

AMNESTY INTERNATIONAL

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Bans on full face veils would violate international human rights law

Over the last few months there has been growing public debate in Europe on the wearing of full face veils, such as the burqa and the niqab, by Muslim women. Two countries, Belgium and France, are currently considering the adoption of legislation that would prohibit the wearing of full face veils. In Belgium, a draft law currently passing through Parliament, would prohibit the wearing of full face veils anywhere in public. In France, a specially constituted Parliamentary Commission has proposed that individuals be prohibited from wearing full face veils when accessing public services.

Amnesty International believes that such general prohibitions on the wearing of full face veils would violate the rights to freedom of expression and religion of those women who choose to wear a full face veil as an expression of their religious, cultural, political or personal identity or beliefs. Amnesty International therefore urges states not to adopt such legislation, and calls on states to take 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 on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; to protect them against abuses 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.

Under international human rights law everyone has the rights to freedom of expression and freedom to manifest their religion or beliefs; these freedoms extend to the way in which people choose to dress. States must therefore not 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. It is wrong for women to be compelled to wear a headscarf or veil, either by the state or by non-state actors; it is also wrong for women to be prohibited by law from wearing it.

Under international human rights law the exercise of the right to freedom of expression and to manifest one's religious belief may be subject to certain restrictions but only where such restrictions meet a stringent three-part test: they must be prescribed by law; they must address a specific legitimate purpose permitted by international law; and must also be demonstrably necessary and proportionate for that purpose.

The permissible legitimate purposes are to ensure respect for the rights of others or to protect certain public interests (national security or public safety, or public order, health, or morals). Any such restriction must, in addition, be demonstrably necessary for that purpose – in other words, as the European Court of Human Rights has said, it must meet a “pressing social need”; it must be the least intrusive measure to achieve the intended legitimