A lawyer assisting the families of two pupils who were forbidden to wear the headscarf in school told Amnesty International that, in recent years, there have been several similar cases. For instance, the public Institute Camilo José Cela de Pozuelo de Alarcón in Madrid forbids the wearing of any dress covering the head in its internal regulation. On this basis, Najwa, a 16-year-old girl wearing the headscarf, was not allowed to attend classes with her schoolmates and was isolated in the visitors' room. Another school denied the pupil enrollment by amending its internal regulation just a day before she was supposed to start classes. The school's director declared to the press that the amendment was aimed at "avoiding ghettos".<sup>202</sup> The girl was eventually enrolled in another public school in the same

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196 In Ceuta and Melilla education is a competence of the central state authorities.

197 Article 149.1 of the Spanish Constitution.

198 Article 84.3 of the Framework Law on Education 2/2006 reads: "In no case will there be discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance."

199 Article 1b of the Organic Law on Education reads "Equity that guarantees equal opportunities, educational inclusion and non-discrimination and that acts as a compensating factor for the personal cultural, economic and social inequalities, with special emphasis on those derived from disabilities."

200 OBERAXE, "Evolución del racismo y la xenofobia en España", Informe 2010, p209.

201 In 2009, 37 per cent of Spaniards thought that it is acceptable to exclude a pupil wearing the headscarf from school, while in 2008 28 per cent thought so. OBERAXE, "Evolución del racismo y la xenofobia en España", Informe 2010, p215.

202 "No contribuiremos a crear guetos", *El País*, 28 April 2010,

town where she could wear the headscarf. On 25 January 2012, a court of first instance in Madrid upheld the decision of the Institute José Cela to penalize Najwa because she wore the headscarf at school. The Court noted that the internal regulation of the institute applied to everyone without any distinction and that the prohibition on wearing any form of dress covering the head aimed at introducing common dress code rules in order to ensure living together and to avoid pupils' distractions. The Court found that the restriction introduced by the institute was necessary to protect public order and the human rights of the other pupils. Further it found that secularism was a constitutional principle and that attitudes which were at odds with this principle could not be considered as a component of the right to freedom of religion.<sup>203</sup>

In another case in Arteixo in Galicia, an 11-year-old girl had been experiencing problems since December 2010 when the internal regulation of the public school she was attending (Colexio Novo) was amended with the aim of forbidding the wearing of headwear.<sup>204</sup> The girl was at the centre of a legal conflict between her family and the school council. Non-compliance with the internal regulation is considered to be a serious misconduct punishable by temporary expulsion from the school. The girl was eventually enrolled in another school in June 2011. The Galician Ministry of Education stated that the internal regulation was not contrary to existing legislation and that the autonomy of schools, if complying with legislation on education, should be respected.<sup>205</sup>

Spain's Ministry of Education told Amnesty International that the competence of autonomous communities in the field of education should be respected and that central authorities could intervene only if a regulation discriminating against pupils in access to education was adopted at the autonomous level. However, both the state and autonomous authorities share responsibility to ensure that the principle of non-discrimination in education is respected as it is enshrined by both the Constitution (Article 27.2) and the framework legislation on education mentioned above (Law 2/2006).

According to international law, schools may restrict the wearing of religious and cultural symbols and dress in their internal regulations only on the basis of a legitimate aim and provided that the restriction is proportionate and necessary to the aim sought. It is up to school authorities to prove that the restriction is in line with these criteria and autonomous

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[http://www.elpais.com/articulo/sociedad/contribuiremos/crear/guetos/elpepisoc/20100428elpepisoc\\_5/Tes](http://www.elpais.com/articulo/sociedad/contribuiremos/crear/guetos/elpepisoc/20100428elpepisoc_5/Tes), accessed 31 January 2012.

203 Amnesty International, *Spain: restrictions imposed by schools on the rights to freedom of expression and religion or belief should be in line with human rights standards* (Index: EUR 41/002/2012).

204 Article 3.7 of the internal regulation reads: "en las aulas se observará una postura e indumentaria correctas. Se mantendrá la cabeza descubierta. No se permitirán boinas, viseras, pañuelos de cabeza, ni otras prendas que la cubran".

205 Junta de Galicia. A Consellería de Educación respalda a decisión do CEIP de Arteixo. 23 March 2011, <http://www.edu.xunta.es/web/node/2180>, accessed 31 January 2012.

authorities to assess the restriction against these criteria. In the two cases mentioned above, concerns arise in relation to respect for the best interest of the child, because the right to education of the two pupils was guaranteed only by enrolling them in another school, which should be a last resort. In addition, the imposition of the restriction gave rise to several months of conflicts between their families, school authorities and autonomous authorities before they were forced to transfer to other schools.

#### 4.3.4 SWITZERLAND

Education is decentralized in Switzerland, with competence falling within the remit of each Canton. Consequently, regulations pertaining to the display of religious and cultural symbols and dress differ in each Canton. In recent years, several Cantons have launched parliamentary initiatives aimed at restricting the wearing of Muslim religious and cultural symbols and dress, in general without success. In cases where the issue is not subject to a cantonal regulation, schools can apply individual rules. According to the Federal Commission against Racism, many schools have introduced restrictions on headwear. The Commission recommended that these schools envisaged an exception when headwear is worn as a manifestation of religion or belief.<sup>206</sup>

The Canton of Fribourg allows the wearing of the headscarf at school.<sup>207</sup> A Parliamentary motion to prohibit the wearing of the headscarf in primary schools was rejected on 7 October 2010.<sup>208</sup> The Parliament of Vaud rejected another such motion, aimed at prohibiting the wearing of the headscarf in compulsory education, on 30 November 2010.<sup>209</sup> Similarly, the Parliament of Zürich rejected a proposal implying the non-accommodation of the headscarf in schools,<sup>210</sup> and a recent initiative in Ticino was voided by the Commission set up to evaluate it.<sup>211</sup>

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206 Federal Commission against Racism, "Prohibiting the headscarf at school? Or the example of a debate targeting a minority", Bern, June 2011.

207 State of Fribourg, "Cultural and Religious Diversity at school: the wearing of religious symbols and dresses", p14.

208 Motion 1084.09 introduced by MP Erika Schnyder on 2 November 2009, [http://www.fr.ch/gc/files/pdf5/m1084\\_09.pdf](http://www.fr.ch/gc/files/pdf5/m1084_09.pdf) , accessed 31 January 2012.

209 Motion introduced by MP Pierre-Yves Rapaz on 24 November 2009. On 27 April 2010 the Commission in charge of examining the motion advised the cantonal Parliament (Grand Conseil) to reject the motion as it would contravene the right to freedom of religion and as it is a disproportionate measures. The cantonal Department for Education, Youth and Culture had estimated that 200 female students out of 40,000 female students in total wear the headscarf.

210 Motion n. 290/2007 introduced by Barbara Steinemann, Matthias Hauser and Natalie Simone Rickli.

211 Motion introduced to the Parliament of Ticino by Giorgio Ghiringhelli on the basis of Article 8L of the Cantonal Constitution. According to the cantonal Department of Education, Culture and Sport no pupils wear the headscarf in primary schools, around three wear it in secondary schools and three in professional trainings institutes. The Commission rejected the petition on 25 October 2010.

However, public authorities in St. Gallen have issued recommendations aimed at restricting the wearing of headscarves. On 5 August 2010 the Education Council of St. Gallen recommended forbidding pupils to wear head coverings in public schools. According to M. Stefan Kölliker, Director of Education (Regierungsrat) of St. Gallen, the recommendation was aimed at facilitating communication and maintaining order at school. According to him head coverings, such as baseball caps, partially hide the pupil's face or ears and could impede eye contact. M. Kölliker told Amnesty International that cantonal authorities did not consider the headscarf as a religious symbol or dress but as a cultural tradition, otherwise they would not have recommended a general ban on headwear.<sup>212</sup> Amnesty International was told that cantonal authorities issued this recommendation on the basis of two inquiries coming from local school authorities (Heerbrugg and Bad Ragaz) following the refusal of two pupils to abide by regulations prohibiting headwear.

A survey carried out by a local newspaper in June 2011 found that one third of schools in St. Gallen had implemented the policy recommended by the cantonal authorities. The individual ban imposed in Bad Ragaz was challenged before the Regional School Surveillance Body and overturned on the grounds that it was contrary to the right to freedom of religion or belief. Cantonal authorities told Amnesty International that they did not have the power to impose rules regulating the wearing of religious symbols in individual schools. They have just issued the 2010 recommendation, which is not binding, and thus still valid after the ruling of the Regional School Surveillance Body.

State authorities should refrain from putting forward recommendations, even if non-binding, that could lead to violation of the rights of pupils to freedom of expression and freedom of religion or belief. In this case, cantonal authorities could have adopted a different approach of developing guidelines for schools setting out criteria to enable them to judge where it might be necessary and proportionate to impose such restrictions. Moreover, it is not up to public authorities to decide whether the headscarf is worn as an expression of religion, culture, tradition or any other reason. Headscarves may be worn for any or all these reasons, and, if not based on a legitimate aim and without respecting the proportionality and necessity principles, restricting them could violate the right to freedom of expression and, where they are worn specifically for religious reasons, violate the right to freedom of religion or belief.

#### 4.3.5 THE NETHERLANDS

According to the informal data provided to Amnesty International by the Ministry of Education, roughly two thirds of schools in the Netherlands (so-called denominational schools) are privately run. These schools can be based on a religious ethos or on a specific, non-religious, educational orientation (for instance Montessori, Jenaplan or Dalton).

In the Dutch Constitution the principle of freedom of education implies that anyone can run a school as long as some basic requirements are met.<sup>213</sup> The majority of the privately run

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212 Phone interview with M. Kölliker, 15 September 2011.

213 Article 23.2 of the Constitution reads "All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, their right to examine the

schools are religious, mainly Catholic or Protestant. There are 42 Muslim primary schools out of nearly 7,000 overall, and one Muslim secondary school among more than 650 in the country.<sup>214</sup> Only a small minority of religious schools have adopted policies excluding pupils of different faith. Others may have policies limiting the expression of other faiths, including restrictions relating to the wearing of other religious and cultural symbols and dress.

### **THE CASE OF I. AND THE DON BOSCO COLLEGE IN VOLENDAM<sup>215</sup>**

In February 2010, I., a 14-year-old Muslim girl of Moroccan background, and a student at the Don Bosco College in Volendam (a publicly funded Catholic school), expressed, together with three other pupils, a desire to wear the headscarf within the school premises. An internal regulation prohibited headwear in general. School authorities decided to hold an internal discussion to clarify the issue. Initially I. refrained from wearing the headscarf but at the beginning of the following school year, she decided to do so as school authorities had yet to take a decision. After three weeks, during which I. received education by herself in a room apart from her schoolmates, she was told that she was not allowed to wear the headscarf at school and that she would be expelled if she did not comply with this rule. The school amended its internal regulation by adding the headscarf to the list of items pupils were not allowed to wear. The case was brought before the Equal Treatment Commission, which found a direct discrimination on the ground of religion. In its opinion, issued on 2 July 2010, the Commission said the school had failed to prove that prohibiting headscarves was necessary to preserve its religious ethos. The Commission was clear that denominational schools were entitled to introduce restrictions on the ground of religion insofar as they applied a consistent policy, which was not so in the case of Don Bosco College as the school modified its internal rules only after I. expressed her wish to wear the headscarf. The school did not implement the opinion of the Equal Treatment Commission and thus I. was not allowed to wear the headscarf. Her family took the school to court but on 4 April 2011 the District Court of Haarlem found that the Don Bosco College had not discriminated against I. According to the Court, the school's policy was not inconsistent; it had simply adopted a specific policy when the need arose (when I. expressed her wish to wear the headscarf). The Court stated that denominational schools had a wide margin to decide what was necessary in order to preserve their religious ethos and that it was not within the remit of the judiciary to decide on this issue. The Court of Appeal of Amsterdam upheld the judgment on 6 September 2011.

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competence and moral integrity of teachers, to be regulated by Act of Parliament". Private schools are free to determine the content of teaching and the methodology. However, there have to comply with qualitative standards established by the Ministry of Education, Culture and Science.

214 Primary schools: 6,848 schools, 32 per cent non-denominational schools, 29 per cent Protestant schools, 29 per cent Catholic schools, 10 per cent other denomination (including the 42 Muslim schools). Secondary education: 659 schools in total, 185 non-denominational schools (28 per cent), 474 denominational schools (72 per cent). 123 schools are Protestant (19 per cent), 154 Catholic (23 per cent), 68 are partnership schools (for example Catholic and Protestant) and 102 are denominational but not religious.

215 The information based on this case is based on, ECT Opinion 2011-2, the judgment of the District Court of Haarlem, LNJ: BQ0063, 04-04-2011, the judgment of the Court of Appeal Amsterdam, LNJ BR6764, 06-09-2011 and an interview with the lawyer who assisted I. and her family, Mr. J. Klaas.

Article 7 of the 1994 General Equal Treatment Act (GETA) provides legal protection against discrimination on the ground of religion or belief in the area of education.<sup>216</sup> However, Article 7.2 allows faith-based schools to adopt policies and regulations they deem necessary to preserve their religious ethos, which may include denying access to pupils of other faiths.<sup>217</sup> The legislation stipulates that the establishment of these requirements should not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

In practice, the overall majority of private Christian schools in the Netherlands respect the right to freedom of religion or belief of pupils of non-Christian background. Most of these schools admit Muslim pupils and allow them to manifest their religion, including to display religious and cultural symbols and dress. Public schools run by the state are spread throughout the country. Article 48 of the Law on Secondary Education requires privately run schools to admit pupils if no public schools are available within reasonable distance. In the case of I. and the Don Bosco College, there is no other secondary education institution in Volendam and the nearest alternative is in the adjacent town of Edam. However, I. did not wish to change school. As explained by the UN Special Rapporteur on freedom of religion or belief, the best interest of the child should be duly taken into account by an authority that is restricting the wearing of religious and cultural symbols and dress. For example, in this case enrolling I. in another school might have run counter to the principle of the best interests of the child, given her expressed wish not to change school.

In the aftermath of the opinion given by the Equal Treatment Commission in the case of I. and the Don Bosco College, members of parliament from the Party for Freedom (PVV) raised questions with the Minister of Interior and Kingdom Relations and the Minister of Education and Culture. In response the ministers reaffirmed that religious schools do not have the freedom to forbid the wearing of the Islamic headscarf except in circumstances where it is necessary to fulfil their founding principles and according to a consistent policy.

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216 Article 7.1 of the GETA reads: "1. It is unlawful to discriminate in offering goods or services, in concluding, implementing or terminating agreements thereon, and in providing educational or careers guidance if such acts of discrimination are committed: a. in the course of carrying on a business or practising a profession; b. by the public sector; c. by institutions which are active in the fields of housing, social services, health care, cultural affairs or education, or d. by private persons not engaged in carrying on a business or practising a profession, insofar as the offer is made publicly".

217 Article 7.2 of the GETA reads: "Subsection 1 (c) does not affect the freedom of an educational establishment founded on religious or ideological principles to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment's purpose, are necessary for the fulfilment of its principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status. Discrimination on the grounds of sex is permitted solely if the distinctive nature of the establishment so requires and if equivalent facilities are available for pupils or students of both sexes".

MP Geert Wilders, the PVV leader, in a public response to the District Court's ruling expressed the view that many Christian schools should follow the example of the Don Bosco College.<sup>218</sup>

### CONCLUSIONS

The exception enshrined in Article 7.2 of the GETA, the high number of Christian schools that could avail themselves of the exception, and the considerable number of Muslim pupils in the country, the overall majority of whom attend either Christian private schools or public schools, is a mix which raises concerns about the potential for violations of the rights to freedom of religion or belief and to freedom of expression of Muslim pupils.

If ensuring the fulfilment of founding principles could be considered as an objective and reasonable justification for denominational schools to implement differences of treatment on the ground of religion or belief, the test of justification included in Article 7.2 is loosely formulated and could result in the introduction of differences of treatment that are not necessary and proportionate. The government of the Netherlands should ensure that any policies put in place by educational institutions based on religious, ideological or political ethos are consistent with international human rights law. Policies implemented by such institutions and aimed at preserving the ethos they are inspired to should in any case be proportionate and necessary.

### 4.3.6 TURKEY

In countries such as France and Belgium, bans on the wearing of religious and cultural symbols and dress have been justified by public authorities on the basis of the need to uphold the principles of secularism and neutrality in public education. The strong secular tradition established in Turkey, a predominantly Muslim country, from the founding of the Republic has resulted in restrictions on the wearing of specific forms of religious and cultural dress, and particularly the headscarf, in education.

Legislation and regulations dating from the early 1980s imposed compulsory dress codes on male and female students and teachers in schools and universities, prohibiting any kind of head covering, including headscarves, as well as beards.<sup>219</sup> These prohibitions were not applied across the board; in practice some universities initially allowed students to wear headscarves or traditional dress. However, in 1987 the Higher Education Council (HEC), which was responsible for developing nationwide policies on higher education, clarified that

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218 See Parliamentary Debate held on 19 May 2011, Tweede Kamer 2010-2011, Handeling, vergaderingnummer 83.

219 In 1981 a new law on Higher Education (no. 2547) was adopted. A regulation applying to primary, secondary and higher education entered also into force (Regulations Concerning Dress and Attire of Staff and Students in Schools Under the Ministry of National Education and Other Ministries, Official Gazette, 7 December 1981, Issue 17537). It enshrined compulsory dress code rules for both male and female students; it forbade any kind of head covering as well as grown beards. In 1982 the Higher Education Council (HEC) was created with the aim of developing nationwide policies on higher education. The HEC issued a Circular later on that year reaffirming that in higher education head coverings, including headscarves, were prohibited (HEC, Circular Order No. 7327).

only modern dress could be worn in universities.

In 1988, the Turkish Parliament amended the 1981 Law on Higher Education to allow students to cover their heads and necks with a headscarf or turban on the ground of their religion or belief, but the following year the Constitutional Court found the provision contrary to the Constitution. In 1990, the Parliament passed another law adding a new article to the Law on Higher Education (Article 17) aimed at upholding the principle that there should be no restrictions on clothing and attire worn by students in higher education, but the Constitutional Court again disagreed. On the basis of an application by the Social Democratic People's Party (SHP), the Court ruled that its 1989 decision was still in force and so Article 17 did not apply to the prohibition on covering the head and the neck on the ground of religion or belief.

In 2008 the Parliament voted in favour of a proposal put forward by the Justice and Development Party-led government to amend articles 10 and 42 of the Constitution, concerning the principle of equality and the right to education. Although not explicitly mentioned in the amendment, the primary aim was to lift the ban on headscarves in higher education. However, two opposition parties, the Democratic Left Party (DSP) and the Republican People's Party (CHP), applied to the Constitutional Court alleging that these amendments violated the principle of secularism enshrined by Article 2 of the Constitution. On 5 June 2008 the Constitutional Court found a violation and thus annulled the amendments.

In practice, the ban on headscarves in higher education is currently implemented according to the position of each university administration, and many universities relaxed implementation of the ban in 2010. The wearing of beards by male students in higher education has not been an issue of controversy to the same extent as female students covering their heads and necks.

Under international law, state neutrality and secularism are not legitimate reasons for imposing restrictions on the exercise of the rights to freedom of religion or belief and to freedom of expression. Moreover, general bans on the wearing of religious and cultural symbols and dress by adult students are unlikely to meet the necessity and proportionality test for permissible restrictions on the exercise of these rights, even if in particular institutions it may be possible to justify such restrictions, for example to protect students who do not cover their heads against being subjected to harassment by religious groups. But such restrictions can only be justified by reference to demonstrable facts, not presumptions, speculation or prejudice. In the case of *Leyla Şahin v. Turkey*, before the European Court of Human Rights, Judge Tulkens in her dissenting opinion argued, "Only indisputable facts and reasons whose legitimacy is beyond doubt — not mere worries or fears — are capable of ... justifying interference with a right guaranteed by the [European] Convention."<sup>220</sup>

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220 European Court of Human Rights, *Leyla Şahin v. Turkey*, Application no. 44774/98, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=leyla%20%7C%20turkey&sessionid=85692208&skin=hudoc-en>, accessed 30 January 2012.

By maintaining policies and legislation enshrining a general prohibition on the headscarf and other religious and cultural symbols and dress in higher education, Turkey violates the rights to freedom of religion or belief and of expression of those who freely chose to manifest their religious or cultural belief. Adult students excluded from higher education only because they wear religious and cultural symbols and dress are discriminated against on the ground of religion or belief in access to education.

Such restrictions have a disproportionate impact on female students and are therefore also discriminatory on the ground of gender. With regard to the impact of these restrictions on women, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed its concerns about the absence of related information and data in several areas of life, including the number of women excluded from schools and universities. In its 2010 concluding observations on Turkey's sixth periodic report, the Committee "reiterate[d] its previous concluding observations of 2005 and request[ed] the State party to undertake studies to evaluate the impact of the ban on wearing headscarves in the fields of education, employment, health and political and public life, and to include detailed information regarding the result of the study and measures taken to eliminate any discriminatory consequences of the ban in its next periodic report."<sup>221</sup>

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221 Concluding Observations of the Committee on the Elimination of Discrimination against Women on Turkey, 16 August 2010, para17.

## 5. RESTRICTIONS ON ESTABLISHING MUSLIM PLACES OF WORSHIP

The right to establish places of worship is a component of the right to freedom of religion or belief, as highlighted by the UN Human Rights Committee in its General Comment No. 22 and the UN Special Rapporteur on freedom of religion or belief, who stated: “Places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious communities or communities of belief need the existence of a place of worship where their members can manifest their faith. Moreover, unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question.”<sup>222</sup>

At times prejudiced and stereotypical views on mosques have been upheld by political parties and voiced by some sections of public opinion, for example by staging protests against the opening of new Muslim prayer rooms. The case of Switzerland, where a prohibition to build minarets is enshrined in the Constitution as a result of a popular vote, shows the extent to which political parties can build on existing stereotypes for electoral purposes and how this process could lead to discrimination against a specific religious minority.

In order to meet the state’s obligations to fulfil the right to freedom of religion or belief, public authorities should ensure that different religious groups in society are able to establish adequate places of worship. Although public authorities do not have a responsibility to fund and build places of worship, they should ensure that religious groups and associations can do so, without imposing on them unnecessary or disproportionate or otherwise unlawful restrictions. The opening of a new place of worship, as with any other building for public use, may require compliance with specific technical rules, but public authorities should refrain from imposing these rules for purposes other than the requirements of international human rights law. For example, a requirement that places of worship cannot be established unless the building comply with technical rules aimed at protecting public safety is legitimate, as protecting public safety is a legitimate and permissible aim for restricting the exercise of the right to manifest religion or belief, provided that the rules imposed are necessary and proportionate for achieving that aim.

The fulfillment of this specific component of the right to freedom of religion or belief, that is, the availability of places of worship, may require some time, especially in contexts where there is a rapid increase in the religious diversity of the population as a result of migration. However, states should ensure that religious groups have effective opportunities to establish

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<sup>222</sup> Civil and political rights, report submitted by Asma Jahangir, UN Special Rapporteur on the right to freedom of religion or belief, 20 December 2004, E/CN.4/2005/61, para50-51.

places of worship to cater for the needs of their adherents. If it is not possible to do this immediately, states should develop policies aimed at avoiding controversies and tensions between religious associations and other groups in society. The establishment of regular consultation mechanisms to assess the needs of religious groups, especially religious minorities, as well as other community needs should be the foundation on which to build and adopt local level policies for managing religious diversity.

The case of Catalonia, Spain, provides an example of the lack of adequate Muslim places of worship and its consequences for Muslims who choose to manifest their religion by worshipping collectively. In some cases, for instance, Muslims have to pray in outdoor spaces (including in big cities such as Barcelona, Badalona and Lleida) because the existing prayer rooms are too small to accommodate all the worshippers. Although no purpose-built mosques exist in the region, some political parties have portrayed the request from Muslim organizations to open a new mosque as “incompatible with Catalan traditions and culture”.

## 5.1 SWITZERLAND

*“The anti-minaret initiative is particularly important for the younger generation. The young will be the ones particularly affected if Islamization succeeds.”*

Ulrich Schlüer, Former Member of the Swiss Parliament

*“It is like the veil, it is a symbol of non-integration. We hope that this initiative sends a clear signal that we are calling a halt to the Islamization of Switzerland. Our hard-won individual liberties are being eroded and that is not acceptable.”*

Dominique Baettig, Former Member of the Swiss Parliament

According to the Co-ordination of Islamic Organizations in Switzerland (KIOZ) there are around 300 Muslim associations and 200 Islamic centres in the country. Most of them are located in small venues rented out to Muslim organisations. There are two purpose-built mosques (in Geneva and Zürich) and four minarets (Geneva, Zürich, Winterthur and Wangen bei Olten) in the whole country.

The building of minarets has been subject to legal and political controversy at least since 2005, when a Turkish cultural association in Wangen bei Olten (Canton of Solothurn) sought a construction permit to erect a 6m-high minaret on the roof of its community centre. The project faced opposition from the residents of the surrounding area as well as from the city council. In the dispute that followed, the case was brought before the Federal Supreme Tribunal, which ruled in favour of the association. The minaret was finally built in July 2009.

On 1 May 2007, the Swiss People’s Party (SVP), which is the major political party in Switzerland, and the Federal Democratic Union (FDU) formed the Committee against the Building of Minarets, composed of SVP representatives and one FDU representative. The Committee launched a popular initiative at the federal level aimed at introducing a ban on minarets in the Swiss Constitution. The initiative was signed by 113,540 Swiss citizens and presented to the Federal Assembly (Swiss Parliament).<sup>223</sup>

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223 According to Article 139 of the Swiss Federal Constitution, 100,000 signatures are necessary in order to propose

On 27 August 2008 the Swiss Federal Council (Swiss government) informed the Federal Assembly that in its views the initiative could have entailed a violation of the right to freedom of religion or belief enshrined by the European Convention on Human Rights. However, the Committee against the Building of Minarets argued that minarets were not a manifestation of religion but rather a political statement, hence, banning them would not violate the right to freedom of religion or belief.<sup>224</sup> On 12 June 2009 the Federal Assembly declared the initiative valid and subjected it to a referendum vote. The Assembly recommended to vote against the ban.

On 29 November 2009, 57.5 per cent of voters expressed support for the ban. All but four of the 26 Cantons (Geneva, Vaud, Neuchâtel and Basel City) voted in favour of the ban. Civil society organizations that Amnesty International met in Geneva pointed out that the population in the city was well acquainted with Muslim communities and thus the stereotypical discourse in favour of the ban had little leverage.<sup>225</sup> Public polls undertaken ahead of the vote showed that the majority of the population was against the ban,<sup>226</sup> but according to experts, a considerable part of the population was reluctant to explicitly express support for the ban when interviewed in the context of public opinion polls.<sup>227</sup>

As a result of the referendum, a third point was added to Article 72 of the Federal Constitution, which now reads as follows:

- “1. The regulation of the relation between the Church and the State is a competence of the Cantons.
2. Within the boundaries of their respective competences, the Confederation and the Cantons can adopt measures aimed at maintaining peace among members of different religious communities.
3. The building of minarets is forbidden.”

In the wake of the referendum, the SVP called for “appropriate” implementation of the ban; a controversy arose relating to the building of a minaret in Langenthal (Bern), which had been authorized by the competent authorities before the vote but not actually built.

Two cases related to the ban were brought before the European Court of Human Rights by

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a partial revision of the Constitution.

224 Interview of Ulrich Schlüer with Swissinfo, 6 October 2009, [http://www.swissinfo.ch/eng/multimedia/video/Anti-minaret\\_campaigner\\_puts\\_case.html?cid=1012760](http://www.swissinfo.ch/eng/multimedia/video/Anti-minaret_campaigner_puts_case.html?cid=1012760).

225 The results show in general a greater support of the prohibition in rural areas. Substantial differences exist as well between the three major Swiss linguistic regions, although overall the majority of the population supported the prohibition in all three, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/17/03/blank/key/2009/05.html>.

226 According to a public poll undertaken two and a half weeks before the vote, 53 per cent of the voters was against the ban, 37 per cent was in favour and 10 per cent was undecided.

227 Meeting with Zentrum Religionforschung, University of Luzern.

Muslim organizations, but the Court found the cases were non-admissible as the two organizations did not qualify as victims under the terms of Article 34 of the European Convention.<sup>228</sup> Following this decision, the organizations are expected to initiate new litigation to challenge the ban.

#### DOMESTIC LEGISLATION

The Federal Constitution regulates popular initiatives. Citizens can submit to the Federal Assembly proposals, supported by 100,000 signatures, to partially revise the Constitution. The Federal Assembly (Swiss Parliament) is entitled to reject the initiative only when mandatory rules of international law (customary law) are violated.<sup>229</sup> Otherwise the Federal Assembly can only issue a recommendation on the vote. The Ministry of Justice told Amnesty International that popular initiatives were not submitted to any mechanism aimed at assessing their compliance with Switzerland's human rights obligations. Although the Federal Council had several times reiterated the potential inconsistency between the popular initiative aimed at prohibiting the building of minarets and the European Convention of Human Rights, it had no legal means to formally counteract either the popular initiative or its outcome.

The consistency between the current prohibition, enshrined by the Constitution, and the European Convention could be assessed by the Federal Tribunal, which must implement international law.<sup>230</sup> According to the Swiss government, the Tribunal could, in a concrete case where the request to build a minaret was turned down by authorities on the basis of Article 72.3 of the Constitution, give primacy to the right to freedom of religion or belief enshrined by the European Convention over the Constitution.<sup>231</sup>

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228 Decision on the admissibility on request number 65840/09 presented by *Hafid Ouardiri v. Switzerland* and Decision on the admissibility on request number 66274/09 presented by the *Ligue des Musulmans de Suisse and others v. Switzerland*. [see endnote 234] The requests were declared inadmissible as the two plaintiffs did not qualify as victims according to Article 34 which reads "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=887981&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=887980&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

229 Article 139.2 of the Constitution reads: "A popular initiative for the partial revision of the Constitution may take the form of a general proposal or of a specific draft of the provisions proposed".

230 Article 190 of the Federal Constitution.

231 Meeting with Swiss Federal authorities, Bern, 8 September 2011, Observations from the Swiss Government to the European Court of Human Rights on the case *Ligue des Musulmans de Suisse and others v. Switzerland*. The Tribunal

The Federal Council has issued a report on the relationship between domestic and international law providing two suggestions to avoid potential clashes in the future. The first one proposes submitting popular initiatives to an administrative body ahead of the collection of signatures for a non-binding assessment on their compliance with international law. The second suggestion concerns the inclusion in the Constitution of a further ground on which the Federal Assembly could invalidate a popular initiative, whereby a popular initiative could be considered as invalid if it does not respect the core fundamental rights enshrined by the Constitution.<sup>232</sup>

The Federal Council report stated, however, that the popular initiative forbidding the building of minarets could not have been declared invalid on the basis of the core fundamental rights enshrined by the Constitution. In order for this kind of popular initiative to be declared invalid, a further ground, respect for the non-discrimination principle, should be added. Regrettably, the Federal Council suggested that this further ground should not to be introduced in order to avoid excessive constraints on the popular initiative instrument.

Based on this report, both Chambers of the Swiss Parliament adopted a motion mandating the government to draft a proposal providing the legal basis to reform the popular initiatives mechanism.<sup>233</sup>

## CONCLUSIONS

The Swiss government should exercise all its powers to reforming the rules applying to popular initiatives. It should propose and support a bill extending the list of grounds on which a popular initiative could be invalidated. Such a list should include the incompatibility of a popular initiative with international human rights law to which Switzerland is bound, including the principle of non-discrimination.

The results of the referendum show that federal and cantonal authorities should implement further initiatives and measures to counteract negative stereotypes and perceptions of Muslims. These initiatives may be included in a comprehensive and ambitious plan aimed at fighting discrimination against ethnic and religious minorities. The Swiss government should further engage in effectively counteracting discriminatory statements such as those articulated by the Committee against the Building of Minarets in promoting the initiative against minarets.

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has already given primacy to the Convention over Federal Legislation in the past.

232 Additional report of the Federal Council to the report of 5 March 2010 on the relation between international law and domestic law, 30 March 2011, <http://www.eda.admin.ch/eda/fr/home/topics/intla/cintla/natint.html>, According to the Federal Council, the initiative aimed at prohibiting the building of minarets should not have been invalidated on the basis of this new ground.

233 See motion 11.371 of the Commission on Political Institutions of the Council of States [http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch\\_id=20113751](http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch_id=20113751) and motion 11.3468 of the Commission of Political Institutions of the National Council [http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch\\_id=20113468](http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch_id=20113468)

## 5.2 CATALONIA

*"We are against mosques because they are not only places of worship. They are places where social and political rules are imposed. The Muslim world does not distinguish between social, religious and political aspects of life so that mosques become a nest of Islamism and radicalism. We are against mosques because Islam is incompatible with our European culture based on tolerance, freedom, democratic values and equality between women and men."*

Josep Anglada, President of Platform for Catalonia

The presence of Muslims in Catalonia is due to relatively recent migration flows. In the 1960s, Barcelona became a transit city for Muslims moving from sub-Saharan Africa and Northern Africa to Europe. Muslims now established in Catalonia are culturally very diverse and come originally from many different countries including Algeria, Gambia, Morocco, Pakistan and Senegal.<sup>234</sup> Although there is no official collection of data disaggregated by religion, it is estimated that 350,000 Muslims, representing less than 5 per cent of the whole population, live in the region.<sup>235</sup>

Other religious minorities are established in Catalonia including Evangelical Christians and Jehovah's Witnesses. Autonomous authorities collect quantitative data on places of worship available to these communities, as well as to people of Catholic faith, the major religion in Catalonia.

- Number of Catholic places of worship: 6,729
- Number of Evangelical places of worship: 600
- Number of Muslim places of worship: 195

(As of 1 March 2010. Source: Generalitat de Catalunya)<sup>236</sup>

Most of the Muslim places of worship are small and modest prayer rooms, often located on the ground floor of former commercial premises rented out to Muslim associations. There are no purpose-built mosques or mosques including minarets in the region.

The establishment of Muslim places of worship or, in many cases, the simple attempt to establish them, has resulted in a considerable number of disputes between Muslim

234 Jordi Moreras, "Musulmans a Catalunya, Radiografia d'un Islam implantat", European Institute of the Mediterranean, 2010.

235 Estimation based on official statistics of migrants living in Catalonia disaggregated by country of origin, [http://www20.gencat.cat/docs/dasc/03Ambits%20tematics/05Immigracio/02Dadesimmigraciocatalunya/01perfildemografics/Documents/PERFIL\\_Paisos.pdf](http://www20.gencat.cat/docs/dasc/03Ambits%20tematics/05Immigracio/02Dadesimmigraciocatalunya/01perfildemografics/Documents/PERFIL_Paisos.pdf), accessed 21 January 2012.

236 <http://www20.gencat.cat/portal/site/governacio/menuitem.63e92cc14170819e8e629e30b0c0e1a0/?vgnextoid=42dad854448ad210VgnVCM2000009b0c1e0aRCD&vgnnextchannel=42dad854448ad210VgnVCM2000009b0c1e0aRCD&vgnnextfmt=default>, accessed 24 January 2012.

associations, neighbours and municipal authorities; at least 40 between 1990 and 2008.<sup>237</sup>

Some of the municipal and Catalan autonomous authorities told Amnesty International that the barriers Muslim organizations encountered in establishing places of worship resulted from scarce financial resources as well as lack of knowledge on technical requirements and administrative procedures. Civil society organizations and Muslim individuals told Amnesty International that local populations had held public protests opposing the opening of new places of worship, sometimes as soon as Muslim organizations made public their intention to seek a licence to do so.<sup>238</sup> Protests have also been organized against places of worship belonging to other religious minorities, such as the Evangelicals. However, as highlighted by some Muslim organizations and experts in meetings with Amnesty International,<sup>239</sup> those protests usually concerned specific complaints, for instance about noise, in relation to existing places of worship. Catalan authorities acknowledged that the opening of mosques often stirred controversy and they identified the general lack of knowledge about Islam as one of the main causes.<sup>240</sup>

Muslims are often found worshipping in outdoor spaces provisionally granted by local authorities for that purpose or in the surroundings of existing prayer rooms that have reached maximum capacity, which is often the case for Friday prayer in cities such as Barcelona, Lleida and Badalona.

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237 Jordi Moreras, "Una mesquita al barri, conflicte, espai públic i inserció urbana dels oratoris musulmans a Catalunya", 2009, p52. Twenty-one conflicts took place in Spain excluding Catalonia from 1990 to 2009, Avi Astor, "Mezquita No! The origins of Mosque Opposition in Spain", 2009, p5.

238 Some of these cases are reported for instance by SOS-Racisme, "Informe Annual 2011 sobre racisme a l'Estat espanyol", <http://www.sosracisme.org/reflexions/informeanual.php>, accessed 21 January 2012. Other organizations met by Amnesty International include the Associació Dones Musulmanes a Catalunya and the Consell Islàmic de Catalunya.

239 Meeting with Jordi Moreras, Professor, University Rovira I Virgili, 7 July 2011. Meeting with ISOR (Department of Research on sociology of religion), Autonomous University of Barcelona, 8 July 2011.

240 Meeting with the DG Religious Affairs, Generalitat de Catalunya, 6 July 2011. Meeting with DG Immigration, Generalitat de Catalunya, 13 January 2011.

## OVERCROWDING IN BARCELONA<sup>241</sup>

There are 17 small Muslim prayer rooms located in different neighbourhoods of Barcelona, and they are constantly overcrowded in several neighbourhoods such as Raval, St. Marti, and Sants. The Office for Religious Affairs of the municipality told Amnesty International that the number of Muslim prayer rooms was not adequate for the number of Muslims living in the city. It also acknowledged that popular opposition to the establishment or the enlargement of Muslim places of worship often stemmed from prejudices and stereotyping.

The prayer room in Sants is one of the oldest in Barcelona. On Fridays between 600 and 1,000 worshippers gather in this venue, which has a surface area of 70–5m<sup>2</sup>. As a consequence many worshippers pray outside, in the street adjacent to the mosque. The Islamic Cultural Centre of Sants, which is renting the space, told Amnesty International that talks had been held with the municipality with the aim of getting a bigger space, but to date, a solution had not been found.

A municipal plan to upgrade the area was developed a few years ago, which could mean the demolition of the prayer room well as of the adjacent buildings. The plan has not been implemented yet, allegedly because the municipality lacks financial resources to do so.

As a result of neighbourhood protests or lack of adequate space in central locations, municipalities have identified industrial estates as spaces where new places of worship could be established; however, these relocations efforts have been controversial. In Lleida for instance the Muslim organization that managed the Ibn Hazm mosque, located in the centre of the city (Carrer del Nord), was given the permission, following a public tender launched in 2007 by the municipality, to establish a new mosque in the industrial area of El Segre, although business associations in the area opposed it. However, the municipality told Amnesty International that the permission was finally withdrawn as that organization never started to build the new mosque. In 2010, the Ibn Hazm mosque was closed down for safety reasons as it was constantly overcrowded. At the moment there is only one Muslim prayer room functioning in the city, the Omar Mosque, which is too small to host the numbers who wish to worship there, especially on Friday. The municipality is allowing Muslims to hold Friday prayers in an outdoor car park as a temporary solution. In December 2011, the municipality, following another public tender, agreed to rent out a plot of land in the industrial area of El Segre to another Muslim organization, Al-Umma, which expressed interest in building a new mosque there.

### POLITICAL OPPOSITION TO NEW MOSQUES

As mentioned above, in the last two decades a considerable number of protests opposing the establishment of Muslim places of worship have taken place in Catalonia. In some cases these protests were supported by parties promoting an anti-Islam discourse, such as Platform for Catalonia (PxC). In a prominent case, which took place in 2002 in the city Premià de Mar, the decision of the city council to grant a permit to the Muslim organization At-Tauba to

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<sup>241</sup> Meeting with the Islamic Cultural Centre of Sants, 9 July 2011. Meeting with the Office for Religious Affairs of the city of Barcelona, 13 July 2011.

build a mosque on a plot of land it owned sparked neighbourhood protests and led to a confrontation involving the local people, At-Tauba and the city council. Josep Anglada, the current leader of PxC, was a high-profile supporter of the protests. The city council eventually convinced the Muslim organization not to build the mosque in exchange of the provisional use of an old school as a place of worship. To date, the provisional agreement is still in place and a permanent solution has not been reached.<sup>242</sup>

PxC won 2.3 per cent of the votes in the 2011 municipal elections in Catalonia and came second or third in other municipalities including Salt, El Vendrell and Vic.<sup>243</sup> A local councillor from the majority coalition in El Vendrell told Amnesty International that the presence of PxC as an opposition party in the city council had an important impact on local policies in the areas of migration and integration as it regularly questioned and criticized the ruling majority on these issues.

## MORATORIA STALL OPENING NEW PLACES OF WORSHIP

In July 2010, the urban management plan of the city of Salt was amended so that two sections of the industrial estate of Torre Mirona could be allocated to the establishment of new places of worship, among other uses. Platform for Catalonia (PxC) expressed opposition to the building of a mosque in the industrial estate and called for a demonstration to be organized on 27 August 2011. The Ministry of the Interior did not authorize the demonstration for security reasons. On 24 August 2011 the city council adopted a one-year moratorium on granting licences to open and use places of worship in the industrial estate of Torre Mirona. This licence is essential to establish a new place of worship (see domestic legislation). According to the official record of the city council meeting where the decision was taken, the moratorium was adopted with the aim of developing a new proposal to boost economic activities at the industrial estate.<sup>244</sup>

The city council of Lloret de Mar adopted a similar moratorium on 26 September 2011 in order to discuss potential reforms of municipal urban planning taking into account the provisions enshrined in the 2009 Catalan legislation, particularly those relating to the establishment of new places of worship (see under domestic legislation below).<sup>245</sup> The existing municipal urban management plan was adopted before the 2009 legislation entered into force.<sup>246</sup>

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242 Jordi Moreras, "A mosque in our neighbourhood! Conflicts over mosques in Spain", Premià de Mar: the mosque that was not built, Ed. Stefano Allievi, *Mosques in Europe: why a solution has become a problem*, 2010, p245.

243 PxC collected 17.85 per cent of votes in El Vendrell (third party), 13.96 per cent of votes in Salt (third party) and 19.94 per cent of votes in Vic (second party).

244 Acta de la sessió extraordinària del plé municipal. Session number 11/2011. 24 August 2011.

245 Acta del ple de la corporació. Number 11/11. 26 September 2011.

246 These moratoria have been adopted by the City councilss of Salt and Lloret de Mar on the basis of articles 73 and 74 of the Legislative Decree 1/2010 of 3 August through which the recast Law on Urbanism is adopted.

## DOMESTIC LEGISLATION

Spanish legislation on freedom of religion or belief enshrines the right to establish places of worship.<sup>247</sup> In 2009 the Catalan autonomous community adopted a new piece of legislation on places of worship.<sup>248</sup> No similar legislation exists in other Spanish regions or autonomous communities.<sup>249</sup> Catalan authorities told Amnesty International that such legislation was introduced to establish minimum standards for municipalities and associations that manage existing places of worship or seek to establish new ones.

Under this legislation, municipalities have to make provision in their urban management plans for plots of land to be allocated for several possible future uses as may be required by the community, including the establishment of new places of worship.<sup>250</sup> Authorities are expected to consult religious communities when developing such plans. The legislation also sets out technical rules applying to existing and new places of worship. These technical requirements, which must be met in order to obtain a licence to function as a place of worship, should be proportionate and in any case not stricter than those applying to public venues generally (Article 8 paragraphs 1 and 3).<sup>251</sup>

Some financial support mechanisms were put in place to enable associations running existing places of worship to comply with the new legislation. The Catalan government established such a funding programme in 2010.<sup>252</sup> The municipality of Barcelona established an Office

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247 Article 2.2 of Law 7/1980 of 5 July 1980.

248 Law 16/2009 of 22 July on places of worship, Article 161 of Autonomous Statute of Catalonia of 2006 established the competences of the autonomous administration in the area of freedom of religion.

249 The government of the autonomous community of the Basque Country has presented a draft bill on places of worship. The draft bill is expected to be presented to the Basque Parliament in May 2012.

Draft bill:

[http://www.mugak.eu/ef\\_etp\\_files/view/ANTEPROYECTO\\_Ley\\_Culto\\_%28texto\\_definitivo\\_31oct%29%5B1%5D.pdf?revision\\_id=27086&package\\_id=13216](http://www.mugak.eu/ef_etp_files/view/ANTEPROYECTO_Ley_Culto_%28texto_definitivo_31oct%29%5B1%5D.pdf?revision_id=27086&package_id=13216), accessed 23 January 2012. For more information on the legislative procedure, <http://www.jusap.ejgv.euskadi.net/r47->

[contgral/es/contenidos/plan\\_programa\\_proyecto/py\\_ley\\_59/es\\_py\\_ley/py\\_ley\\_59.html](http://www.jusap.ejgv.euskadi.net/r47-contgral/es/contenidos/plan_programa_proyecto/py_ley_59/es_py_ley/py_ley_59.html), accessed 23 January 2012.

250 Article 4 of Law 16/2009. Decree 94/2010 of 20 July clarifies in its Article 4 that municipalities excluding the establishment of new places of worship on community plots of land should produce written justification.

251 New places of worship require both the municipal licence of opening and use and the urbanistic licence. The licence of opening and use can be obtained only if a whole set of technical conditions are satisfied. These rules are spelled out in Decree 94/2010 of 20 July aimed at implementing the law (articles 8-17). The urbanistic licence aims at making new places of worship, or venues used as places of worship undergoing renovation work, complying with existing urbanistic legislation (Article 12 of Law 16/2009). Places of worship established before the legislation entered into force are not required to obtain the licence of opening and use but have to comply anyway with basic safety rules within five years (Third Transitional Provision of Decree 94/2010).

252 Ajuts a les despeses ocasionades per l'adaptació dels centres de culte a la normativa vigent, closed on 11

on Religious Affairs, which is providing technical assistance and information to religious groups running places of worship. The Office told Amnesty International that only a few requests for assistance had come from Muslim associations (most were from Evangelical groups). The Office acknowledged the need to step up contact with Muslim associations with the aim of informing them about the available support and assistance.

On 13 September 2011 the Catalan government adopted a bill amending the 2009 legislation.<sup>253</sup> At the time of writing (March 2012), the bill is before the Catalan Parliament. The bill (Article 2) provides that municipalities do not have to revise their urban management plans in order to foresee plots of land that may be used for religious purposes if there is no need to establish new places of worship.. The Bill also drops the requirement according to which municipalities have 10 years to adapt their urban management plans to the 2009 legislation. The government stated that the bill aimed at ensuring that the absolute autonomy of municipalities was respected; to this aim, it was not considered to be appropriate to impose on municipalities the duty to revise urban management plans if not necessary.

## CONCLUSIONS

The establishment of places of worship is a component of the right to freedom of religion or belief. States should ensure that this right is respected, protected and fulfilled. This means that states are not only required to refrain from imposing unlawful restrictions to this right, but also to prevent non-state actors from doing so. They must also ensure effective remedies for individuals whose right to freedom of religion or belief has been violated. In addition, states should take positive action to facilitate the enjoyment of this right. This requires, for example, that planning and consultation processes aimed at identifying the provision of community facilities should accommodate the needs of religious communities to establish and maintain adequate places of worship.

To meet the state's obligations in this regard, when public authorities are developing or revising local urban management plans, they should engage in a meaningful consultation with religious groups, like other local groups, to assess their needs. In drawing up such plans, public authorities should ensure that provision is made for some space which can be used, if required by the local population, or a section of that population, for the building of new spaces places of worship, in the same way as they make provision for space to establish other community facilities which are needed by the local community.

Catalan autonomous authorities should ensure that the 2009 legislation on places of worship, whether or not it is amended as proposed in the 2011 bill, is properly implemented by local authorities. In particular, the consultation foreseen by this legislation between authorities and

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September 2010,

<http://www20.gencat.cat/portal/site/OVT/menuitem.8d9f3f7e23c1cd519e629e30b0c0e1a0/?vgnextoid=7ff71225661e3210VgnVCM1000008d0c1e0aRCRD&vgnnextchannel=7ff71225661e3210VgnVCM1000008d0c1e0aRCRD&vgnnextfmt=detail&contentid=a5c7ae21b03ca210VgnVCM1000008d0c1e0aRCRD>, accessed 25 January 2012.

253[http://www20.gencat.cat/docs/governacio/Afers%20religiosos/Recursos/legislacio/modificacio\\_llei/Projecte\\_modificacio\\_llei\\_centres\\_culte.pdf](http://www20.gencat.cat/docs/governacio/Afers%20religiosos/Recursos/legislacio/modificacio_llei/Projecte_modificacio_llei_centres_culte.pdf)

religious associations should be meaningful, not driven by stereotypes and prejudices and genuinely take into accounts the needs expressed by religious groups in relation to the establishment of new places of worship. To this aim, representatives of local authorities should refrain from initiating or supporting campaigns aimed at banning the establishment of new Muslim places of worship. If disputes arise between religious associations and other sections of the population about the building of mosques, public authorities should aim to foster dialogue among different groups and, specifically, should take steps to raise awareness that the establishment of places of worship is a key component of the right to freedom of religion or belief, and they should aim to facilitate the achievement of long term solutions which will avoid future disputes.

As noted above, the government has stated the need to respect the autonomy of municipalities. However, in a context such as that described above, where the establishment of new places of worship has at times been an issue exploited by political parties at the local level, Amnesty International maintains that legislation and policies at the autonomous level should provide certain clear principles to be followed by each municipality so as to ensure that the autonomy of municipalities does not in any instance lead to the violations of human rights such as the right to freedom of religion or belief.

Catalan authorities should develop long-term initiatives aimed at counteracting stereotypes about Islam and Muslims, which underlie much of the opposition to the building of Muslim places of worship. These initiatives could be included in a general plan aimed at combating racism and all other forms of intolerance at the autonomous level. To date there is no such plan in Catalonia.

With regard to the technical regulations governing places of worship, international law permits states to impose restrictions on exercising the right to manifest religion or belief (which would include building or other technical regulations) if the restrictions are necessary and proportionate for the achievement of a legitimate purpose, such as public safety. In keeping with the obligation of states to ensure the enjoyment of human rights without discrimination, public authorities should apply these requirements, in a consistent and uniform manner, to places of worship of all religions. If a proposed Muslim place of worship or that of any other minority religion, meets all requirements, public authorities should not deny authorization on the sole ground that some people living locally may not like to have a mosque in their neighbourhood.

## 6. LEGISLATION PROHIBITING FULL-FACE VEILS

In recent years the possibility of prohibiting the wearing of full-face veils has been debated in several European countries including Austria, Belgium, Bosnia and Herzegovina, Denmark, France, Italy, the Netherlands, Spain, Switzerland and the United Kingdom. Amnesty International is concerned that these debates have contributed to strengthening stereotypes and prejudices against Muslims. As the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, pointed out in 2010, “The fact that the public discussion in a number of European countries has almost exclusively focused on what is perceived as Muslim dress has been unfortunate and created the impression of targeting one particular religion. Some of the arguments have been clearly Islamophobic and that has certainly not built bridges or encouraged dialogue.”<sup>254</sup>

Amnesty International believes that general prohibitions on the wearing of full-face veils violate the rights to freedom of religion or belief and of expression of those women who choose to wear it as an expression of their religious, cultural or personal identity or beliefs. Amnesty International therefore urges states not to adopt such legislation, and calls on them to adopt a range of measures to ensure that all women are able to exercise their rights free from coercion, harassment and discrimination.

States have an obligation under international law to respect the human rights of everyone without discrimination; to protect them against abuse of those rights by third parties, including by private actors within their families or communities; and to ensure they are able to exercise those rights in practice. States must not therefore impose generally applicable requirements that women dress or do not dress in a certain way, and they must protect women from the imposition of such requirements by third parties. This applies whether women are being compelled to wear a headscarf or veil, either by the state or by non-state actors, or being prohibited by law from wearing it, as set out in this chapter.

Coercion by the state or by private actors to ensure compliance with rules on traditional, cultural or religious forms of dress impact disproportionately women, violate their rights to freedom of expression, and are often imposed in ways that violate their right to be free from cruel, inhuman or degrading treatment (see Appendix for some examples from past Amnesty International reports and other documents).

Similarly, legislation and policies placing general prohibitions on certain forms of dress, such

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<sup>254</sup> Commissioner’s Viewpoint, “Rulings anywhere that women must wear the burqa should be condemned – but banning such dresses here would be wrong,” 8 March 2010.

as full-face veils, may violate the rights to freedom of expression and religion or belief of women who choose to wear those forms of dress. This chapter looks at some instances in European countries where such bans have been imposed or proposed and some of the consequent impacts on human rights. It also considers the stated aims of authorities in imposing them, whether those aims are legitimate under international human rights law, and whether the bans are a necessary and proportionate measure to achieve the stated aims.

## 6.1 BELGIUM

### THE CASE OF S. AND LOCAL REGULATIONS

S. has been wearing the niqab for 11 years. She told Amnesty International, “It is a personal choice based on spiritual reasons.” In 2009 she was stopped twice by the police while accompanying her child to school in Etterbeek (Brussels region). She expected police officers to check her identity but she was instead fined for covering her face. “I have never refused to be identified when I was asked to. On some occasions, the police had told me that I was not allowed to wear the niqab; once I was told that the niqab was forbidden at the federal level although I knew that this was not true. However, I was never fined before.” The police applied a municipal regulation prohibiting the concealment of the face. S. sought further information in the municipality where she lived and found that a similar regulation existed there but it was not implemented. S. filed a complaint after she received the second fine. On 26 January 2011, an Administrative Tribunal found that the regulation was against the right to freedom of religion or belief and thus cancelled the fine. The regulation remained in place. S. told Amnesty International the arguments being put forward to justify the regulation were hypocritical and the intention to promote gender equality by introducing such prohibition short sighted. “Neither the security nor the gender equality argument back this prohibition. No security problems have ever arisen in relation to women wearing the niqab in Belgium. Women’s rights should be further enhanced by legislation. For example, further steps are needed in order to fight against domestic violence. I do not see how authorities know that women wearing the niqab need to be protected from violence without even consulting them.” She said that new federal legislation would provide further legitimacy to put pressure on women wearing full-face veils and to justify intolerance against them. S. understands that some people might not feel comfortable seeing her wearing the full-face veil. However, she does not think that this justifies a prohibition. “I do not fully understand why a punk pierces her entire body. However, I would never support a legislation prohibiting her from doing so or any manifestation of intolerance against her,” she said.

Although official data are not available, fewer than 300 women are estimated to wear full-face veils in Belgium.<sup>255</sup> There is also a variety of approaches to the wearing of this veil; some women fully veil themselves only for a few years, some others do so only in specific circumstances.<sup>256</sup>

On 28 April 2011, the Chamber of Representatives (Lower Chamber of the Federal

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255 The Centre for Equal Opportunities and the Fight against Racism estimates the overall number at 200. The Centre d’action laïque mentioned 270 in a meeting organized with the French Commission presided over by Mr. A. Gerin and aimed at inquiry the practice of the wearing full-face veils in France. See p74 of the report drafted by the Commission: <http://www.assemblee-nationale.fr/13/pdf/rap-info/i2262.pdf>

256 Unpublished research undertaken by Prof. Eva Brems, University of Ghent. Meeting with Eva Brems, Leuven, 22 June 2011.

Parliament) voted in favour of a federal legislation prohibiting the concealing of the face. All the members of the Chamber voted in favour except for one who voted against and two who abstained. The legislation entered into force on 23 July 2011.<sup>257</sup> The Parliament had already voted in favour of this legislation in April 2010, although the legislative procedure was interrupted because of a political crisis leading to early federal elections. The first proposal to introduce such a prohibition dated back to 2004 and was put forward by the political party Vlaams Blok (today Vlaams Belang).

Prior to the adoption of the federal legislation, women wearing full-face veils had sometimes been fined on the basis of a municipal regulation forbidding concealment of the face. As shown in the case of S., some municipal authorities did not implement this regulation (such as the municipality where she lives) while others did (S. was fined on the basis of the Police General Regulation of Etterbeek, the municipality where her child went to school).<sup>258</sup>

The new federal legislation entails an amendment of the penal code and foresees a fine (euros 15-25 euros) and/or imprisonment (one to seven days) for anyone hiding the face totally or partially in such a way as to be unidentifiable. The legislation introduced a general prohibition applicable in all public spaces with the exception of situations where the face is concealed on the basis of regulations protecting health and safety or on the occasion of public festivities.

Although the legislation is neutrally formulated, the language and the arguments used in the parliamentary debate prior to its adoption indicate that it targets the wearing of full-face veils. On 18 April 2011, three bills were debated and the members of parliament who introduced them clearly made the link between their proposals and full-face veils in their speeches. For instance, MP Corinne De Permentier, whose draft was adopted by the plenary, declared that hiding the face created communication problems as well as challenges to public security. She said women in Kuwait and Afghanistan “fight everyday to get rid of the burden of the burqa and a message should be sent to them.”<sup>259</sup> The language used in the parliamentary debate was reflected in the language used in the public debate and by the media, which commonly referred to the proposed legislation as the “burka ban”.

Supporters of the ban claim that to conceal the face in public could hinder the functions of law enforcement officers to tackle crime. However, domestic legislation already allows law enforcement officers to proceed with identity checks when they suspect a person has infringed or is about to infringe the law or has violated or is about to violate public order. In cases where an individual refuses to comply, he or she may be held in custody for up to 12

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257 Law aimed at prohibiting the wearing of any dress hiding completely or predominantly the face (loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage), <http://staatsbladclip.zita.be/moniteur/lois/2011/07/13/loi-2011000424.html>, accessed 25 January 2012.

258 Article 12, <http://www.etterbeek.irisnet.be/Brochures/reglement-general-de-police>, accessed 31 January 2012.

259 Report of Ms. Leen Dierick on behalf of the Commission of Interior, General Affairs and Public Service, 18 April 2011, pp4 and 5, <http://www.dekamer.be/FLWB/pdf/53/0219/53K0219004.pdf>, accessed 25 January 2012.

hours for the purpose of ascertaining his or her identity.<sup>260</sup> Therefore, the legislation banning concealment of the face does not seem to be necessary for ensuring security.

The Parliament did not consult with civil society or seek the advice of the Council of State ahead of the vote. In July 2011 two women wearing full-face veils launched a procedure before the Constitutional Court aimed at repealing the legislation. The plaintiffs also asked for a temporary suspension of the legislation. The Constitutional Court denied the temporary suspension on the basis that the legislation did not entail a serious prejudice to plaintiffs that was difficult to redress.<sup>261</sup> At the time of writing (February 2012), the judgment on the constitutionality of the legislation was still pending.

## 6.2 FRANCE

### LEGISLATION INCREASES HOSTILITY

M. is 20, was born in France and lives in the Parisian region. She has been wearing the niqab for one year. M. told Amnesty International her decision to wear the full-face veil was a personal choice in her spiritual journey, and not necessarily a religious duty. She said the police had stopped her six times since April 2011 when the general prohibition on concealing the face entered into force. The first time she was stopped at the train station. After her identity check she was taken to the police station and questioned about why she wore the niqab and on whether she was experiencing pressure from her husband. Law enforcement agents made unpleasant and rude comments at her such as, "It is easy to hide behind Islam" and, "It is better if you hide your face". After a few days she was stopped again and this time she asked for a female police officer to do her identity check. According to her, the police officer refused, twisted her arm and pushed her into the police car. She told Amnesty International that she was kept 30 minutes at the police station. When released she went to the hospital where the doctors certified a bruise on her arm. She allegedly tried to file a complaint against the police officer but the municipal police in the town where she lives repeatedly refused to accept her complaint. The third time she was questioned by the police in front of a Court where the case of two other women wearing the niqab was being heard. The other times she was not taken to the police station. So far the police have not brought any charges against her and she has not been summoned by the Court.

According to M., people are even more hostile towards women wearing full-face veils since the law was introduced. She told Amnesty International that she was often verbally assaulted when she was alone in the street and people had sometimes spat at her. "This law segregates women wearing full-face veils. I try to be accompanied by a man when possible".

According to a study undertaken by the Ministry of the Interior, 1,900 women in France wear the niqab and none wear the burka.<sup>262</sup> One quarter of the women who wear the niqab are converts to Islam and two-thirds of them hold French citizenship. Research undertaken by the Open Society Institute found that the wearing of full-face veils is not a homogenous practice; some women wear it part-time, others only for a limited period of time. The research

<sup>260</sup> Article 34 of the Law of 5 August 1992 on the Police Function.

<sup>261</sup> Judgment 148/2011 of 5 October 2011, [http://www.euboco.eu/fr/page6/files/cour\\_constit\\_arret\\_%20niqab\\_05102011.pdf](http://www.euboco.eu/fr/page6/files/cour_constit_arret_%20niqab_05102011.pdf), accessed 25 January 2011.

<sup>262</sup> National Assembly, "Report on the wearing of full-face veils on the national territory", January 2010, p28.

also found that, contrary to common belief, women who wear full-face veils do not necessarily segregate themselves or feel rejection against French society.<sup>263</sup>

In June 2009, the National Assembly (Lower Chamber of the French Parliament) set up a Commission to conduct research on the wearing of full-face veils in France. The Commission found that the practice was marginal; most of the Muslim individuals and representatives of civil society organizations interviewed did not consider it as a religious duty. Although the Commission acknowledged that some women freely chose to wear full-face veils, it considered that in some cases this might result from community pressures on women to comply with perceived religious norms and duties.<sup>264</sup>

The French legislation entered into force on 11 April 2011 (Law 2010-192)<sup>265</sup> and prohibits any form of dress aimed at concealing the face in public. The material scope of the ban is very wide as it applies to all public spaces; full-face veils can only be worn at home, in private cars or in places of worship.<sup>266</sup> Some other exceptions to the general ban include situations where the face is covered on the basis of existing safety and health regulations or for public festivities. Whoever contravenes the legislation can be punished with a fine and/or a citizenship training; courts are responsible for deciding on the punishment, on a case by case basis.<sup>267</sup>

In 2009 new legislation was adopted prohibiting concealment of the face in public demonstrations so as to ensure the identification and prosecution of hooded rioters.<sup>268</sup> As in

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263 Open Society Foundation, "Unveiling the truth: why 32 Muslim women decided to wear full-face veils in France: the practice of wearing full-face veils", 2011, p12-13, [http://www.soros.org/initiatives/home/articles\\_publications/publications/unveiling-the-truth-20110411/a-unveiling-the-truth-20100510.pdf](http://www.soros.org/initiatives/home/articles_publications/publications/unveiling-the-truth-20110411/a-unveiling-the-truth-20100510.pdf), accessed 25 January 2012.

264 "Report on the wearing of full-face veils on the national territory: the submission to a context characterized by constraints or violence", p50.

265 Law 2010-1192 of 11 October 2010 prohibiting the covering of the face in the public space, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022911670&categorieLien=id>, accessed 26 January 2011.

266 Circular of 2 March 2011 relating to the implementation of law number 2010-1192 of 11 October prohibiting the covering of the face in the public space: the definition of public space, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023654701>, accessed 26 January 2012; The Constitutional Council issued its opinion on the bill ahead of the adoption finding that it was consistent with the Constitution although the ban should not be enforced in places of worship open to the public, Decision 2010-613 of 7 October 2010.

267 See Circular of 2 March 2011 relating to the implementation of law 2010-1192.

268 Decree 2009-724 of 19 June 2009 introduces article R645-14 in the Penal Code.

Belgium, domestic legislation relating to identity checks undertaken by law enforcement agents was already in place,<sup>269</sup> and there is no evidence that these laws are not sufficient to tackle potential threats to public security stemming from the practice of concealing the face. Thus the 2011 legislation appears to be unnecessary for the purpose of ensuring security.

Law 2010-192 introduces in the Penal Code a provision aimed at punishing persons found to be coercing women to cover their face.<sup>270</sup> In July 2010, France adopted new legislation aimed at combating violence against women including psychological violence, harassment and forced marriages.<sup>271</sup> The achievement of women's equality and the fight against all forms of gender-based discrimination would be better served by improving implementation of this existing legislation instead of supporting general bans on specific forms of dress, which is likely to further stigmatize women from ethnic and religious minorities.

On 3 January 2012, the Minister of the Interior, Claude Guéant, in an interview with the newspaper *Le Monde*, said that 237 infringements had been reported and administrative courts had fined six people since the law entered into force.<sup>272</sup>

### 6.3 THE NETHERLANDS

#### GENERAL BAN SEEN AS ISOLATING VEILED WOMEN

S. is 27 and was born in the Netherlands although her family is originally from Pakistan. She has been wearing the niqab for nine years. She thinks that rules restricting the wearing of full-face veils are justified in specific areas of life such as education. She told Amnesty International that, in her view, a teacher should not cover her face given the importance of facial communication when performing her professional duties. That is why it makes sense to her that schools are allowed to restrict the wearing of full-face veils for teachers. However, she thinks a general ban would only result in the isolation of veiled women, who already experience intolerance in public places. S. told Amnesty International, "It is already almost impossible for a fully veiled woman to find a job; a general ban will result in their definitive exclusion from the labour market."

S. had considered applying for a part-time job in the call centre where her sister, who does not wear the niqab, was already employed. However, she refrained from applying when she found out that internal regulations did not allow employees to cover their face. "I still do not understand the rationale behind this regulation, as no justification pertaining to visual communication could be adduced in this case. A general ban on face covering will result in such a rule been applied everywhere, no matter if the requirement is needed or not for that specific position," she pointed out.

S. told Amnesty International that she was often called names in the street and that she did not feel

<sup>269</sup> Article 78.2 of the Code of Penal Procedure.

<sup>270</sup> Article 225-4-10 of the Penal Code.

<sup>271</sup> Law number 2010-769 of 9 July 2010 relating to violence specifically against women, domestic violence and its impact on children, [http://www.assemblee-nationale.fr/13/dossiers/repression\\_violences\\_femmes.asp](http://www.assemblee-nationale.fr/13/dossiers/repression_violences_femmes.asp) accessed 26 January 2012.

<sup>272</sup> "L'Islam ne doit pas être un sujet d'empoignades en 2012", *Le Monde*, 3 January 2011.

comfortable when walking downtown alone. She sometimes asks her father or a member of her family to accompany her. After the government made public its plans to prohibit face coverings, someone shouted at her: "380 euro fine!" She has been told on other occasions to return to her country of origin: "I do not fully understand what it means given the fact that I am Dutch and I was born in the Netherlands." Once while sitting in a doctor's waiting room she overheard two women commenting on her veil. When she indicated that she understood Dutch, they responded aggressively: "You have to uncover your face or go back to your country."

Several initiatives aimed at restricting the wearing of full-face veils have been debated in the past. In 2005 the majority of the Dutch Parliament voted in favour of a resolution aimed at prohibiting the burqa in public spaces, which was introduced by M. Geert Wilders, then an independent and now leader of the Party for Freedom (PVV).<sup>273</sup> In August 2006, an advisory commission of experts set up by the Ministry of Immigration Affairs and Integration concluded that a general ban would be highly problematic.<sup>274</sup> In 2008, the government intended to introduce legislation prohibiting the wearing of full-face veils in education but in the end it did not put forward a bill.<sup>275</sup>

The Parliamentary support agreement between the current governmental coalition (People's Party for Freedom and Democracy and Christian Democratic Appeal) and the PVV, signed in September 2010, included the commitment to "ban the burqa and other clothes covering the face in public".<sup>276</sup>

On 16 September 2011, the Ministry of the Interior and Kingdom Relations announced that a bill to prohibit face coverings had been approved by the weekly meeting of Ministers. On 6 February 2012, the bill was made public and sent to the Parliament<sup>277</sup> after the Council of State had examined it and questioned the necessity of introducing such legislation.<sup>278</sup> At the time of writing (February 2012), the debate on the bill in the House of Representatives had

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273 Resultion Wilders of 10 October 2005, Het openbaar gebruik van de boerka in Nederland te verbieden, Kamerstukken II 2005/2006, 29 754, nr. 41.

274 Overwegingen bij een boerka verbod: zienswijze van de deskundigen inzake een verbod op, gezichtsbedekkende kleding, The Hague, 3 November 2006.

275 Letter from the Ministers of Interior, Justice, Housing Communities and Integration and of Education on February 8, 2008, Parliamentary Papers II 2007/08 31 200 VII, No. 48, p7.

276 Parliamentary support agreement VVD-PVV-CDA of 30 September 2010, Chapter on Integration, p11.

277 Wetsvoorstel algemeen verbod op gelaatsbedekkende kleding, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/06/wetsvoorstel-algemeen-verbod-op-gelaatsbedekkende-kleding.html>, accessed 10 February 2012.

278 Advise W04.11.0379/I of 28 November 2011, [http://www.raadvanstate.nl/adviezen/zoeken\\_in\\_adviezen/zoekresultaat/?advicepub\\_id=10095](http://www.raadvanstate.nl/adviezen/zoeken_in_adviezen/zoekresultaat/?advicepub_id=10095), accessed 10 February 2012.

not yet been scheduled.

The bill has a very wide material scope and is aimed at enforcing a general ban on face coverings in all public places, for instance public transport and all buildings open to the public. A few exceptions are foreseen, including when the face is covered for health and safety reasons, or to satisfy specific requirements linked to a particular occupation or sport, in events such as Sinterklaas (Santa Claus) or Carnival and in places of worship.

The government argued that the prohibition would guarantee the social order in the Netherlands and that concealing the face constituted an obstacle to open communication and social participation. Although existing domestic legislation on identity checks requires everyone aged 14 and above to show an identity document and make himself or herself identifiable upon request of a law enforcement official,<sup>279</sup> the government insists that concealing the face may pose a threat to security.

Official figures on the number of women wearing full-face veils in the Netherlands are not available, but according to academic research conducted in 2009, no more than 400 women in the country wore such forms of dress.<sup>280</sup> Under human rights law, it could be a legitimate aim to restrict the rights to freedom of expression and religion in order to foster social participation and promote equality. In this case, however, concerns arise over the government's apparent lack of attention to the possible negative effects of such a ban, which could include further isolation of women wearing full-face veils (as in the case of S. highlighted above), and which would put into question the proportionality of such a general restriction.

## 6.4 SPAIN

According to the information Amnesty International has collected,<sup>281</sup> 15 municipalities in Catalonia and three in other regions (one each in Mallorca, Madrid and Malaga) have initiated a process aimed at prohibiting the wearing of full-face veils in municipal buildings and venues such as indoor markets, swimming pools and libraries. At the time of writing (February 2012) the process has been concluded at least in five Catalan municipalities (Lleida, Vendrell, Mollet del Vallès, Cervera, Castelló d'Empúries) and in Galapagar (Madrid).

The Catalan Parliament has twice rejected attempts to introduce a ban on full-face veils in public spaces.<sup>282</sup> The view of the Directorate General for Immigration of the Catalan

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279 Law on the identification requirement, (Wet op de identificatieplicht), Article 2.

280 Annelies Moors, "The Dutch and the veil: the politics of discomfort", *Social Anthropology*, 2009, pp393-408.

281 Information updated on 26 January 2012.

282 Two motions presented by the Popular Party were rejected on 1 July 2010 by the Plenary and on 5 April 2011 by the Commission on Welfare and Immigration of the Catalan Parliament. On the contrary, two motions were adopted by the Spanish Senate on 23 June (662/000121) and 7 July 2010 (662/000126) asking the Spanish government to take legal steps aimed at regulating the face coverings.

administration (Generalitat de Catalunya) is that a ban would not entail a violation of the right to freedom of religion or belief as it could be justified on grounds of public security and women's equality. In August 2011, the Catalan government announced that the wearing of full-face veils would be regulated within the Catalan Law on Citizens' Rights and Duties, currently being drafted by the Catalan Ministry of the Interior.

Spanish legislation already sets forth clear conditions according to which law enforcement agents can proceed with identity checks in public spaces with the aim of protecting security.<sup>283</sup> Amnesty International is not aware of any case where a fully veiled woman has refused to be identified or represented a threat to public security.

In the view of some municipal and autonomous authorities Amnesty International spoke to, the prohibition on wearing full-face veils is necessary for women's equality, which also implies the need to combat all forms of violence against women. However, Spain had already adopted domestic legislation aimed at combating domestic violence. Law 1/2004 on means of comprehensive protection against gender-based violence entered into force in 2005 and enshrined a definition of violence including physical and psychological acts as well as any form of coercion.<sup>284</sup> The achievement of women's equality and the fight against all forms of gender-based discrimination would be better served by improving implementation of this existing legislation instead of supporting general bans on specific forms of dress, which is likely to further stigmatize women from ethnic and religious minorities.<sup>285</sup>

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283 Article 20 of the Law 1/1992 of 21 February on Protection of Civic Security.

284 Organic Law 1/2004 of 28 December on measures of comprehensive protection against gender-based violence, article 1, [http://noticias.juridicas.com/base\\_datos/Admin/lo1-2004.tp.html#a1](http://noticias.juridicas.com/base_datos/Admin/lo1-2004.tp.html#a1), accessed 26 January 2012; Legislation aimed at combating violence against women exists as well as the Catalan level. Law 5/2008 of 24 April on the right of women to eradicate sexist violence includes a broad definition of violence including psychological violence and coercion (Article 3), [http://www20.gencat.cat/docs/icdones/temes/docs/llei\\_violencia\\_angles.pdf](http://www20.gencat.cat/docs/icdones/temes/docs/llei_violencia_angles.pdf), accessed 26 January 2012.

285 Amnistía Internacional, *Obstinada Realidad, Derechos Pendientes*. Tres años de la ley de medidas de protección integral contra la violencia de género, <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/OBSTINADA%20REALIDAD,%20DERECHOS%20PENDIENTES%20TRES%20A%C3%91OS%20DE%20LA%20LEY%20DE%20MEDIDAS%20DE%20PROTECCI%C3%93N%20INTEGRAL%20CONTRA%20LA%20VIOLENCIA%20DE%20G%C3%89NERO?CMD=VEROBJ&MLKOB=26649310606>, accessed 26 January 2012.

## EXAMPLES OF LOCAL LEVEL PROHIBITIONS

### Lleida

On 8 October 2010, the Lleida municipality approved an amendment to the Municipal Regulation on Civic Responsibility and Living Together prohibiting the wearing of all forms of dress that could hamper identification when accessing public buildings and facilities.<sup>286</sup> Instructions clarifying the implementation of the prohibition, and approved the same day, include a list of spaces where the prohibition could be applied.<sup>287</sup> The amendment entered into force on 9 December 2010. Contravening the prohibition could lead to a fine of up to 600 euros.<sup>288</sup>

A municipal councillor told Amnesty International that the practice of wearing full-face veils in the city was linked with the increasing presence of Muslim conservative groups; banning the full-face veils could, in the municipality's views, contribute to counteracting religious fundamentalism. However, the municipality acknowledged the lack of data on the number of women wearing full-face veils and that no specific consultation had been undertaken with Muslim women wearing this form of dress.

The Watani Association for Freedom and Justice, a local Muslim group, challenged the ban before the Supreme Tribunal of Justice of Catalonia. In January 2011, the Tribunal temporarily suspended the prohibition as an interim measure; it acknowledged that the suspension of the ban would not be a challenge to security or public order.<sup>289</sup> On 7 June 2011 the Tribunal found that the municipality was competent to regulate the issue and that the restriction was justified. The judgment stated: "In our Western culture covering the face in daily activities disturbs peace because of the hiding of a significant identification element which is the face."<sup>290</sup> At the time of writing (February 2012) the judgment was on appeal before the Superior Tribunal which admitted the case in October 2011.

### El Vendrell

On 14 March 2011, the El Vendrell municipality approved a new Regulation on Civic Responsibility and Living Together, which included a prohibition on accessing municipal buildings wearing covering that fully or partially conceals the face making identification difficult.<sup>291</sup> The party Platform for Catalonia (represented by five councillors in the city council) was in favour of a specific prohibition on the burqa and niqab applying in

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286 Article 26.2, 27.0 and 102.25 of the Regulation, [https://www.paeria.es/arxiu/ordenances/Document\\_476.pdf](https://www.paeria.es/arxiu/ordenances/Document_476.pdf), accessed 26 January 2012.

287 Instruction number 1, [https://www.paeria.es/arxiu/ordenances/Document\\_477.pdf](https://www.paeria.es/arxiu/ordenances/Document_477.pdf), accessed 26 January 2012.

288 Articles 102.25 and 106.A of the Regulation.

289 Supreme Tribunal of Justice of Catalonia, Appeal of jurisdictional protection number 394/2010 of 12 January.

290 Judgment 489 of 7 June 2011 of the Supreme Tribunal of Justice of Catalonia, Appeal 394/2010, <http://www.itinerauniversitas.org/pdf/ID-jul-ago11-STSJ-de-Catalunya-de-7-de-junio-de-2011-Velo-islamico-en-espacios-publicos.pdf>, accessed 26 January 2012.

291 Article 56.4 of the Regulation.

all public spaces and thus voted against. All the other parties voted in favour.

A municipal councillor told Amnesty International that Muslims represented one of the groups considered to be furthest away from Western cultural values. He pointed out, however, that this could not justify the socio-economic exclusion experienced by them. No data are available on the number and the situation of Muslim women wearing full-face veils in the city.

## 6.5 SWITZERLAND

In 2009, the federal government ruled out placing regulations on the wearing of full-face veils in Switzerland. At that time the practice was considered to be very marginal and did not raise any specific concern.<sup>292</sup>

In March 2011, the Council of States rejected an initiative put forward by the Canton of Argovia, which called on the Federal Assembly to develop a legal basis to ban from public spaces clothing covering the face completely or partially. The Council of States deemed such legislation unnecessary, and highlighted the potential of such prohibition to have a negative impact on the Swiss tourist industry.<sup>293</sup>

On 29 September 2011, the National Council (the other Chamber of the Swiss Parliament) voted in favour of a proposal to prohibit the covering of the face on public transport and in public buildings. The initiative is currently being examined by the Council of States.<sup>294</sup>

According to a public opinion survey undertaken by the newspaper *SontagsBlick* in 2010, the majority of Swiss citizens are in favour of banning full-face veils.<sup>295</sup>

A popular initiative was launched in the Canton Ticino with the aim of introducing a new article in the cantonal Constitution prohibiting the covering of the face in all public spaces except places of worship.<sup>296</sup> On 31 May 2011 cantonal authorities acknowledged that

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292 Answer of the Federal Council to question 09.4308 Wearing the veil and integration

[http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch\\_id=20094308](http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20094308), accessed 26 January 2012.

293 [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch\\_id=20100333](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20100333), accessed 26 January 2012.

294 The initiative would introduce, if adopted, a new article into the federal law establishing measures aimed at maintaining internal security of 21 March 1997, Motion 10.3173 "Drop the Masks" presented by MP Oskar Freysinger, SVP, [http://www.parlament.ch/e/suche/pages/geschaefte.aspx?gesch\\_id=20103173](http://www.parlament.ch/e/suche/pages/geschaefte.aspx?gesch_id=20103173), accessed 26 January 2012.

295 Survey undertaken by the newspaper *SontagsBlick* in May 2010. 57.6 per cent of respondents were in favour of the ban, <http://www.news24.com/World/News/Swiss-want-to-ban-burqa-20100523>

296 Popular Initiative "Prohibit the concealing of the face in public places and spaces open to the public", [http://www4.ti.ch/fileadmin/GENERALE/DIRITTIPOLITICI/Iniziativa\\_e\\_referendum/Documenti/Iniziativa\\_vietare\\_dissimulazione\\_viso\\_nei\\_luoghi\\_pubblici\\_Formulario.pdf](http://www4.ti.ch/fileadmin/GENERALE/DIRITTIPOLITICI/Iniziativa_e_referendum/Documenti/Iniziativa_vietare_dissimulazione_viso_nei_luoghi_pubblici_Formulario.pdf), accessed 31 January 2012.

supporters of the initiative had collected 11,767 signatures.<sup>297</sup> At the times of writing (February 2012) the cantonal Parliament is currently examining the initiative. The cantonal Delegate for Integration of Foreigners told Amnesty International there were no available data or studies on women wearing full-face veils in Ticino.

## 6.6 OTHER COUNTRIES

### ITALY

On 19 October 2011, the Commission for Constitutional Affairs of the Chamber of Deputies has given its support to a draft law aimed at prohibiting the wearing of full-face veils such as the burka and the niqab. The draft law enlarges the scope of legislation dating back to 1975<sup>298</sup> and foresees a fine of 1,000 to 2,000 euros for women wearing full-face veils in public spaces or venues. Anyone who forces a person to cover her/his face could be fined up to 30,000 euros and sentenced to as much as 12 months' imprisonment.<sup>299</sup> At the time of writing (February 2012), the draft law was still pending in the Chamber of Deputies.

In the view of MP Souad Sbai, who the Commission nominated as Rapporteur on this bill, the legislation could "protect women without rights who are forced into segregation."

Hamza Roberto Piccardo, the spokesman for the Union of Islamic Communities, noted that the legislation was not necessary as there were fewer than 100 women wearing the niqab in Italy and it would contribute to further stereotyping of Muslims.

## 6.7 CONCLUSIONS

Women should be able to wear whatever they prefer. If they wish to express their religious, cultural or traditional background by freely choosing to wear specific forms of dress they should be able to do so. States can deny them this possibility, and thus restrict their rights to

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297 According to the Cantonal Constitution 10,000 signatures are necessary for popular initiative aimed at partially amending the Constitution (Article 85). The Parliament examines the admissibility of the initiative assessing its consistency with higher legal norms (diritto superiore-article 86). [http://www3.ti.ch/CAN/fu/2011/FU\\_044.pdf#page=2](http://www3.ti.ch/CAN/fu/2011/FU_044.pdf#page=2), accessed 31 January 2012.

298 Law 22 maggio 1975, n. 152, Article 5: "È vietato l'uso di caschi protettivi, o di qualunque altro mezzo atto a rendere difficoltoso il riconoscimento della persona, in luogo pubblico o aperto al pubblico, senza giustificato motivo. È in ogni caso vietato l'uso predetto in occasione di manifestazioni che si svolgano in luogo pubblico o aperto al pubblico, tranne quelle di carattere sportivo che tale uso comportino. Il contravventore e' punito con l'arresto da uno a due anni e con l'ammenda da 1.000 a 2.000 euro (1). Per la contravvenzione di cui al presente articolo è facoltativo l'arresto in flagranza (2) (3)."

299 The bill introduces a indeed a new article in the Penal Code, Article 612ter, aimed at punishing any constraint to hide the face,  
[http://nuovo.camera.it/Camera/view/doc\\_viewer\\_full?url=http%3A/www.camera.it/\\_dati/leg16/lavori/schedela/apriTelecomando\\_wai.asp%3Fcodice%3D16PDL0053740&back\\_to=http%3A/nuovo.camera.it/126%3FPDL%3D627%26leg%3D16%26tab%3D2](http://nuovo.camera.it/Camera/view/doc_viewer_full?url=http%3A/www.camera.it/_dati/leg16/lavori/schedela/apriTelecomando_wai.asp%3Fcodice%3D16PDL0053740&back_to=http%3A/nuovo.camera.it/126%3FPDL%3D627%26leg%3D16%26tab%3D2), accessed 5 March 2012.

freedom of expression and to religion or belief, only in order to achieve a legitimate aim and provided that the measures put in place are proportionate and necessary to the aim sought. Assessing the legitimacy of any restriction always requires careful consideration on a case-by-case basis, with reference to demonstrable facts and not presumptions, speculation or stereotyping.

It is not permissible for a state to impose restrictions on wearing the full-face veil on the grounds that a section of the population finds it objectionable. Some clearly defined restrictions on the wearing of full-face veils will be legitimate, for instance, when required to show one's face in certain demonstrably high-risk locations, or for necessary identity checks. But in the absence of any demonstrable link between threats to public safety and the wearing of full-face veils, public safety cannot be invoked to justify the restriction on the right to freedom of expression and religion or belief that a ban on the wearing of full-face veils would entail. As explained earlier, in countries such as Belgium, France, the Netherlands and Spain, domestic legislation already provides law enforcement agents with the power to undertake identity checks when there is a legitimate ground to believe that an individual is a threat to public safety.

In so far as social or religious norms that prescribe dress codes are a reflection of discrimination against women, the state has an obligation to take steps to prevent such discrimination. But these steps should focus on addressing the discrimination itself and its underlying causes, not simply its symptoms; and they should not impose restrictions on women who are freely exercising their right to freedom of expression.

It has been argued that a general ban on full-face veils is necessary to safeguard gender equality and protect women from being pressured or coerced into wearing it. States do have an obligation to uphold gender equality and ensure that all individuals are able to freely exercise their right to freedom of expression and other human rights such as the right to work, education and freedom of movement. They must, therefore, take measures to protect women from being pressurized or compelled to wear full-face veils against their will. Where violence or the threat of violence is employed to compel women to dress in a certain way, the appropriate response for the state is to intervene in each individual case through the family or criminal law system. States have to do so by adopting comprehensive legislation aimed at tackling all forms of violence against women, promoting awareness-raising initiatives in order to better inform women of their rights and putting in place mechanisms to seek redress. However, public authorities Amnesty International spoke to were unable to provide data on either the number of women wearing full-face veils in their country, region or city, or to identify to which extent full-face veils were worn as a result of coercion.

Women from ethnic and religious minorities experience different forms of inequalities in Europe such as lower levels of employment and salaries, and poorer standards of education. Such inequalities should be tackled comprehensively. Amnesty International is concerned that states have focused so much in recent years to the wearing of full-face veils as if this practice were the most widespread and compelling form of inequality women have to face.

Amnesty International is further concerned that the debates on full-face veils, often very well covered by mainstream media, have contributed to the rising hostility against women wearing this form of dress, as explained by some women interviewed in the framework of this

research. Amnesty International is also concerned that this hostile climate combined with general bans could result in the isolation of women who may be fined by law enforcement officers and/or become the target of verbal attacks from private actors merely because they wish to go to a shop or walk in the street with their faces covered.

# 7. CONCLUSIONS AND RECOMMENDATIONS

This report highlighted some examples of discrimination experienced by Muslims in Europe in the areas of employment and education. It also referred to situations where the rights of Muslims to freedom of religion or belief and to freedom of expression are restricted in a way that cannot be justified under international human rights law.

Amnesty International is concerned that anti-discrimination legislation is not effectively implemented in several European states and that European institutions are failing to tackle this problem. Muslims are discriminated against on the ground of religion or belief in employment even in countries where such discrimination is prohibited under domestic legislation. As explained throughout this report, differences of treatment on the ground of religion or belief are implemented by employers and based on justifications that are not in line with international anti-discrimination standards. Regrettably, public authorities have not put in place effective mechanisms to prevent private employers to discriminate on the ground of religion or belief. At times states have introduced general bans on religious and cultural symbols and dress in public employment in order to achieve aims, such as enforcing neutrality and secularism, which are not per se legitimate under international law.

Restrictions on the wearing of religious and cultural symbols and dress have sometimes been introduced in education and lead to violations of the rights of Muslim pupils to freedom of religion or belief and freedom of expression. On some occasions states have introduced general bans in public education without proving that they were necessary and proportionate for the achievement of a legitimate aim. In other contexts, states have failed to ensure that school authorities introduce restriction at the individual school level in a way that is consistent with anti-discrimination standards or that faith-based schools implement differences of treatment on the ground of religion or belief only when they are necessary and proportionate for the preservation of their religious or philosophical ethos.

Restrictions on the establishment of places of worship have limited the exercise of the right to freedom of religion or belief in countries and regions such as Switzerland and Catalonia (Spain). Last but not least, some European governments have introduced legislation resulting in general bans on the wearing of full-face veils, often not on the basis of reliable data and without consulting women affected by such prohibition.

Amnesty International recommends:

## **To all governments**

- Establish a national equality body to monitor the implementation of anti-discrimination legislation, collect individual complaints and provide support to victims including advice on informal settlement mechanisms and legal support in cases brought to court. It should be competent to make recommendations to public authorities or private actors on discrimination-related issues and consult with policy makers in designing policies to tackle

discrimination on the ground of religion or belief in employment, education as well as in other areas, and it should be adequately resourced to meet its obligations.

- Monitor discrimination on the ground of religion or belief and its impacts on Muslims as well as on other religious groups, and the multiple discrimination affecting Muslim women and girls in particular. Measures should include collecting data disaggregated by ethnicity, religion and gender, and undertaking public opinion surveys, studies and research on perceptions and experience of discrimination to guide states when developing policies and legislation aimed at tackling discrimination.
- Ensure that domestic legislation provides that the burden of the proof for discrimination claims in administrative and civil courts is shared. This means that if a claimant has established facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no discrimination.
- Ratify Protocol 12 to the European Convention on Human Rights, enshrining a prohibition of discrimination on the ground of religion or belief, among others, in respect of all legal rights, if they have not already done so.

Amnesty International also makes the following general recommendations to particular governments:

#### **To the government of Switzerland**

- Follow-up recommendations from international human rights treaty bodies by introducing domestic anti-discrimination legislation forbidding all forms of discrimination in employment as well in other areas, providing for shared burden of proof and establishing an equality body to monitor domestic anti-discrimination legislation.

#### **To the government of the Netherlands**

- Undertake initiatives aimed at monitoring and collecting data on all forms of discrimination including on grounds of religion or belief, ethnicity and gender as well as the intersections among these grounds. To this aim, increase support to projects promoted in the past (such as Monitor Racial Discrimination) and pursue initiatives to raise awareness of ethnic and religious minorities on available mechanisms to seek redress for discrimination.

#### **To the government of Spain**

- Introduce comprehensive anti-discrimination legislation aimed at combating all forms of discrimination in all the areas not covered by current legislation. The Spanish equality body should be adequately resourced to collect individual complaints on all forms of discrimination and to assist victims. Increase collection of information on discrimination against Muslims and ensure Muslims are better informed on available redress mechanisms.

#### **To the government of France**

- Bridge the gaps in domestic anti-discrimination legislation to provide protection against all forms of discrimination in all areas including discrimination on the ground of religion or belief in the area of education.

In addition to the above general recommendations, Amnesty International makes the following recommendations on specific areas covered by this report:

## 7.1 COMBATING DISCRIMINATION IN EMPLOYMENT

The European Union must ensure that European anti-discrimination legislation is implemented, interpreted and developed consistent with international human rights law. Amnesty International recommends:

### **To the European Commission**

- Ensure that Member States transpose and implement Directive 2000/78/EC (Framework Employment Directive) consistently with international human rights standards. In particular, differences of treatment on the ground of religion or belief must be based on an objective and reasonable justification, and there should be a strict interpretation of the “determining occupational requirement” as well as limitations on where it can be introduced based on the nature of the occupation and the tasks required.
  
- Open an infringement procedure, on the basis of Article 258 of the Treaty on the Functioning of the European Union, against Member States that fail to appropriately implement EU anti-discrimination legislation, such as in the cases illustrated by this report in Belgium, France and the Netherlands. For the reasons explained in this report and to be consistent with international human rights standards, the European Commission should not consider enforcing neutrality, pleasing clients or promoting a specific corporate image as determining occupational requirement justifying differences of treatment on the ground of religion or belief, or on any other ground, in employment.
  
- In view of the importance of the principle of equality between men and women enshrined by Article 8 of the Treaty on the Functioning of the European Union and the specific impact of multiple discrimination on women (acknowledged by Recital 3 of Directive 78/2000/EC), monitor the impact of discrimination on women from ethnic and religious minorities in the area of employment, including the impact of discrimination associated with the wearing of religious and cultural symbols and dress. Where appropriate, use the conclusions of this monitoring process to develop and promote proposals aimed at addressing multiple forms of discrimination.
  
- Follow-up the infringement procedure (2006-2444) opened against the Netherlands and relating to the incorrect transposition of Directive 2000/78/EC in view of the fact that legislation which entered into force on 7 November 2011 (544-2011) failed to comprehensively address the concerns mentioned by the European Commission in its letter of 31 January 2008.

### **To all governments**

- Ensure domestic legislation protects against discrimination on the ground of religion or belief in the area of employment. In this regard, safeguard against private employers introducing rules on dress or appearance that effectively discriminate against Muslims, and in particular Muslim women, unless there is a determining occupational requirement; in particular, it should not be acceptable for employers to introduce restrictions on the wearing of religious and cultural symbols and dress with the aim of enforcing a concept of neutrality,

promoting a specific corporate image or pleasing clients.

- Establish effective mechanisms to identify and ensure redress for instances of discrimination on the ground of religion or belief in the area of employment whether by public authorities or private employers. This objective could be achieved by different means such as strengthening labour inspectors and/or establishing reporting processes for private employers.
- Raise awareness of private employers on anti-discrimination legislation, that restricting religious and cultural symbols and dress in the workplace is permissible only if there is an objective and reasonable justification, and that enforcing a concept neutrality, promoting a specific corporate image or pleasing clients are not objective and reasonable justification under international human rights law.
- Avoid introducing general restrictions on religious and cultural symbols and dress in public employment. Any restrictions must comply with the obligations of states under international human rights law with respect to non-discrimination in the exercise of freedom of religion or belief and freedom of expression. In general, states should not introduce restrictions unless they are proportionate and necessary to achieve a legitimate purpose. While it may be legitimate to require that those who represent the state (particularly officials like law enforcement agents, public prosecutors and judges, who exercise coercive powers of the state over others) abide by the principle of complete neutrality in dress (excluding the possibility to wear religious and cultural symbols and dress) it does not necessarily follow that such rules must be applied to all public sector employees.
- Establish mechanisms to monitor the effects of any restrictions on cultural and religious symbols and dress that are in place in public employment, in particular whether these restrictions have a disproportionate impact on religious and ethnic minorities, including Muslims, and publish the conclusions regularly. If such restrictions are found to have a disproportionate impact on certain groups, the state should review the necessity and proportionality of the restrictions and take appropriate steps to address the discriminatory effect.

#### **To the government of Belgium**

- Ensure that domestic anti-discrimination legislation is implemented according to international human rights standards and with the advice of the Centre for Equal Opportunities and the Fight against Racism. In particular, ensure that private employers do not discriminate against Muslims or other religious minorities by introducing internal rules on religious and cultural symbols and dress unless on the basis of a determining occupational requirement. Enforcing neutrality, promoting a specific corporate image or pleasing clients cannot be seen as determining occupational requirement for introducing differences of treatment on the ground of religion and belief in employment.
- Put in place initiatives to raise awareness among religious and ethnic minorities of available redress and support mechanisms, such as the Centre for Equal Opportunities and the Fight against Racism and labour inspectors.

### **To the government of France**

- Ensure that domestic anti-discrimination legislation is implemented according to international human rights standards and on the basis of the deliberations of the former High Authority against Discrimination and for Equality (HALDE). In particular, ensure that private employers do not discriminate against Muslims or other religious minorities by introducing internal rules on religious and cultural symbols and dress unless they are based on a determining occupational requirement in line with European anti-discrimination standards and the French Labour Code.
- Refrain from introducing legislative or policy initiatives aimed at restricting the wearing of religious and cultural symbols and dress in private companies, for instance by amending the French Labour Code, or in privately run institutions receiving public funding such as child-care facilities.

### **To the government of Switzerland**

- Undertake initiatives aimed at monitoring and collecting data on discrimination in employment and its impact on religious and ethnic minorities, including Muslims, to be used as a basis to develop policies aimed at combating discrimination. Contribute to strengthening the network of civil society organizations providing assistance to victims of discrimination and introduce awareness-raising mechanisms to inform employees about such assistance.

### **To the government of the Netherlands**

- Develop a strategy aimed at improving implementation of domestic anti-discrimination legislation especially as it applies to the policies or rules of private employers. This strategy should establish co-operation between different stakeholders including organizations representing ethnic minorities, regional anti-discrimination bureaus, the Equal Treatment Commission, trade unions and private employers. Specific initiatives should be put in place to raise the awareness of Muslims and other ethnic and religious minorities on available mechanisms to redress violations.
- Ensure that domestic anti-discrimination legislation is amended according to the suggestions developed by the European Commission and the Equal Treatment Commission. In particular, Article 5.2 of the 2004 General Equal Treatment Act (GETA) should be amended with the aim of reducing the scope of exceptions based on religious, political and or ideological principles on which employers are permitted to apply differential treatment, so that such treatment is only permitted when it is based on a determining occupational requirement.

## **7.2 RIGHTS OF STUDENTS AND PUPILS**

The European Union should ensure that EU anti-discrimination legislation provides equal protection against all forms of discrimination and in all areas of life. To this aim, Amnesty International recommends:

### **To the Council of the European Union**

- Adopt the proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation in areas other than employment and occupation. This new Directive would provide EU-wide protection

against discrimination on the ground of religion in several areas including education. The Directive should clarify that differences of treatment on the prohibited grounds are allowed only if based on objective and reasonable justification. It should also make clear that educational institutions based on religious, ideological or political principles, may implement differences of treatment on the ground of religion or on any other prohibited grounds with the aim of preserving their ethos only if they are proportionate and necessary to the achievement of that aim.

#### **To all governments**

- Avoid introducing general bans on the wearing of religious and cultural symbols and dress in education.
- Ensure that any individual school adopting such a restriction does so only for purposes consistent with those established by international human rights law and only where the restriction imposed is proportionate and necessary for the achievement of the aim sought. States should continually monitor the consequences of restrictions introduced at the individual school level and whether they have a disproportionate effect on specific religious groups, in particular on girls from ethnic and religious minorities. States should also take steps to ensure that restrictions on wearing religious and cultural symbols and dress adopted by some schools do not lead to de facto segregation of Muslims within the school system.
- Ensure that schools based on religious, political or philosophical principles put in place any restrictions on religious and cultural symbols or dress – and more generally, differences of treatment on the ground of religion, as well as on any other ground – only where they are based on an objective and reasonable justification. Preserving the particular ethos of these schools may constitute an objective and reasonable justification, but such restrictions or differential treatment are permissible only if they are proportionate and necessary to the preservation of that ethos.

In addition to these recommendations to all states, Amnesty International makes the following recommendations to specific states;

#### **To the Ministry of Education of the Flemish Community in Belgium**

- Ensure that no general ban on religious and cultural symbols or dress is applied in public schools in Flanders. Such a ban is likely to have a disproportionate impact on Muslim pupils in exercising their rights to freedom of religion or belief and to freedom of expression.
- Launch a consultation involving all the public schools in Flanders that have introduced a ban on religious and cultural symbols and dress. This consultation should identify the aims of the schools when introducing these bans and assess whether those aims are consistent with those established in international law. It should also examine whether the bans are necessary to achieving the aims and whether they are proportionate, particularly in regard to their impact on Muslim pupils, and seek to identify alternative measures for achieving the aims.

#### **To the Ministry of Education of France**

- Undertake a regular review on legislation 2004-225 aimed at banning conspicuous religious symbols in public schools. This review should identify whether the legislation has a disproportionate impact on Muslims or other religious minorities, whether the aims sought

have been achieved and whether those aims could be achieved by alternative measures. This review should also identify whether the legislation causes an increase in the number of Muslim private schools in the country and the potential consequences of this phenomenon. If the updated reports confirm that this legislation has a disproportionate impact on Muslim girls and/or on pupils from other religious minorities, it should be repealed and alternative measures should be put in place.

- Ensure that legislation 2004-225 is applied neither to adult students nor to parents who accompany their children on school outings.

#### **To the Spanish Ministry of Education and competent autonomous authorities**

- Ensure that the principle of non-discrimination in education is upheld. In co-operation with autonomous authorities responsible for education, establish systems of regular monitoring to assess whether dress restrictions introduced at the individual school level respect the rights to freedom of religion or belief and to freedom of expression, and the right of Muslims, especially Muslims girls, to be free from discrimination.

#### **To the government of the Netherlands**

- Ensure that any policies put in place by educational institutions based on their religious, ideological or political ethos are consistent with international human rights law. Amend Article 7.2 of the domestic anti-discrimination legislation (GETA) to ensure that any restrictions that impact disproportionately on particular religious groups, including dress restrictions or differences of treatment on the ground of religion, are permitted only if the school imposing them can demonstrate that they are necessary and proportionate to the preservation of its ethos.

#### **To the government of Turkey**

- Amend the Law on Higher Education with the aim of allowing adult students in higher education to wear religious and cultural symbols and dress.

### **7.3 PLACES OF WORSHIP**

Amnesty International recommends:

#### **To all public authorities**

- When developing or revising local urban management plans, engage in a meaningful consultation with religious groups, in the same way as with other local groups, to assess their needs. Ensure that provision is made for some space which can be used, if required by the local population, or a section of that population, for the building of new places of worship, in the same way as provision is made for space to establish other community facilities which are needed by the local community.
- Any restrictions on the building of places of worship must be for the achievement of a legitimate aim, such as ensuring public safety, and proportionate and necessary to the achievement of that aim. Technical regulations applicable to places of worship should be no more than those imposed on comparable public buildings generally. If all the technical requirements are fulfilled, the authorization to establish a place of worship should not be denied on the sole ground that some people living locally may not like it.

- If there is public opposition to the building of mosques, the authorities should take steps to raise public awareness on the establishment of places of worship as a key component of the right to freedom of religion or belief and to combat existing stereotypes against Muslim places of worship.

#### **To the government of Switzerland**

- Reform the popular initiatives mechanism in order to avoid the enactment of domestic legislation that violates international human rights law, including the principle on non-discrimination to which Switzerland is bound.
- Develop strategies and solutions to repeal the prohibition on building minarets enshrined in the Swiss Constitution in order to ensure the right to freedom of religion or belief of Muslims in the country.
- Adopt a far-reaching plan to counteract stereotypes against Muslims in the country. The plan should seek to raise awareness in the Swiss population that Muslims should be able to enjoy human rights without discrimination, such as the right to freedom of religion, which includes the establishment of places of worship.

#### **To the government of Catalonia**

- Put in place a mechanism aimed at monitoring the implementation of Law 16/2009 on places of worship. In particular ensure that municipalities take appropriate steps to implement Article 4 relating to the need identify spaces that may be used for the establishment of places of worship when developing urban management plans and that they do not discriminate in the application of technical conditions required to open new places of worship.
- Ensure that in public consultations about urban development plans, religious groups are genuinely and fully consulted so that their needs relating to new or existing places of worship are adequately addressed.
- Publicly counteract messages and proposals put forward by political parties opposing the establishment of Muslim places of worship that, if implemented, could be in violation of the right to freedom of religion.
- Develop a strategy at the autonomous level aimed at combating racism and all other forms of intolerance. Such a strategy should include specific initiatives aimed at counteracting stereotypes on Islam and Muslims.

#### **To municipalities of Catalonia**

- Take appropriate steps to implement Article 4 of law 16/2009 and ensure that religious groups are genuinely and fully consulted so that their needs relating to new or existing places of worship are adequately addressed in local development plan.
- Refrain from adopting moratoria on the establishment of new places of worship, especially on economic grounds or as a means of subduing criticism from opposition parties.

### **To the government of Spain**

- Monitor legislation, policies and practices adopted by Catalonia and other autonomous communities in relation to the establishment of places of worship, and take appropriate measures when they fail to respect, protect and fulfil the right to freedom of religion or belief of Muslims or any other religious minorities without discrimination.

## **7.4 FULL-FACE VEILS**

### **To all governments**

- Refrain from adopting legislation that imposes a general ban on the wearing of full-face veils.
- Ensure that any restrictions imposed on the wearing of full-face veils, at the national level or under policies or legislation adopted by regional or local authorities, are demonstrably necessary and proportionate for the achievement of a purpose recognized as legitimate under international human rights law.
- Assess the necessity and proportionality of any such restriction in the context of its impact on the human rights of women who choose to wear the full-face veil as an expression of their identity or beliefs as well as those who do not wish to wear it. Such assessments must be based on reliable information and not stereotypical assumptions.

Protecting the right of women not to wear full-face veils could be a legitimate aim to introduce a restriction on such form of dress. However, any restriction for this reason should be imposed only after critical consideration as to whether it is necessary and proportionate to the aim sought, and in particular a careful assessment of whether a prohibition is the most appropriate measure to combat the potential coercion of women, or whether legislation and policies focused on combating all forms of violence against women could be more effective. Amnesty International recommends to all governments:

- Adopt and implement legislation aimed at fighting against all forms of violence against women including discrimination and coercion and put in place awareness-raising mechanisms to inform women from ethnic and religious minorities about legislation and available mechanisms of redress.
- Sign and ratify the Council of Europe convention on preventing and combating violence against women and domestic violence.

### **To the government of Belgium**

- Repeal legislation 2011-000424 prohibiting any dress that partially or totally conceals the face.

### **To the government of France**

- Repeal articles 1, 2, 3 and 5 of Law 2010-1192 of 11 October 2010 prohibiting the covering of the face in public spaces.

### **To the House of Representatives of the Netherlands**

- Reject the governmental bill aimed at forbidding the wearing of face coverings put

forward by the government on 6 February 2012.

# APPENDIX

Much of this report on religious-based discrimination affecting Muslims in Europe discusses restrictions on wearing religious or cultural symbols or dress which in practice have a disproportionate impact on women or girls who choose to wear it.

This reflects Amnesty International's findings in undertaking research for this report, that for many Muslim people such restrictions constitute one of the ways they experienced religious discrimination in practice in their daily lives.

States have an obligation under international law to respect the human rights of everyone without discrimination; to protect them against abuses of those rights by third parties, including by private actors; and to ensure they are able to exercise those rights in practice. Wearing – not wearing – religious and cultural symbols and dress is a component of the rights to freedom of expression and to freedom of religion or belief. The right to freedom of religion or belief includes both a positive component – that is for instance the right to manifest one's religion or belief by wearing specific forms of dress or symbols, and a negative component – that is the right not to be exposed to any pressure to wear specific forms of dress or symbols. States must therefore not impose requirements that women dress or do not dress in a certain way, and must protect women from the imposition of such requirements by third parties.

These obligations on states apply whether women are prevented from wearing for example a headscarf or veil, as described in this report, or are compelled to wear them. Coercion by the state or by private actors to ensure compliance with rules on traditional, cultural or religious forms of dress violate women's rights to freedom of expression and to freedom of religion or belief and are often imposed in ways which violate their right to be free from cruel, inhuman or degrading treatment. Some examples of instances where Amnesty International has reported on this are given below.

The state has the obligation to safeguard a woman's freedom of choice, not restrict it. To take an example, the veil and headscarf of Muslim women have become a bone of contention between different cultures, the visible symbol of oppression according to one side, and an essential attribute of religious freedom according to the other. It is wrong for women in Saudi Arabia or Iran to be compelled to put on the veil. It is equally wrong for women or girls in Turkey or France to be forbidden by law to wear the headscarf. And it is foolish of western leaders to claim that a piece of clothing is a major barrier to social harmony.

In the exercise of her right to freedom of expression and religion, a woman should be free to choose what she wants to wear. Governments and religious leaders have a duty to create a safe environment in which every woman can make that choice without the threat of violence or coercion. The universality of human rights means that they apply equally to women as well as to men. This universality of rights – universality both in understanding and in application – is the most powerful tool against gender violence, intolerance, racism, xenophobia and terrorism.

*Amnesty International Annual Report – 2007*

Legal and social norms governing dress codes and other behaviour often have a disproportionate impact on women whose dress and appearance are subject to particular regulation. These restrictions lead to violence against women as a penalty for transgressing such codes.

The religious police in **Saudi Arabia**, the Committee for the Propagation of Virtue and the Prevention of Vice (al-Mutawa'een), are authorized to ensure compliance with these strict established codes of moral conduct. In doing so, they beat, arrest, and detain people. In particular, women are at risk of being stopped, beaten and detained by al-Mutawa'een for perceived infractions of rules relating to dress, such as showing the ankles or face. Breaching these codes gives rise to suspicion of prostitution and may result in arrest, brutality, and torture by police, particularly the religious police (al-Mutawa'een), who patrol the streets monitoring, among other things, women's conduct, dress or behaviour.

A person's dress can be an important expression of their personal, cultural, religious or other identity and is an element of the right to freedom of expression. Amnesty International recognizes the right of individuals to express themselves in such a manner and opposes the forcible imposition of dress codes. Under international human rights standards, states are obliged to ensure freedom of expression for everyone, without discrimination. Restrictions of this kind on women are not only a violation of their freedom of expression but also put them at risk of cruel, inhuman or degrading treatment or torture at the hands of law enforcement agencies. Such treatment amounts to gender-based violence because it is directly linked to discriminatory restrictions which have a disproportionate impact on women.

***Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect (AI Index: MDE 04/004/2005)***

Women continue to be forced to wear headscarves by threats and harassment from members of Islamist groups. These groups have targeted women and girls who have not covered their heads, including non-Muslims, in the streets, in schools and in universities. As a consequence, the number of women and girls wearing a headscarf or veil has further increased. Choice of clothes can be an important element of the right to freedom of expression. Intimidating women and girls to make them observe a strict dress code amounts to a restriction of that right. Such forms of social control often have a disproportionate impact on women, because their dress and appearance are subject to particular regulation. Underlying such controls is the threat of injury or worse. They not only restrict women's freedom of movement, their rights to education and work, and sometimes their freedom of religion, but also expose women to the risk of violence as a penalty for transgression.

***Iraq: Decades of suffering, Now women deserve better (AI Index: MDE 14/001/2005)***

Women were threatened and attacked for not complying with strict codes of behaviour, including dress codes, and the authorities did not afford women adequate protection against violence, including by other family members. Some women were killed apparently by male relatives whom the authorities failed to bring to justice.

***Amnesty International Annual Report 2009 – Iraq***

Women continued to face high levels of discrimination and violence. Some were attacked in the street by armed men or received death threats from men who accused them of not adhering to strict Islamic moral codes.

***Amnesty International Annual Report 2010 – Iraq***

Women were targeted for violence by armed groups, and women who did not adhere to a strict dress code were under threat. Women also suffered violence within the family and were inadequately protected under Iraqi law and in practice. Many women and girls were subject to harmful practices, including forced and early marriage.

***Amnesty International Annual Report 2011 – Iraq***

Armed Islamist groups continued to unlawfully kill and torture people they accused of spying or not conforming to their own interpretation of Islamic law. They killed people in public, including by stoning them to death, and carried out amputations and floggings. They also imposed restrictive dress codes, flogging women who did not wear the hijab and forcing men to wear trousers no longer than the ankle.

***Amnesty International Annual Report 2011 – Somalia***

Dress codes can be a manifestation of underlying discriminatory attitudes and reflect a desire to control women's sexuality, objectifying women and denying their personal autonomy.

Where women are subjected to violence or are stigmatized for not conforming with dress codes, they may be told that the blame lies with them. Blaming victims in this way is used as a pretext to reinforce the purported legitimacy of restrictions on dress.

States must not rely on stereotypes about religions, traditions or culture to restrict individuals' human rights. For instance, women from specific ethnic, religious or cultural backgrounds should not be assumed to be committed to beliefs or rules which may be commonly associated with that background. Moreover, women who choose to identify in particular ways religiously or culturally should be able make their own choices about what norms they follow rather than being forced to comply with rules that others impose on them. (...)

In **Chechnya (Russian Federation)**, in November 2007, President Ramzan Kadyrov called for women to dress modestly, in line with tradition, and to wear a headscarf. Schoolgirls over the age of 10 and female students at higher educational establishments have been obliged to wear headscarves or face expulsion. Signs outside official buildings in Grozny state that only women wearing a headscarf may enter, and security guards reportedly enforce this.

Russian human rights defenders stated in September 2010 that they had seen groups of young men in

uniforms or black clothes stop women whose dress was deemed not in line with Chechen tradition and lecture them on traditional Chechen values.

The National Commission on Violence against Women in **Indonesia** (Komnas Perempuan) identified 21 regional regulations on dress codes which “directly discriminate against women” in intent or impact. Since 2010, a bylaw restricts dress for Muslim women in West Aceh district.

The Commission found that supposed dress codes infractions are wrongly cited to excuse crime, perpetuating “the impunity of the criminals because women victims are considered the most responsible party.” Dress codes also discriminate against religious and ethnic minorities.

Punishments for infractions range from disciplinary sanctions for civil servants to social sanctions, including public shaming. Government officials may refuse to provide services to those considered not to conform. In Aceh, the Shari’a police (called Wilayatul Hisbah), and in some cases members of the public, conduct raids to ensure women non-compliance is punishable by three months’ imprisonment or a fine of two million rupiah (220 USD).

In the **Islamic Republic of Iran**, women and men appearing in public must adhere to a mandatory dress code which is enforced in law.

Women’s dress must be loose fitting and cover their heads, necks, arms and legs all year round. While many women wear traditional forms of dress, others have also chosen to interpret this code in other ways, which has left them at risk of harassment from police or other security forces including the volunteer basij militia, particularly during summer crackdowns which have increased since the election of President Ahmadinejad in 2005.

Violations of the dress code are criminalized under Article 638 of the Islamic Penal Code which states that anyone who offends public decency will be sentenced to imprisonment from 10 days to two months or to up to 74 lashes. A note to the article says that women who appear in public without Islamic covering will be sentenced to imprisonment from 10 days to two months or to a cash fine.

The dress code in **Saudi Arabia** applies to everyone, but is particularly restrictive on women who are expected to dress in a way that covers their body with clothes that are not see-through or tight-fitting, as it is considered that showing parts of their body is a factor which can lead to adultery. There is no written dress code set out in law because Saudi Arabia does not have a criminal code; it is based on references to modesty in the Qur’an and the Sunnah (practices of the Prophet Mohammed).

A woman’s guardian (mahram) is expected to ensure that she follows the dress code. The religious police – the Committee for the Propagation of Virtue and the Prevention of Vice (al-Mutawa’een) – ensure compliance with strict codes of Islamic conduct, including dress codes. They do this by verbally reprimanding women or their guardians, sometimes whipping them on the spot or arresting and detaining them, for perceived infractions such as not covering their faces or showing legs, arms, ankles and hair

In **Sudan** the flogging of women for “indecent or immoral dress” under Article 152 of the 1991 Criminal Act came into the spotlight in 2009 through the case of journalist Lubna Hussein. More than a year afterwards her appeal against the constitutionality of the law is pending before the Constitutional Court.

The public order regime, which applies to men and women, includes a Public Order Police (POP) and public order courts which impose cruel, inhuman and degrading punishments for crimes of “indecent or immoral” dress or behaviour. The public order laws do not specify what is immoral or indecent dress, so the POP have broad discretion to judge whether a person has acted in “an indecent manner, or a manner contrary to public morality” or “wears an indecent, or immoral dress, which causes annoyance to public feelings.” The public order courts can impose corporal punishment of up to 40 lashes.

The public order regime has largely affected women, regardless of their religious beliefs or traditions as the POP widely targets non-Muslim southerners in Khartoum, women from the Eritrean and Ethiopian diasporas and women from poor backgrounds, such as tea sellers and street vendors.

***Women’s right to choose their dress, free of coercion***

***Statement submitted by Amnesty International to the 55th session of the UN Commission on the Status of Women (New York, 22 February – 4 March 2011), (AI Index: IOR/40/022/2010)***



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## **CHOICE AND PREJUDICE**

### **DISCRIMINATION AGAINST MUSLIMS IN EUROPE**

Muslims across Europe belong to many different ethnic groups and follow diverse cultural, religious or traditional practices. They are discriminated against for different reasons, including their religion or belief, ethnicity and gender.

This report highlights discrimination on the grounds of religion or belief and illustrates some of its consequences. Restrictive dress-code policies and legislation are enforced in, for example, Belgium, France, the Netherlands, Spain and Switzerland. Muslims, and especially Muslim women, who express their cultural or religious background by wearing specific forms of dress or symbols have been denied employment or excluded from classrooms. Some political parties and authorities also oppose the establishment of Muslim places of worship, a component of the right to freedom of religion. In Switzerland, for example, the major political party successfully campaigned to ban the building of minarets.

Some anti-discrimination legislation exists in Europe. Amnesty International calls on the authorities to enforce it at both European and national levels. Governments should not introduce general bans on religious and cultural symbols and dress, and should end the practice of restricting the right of Muslims to establish places of worship.

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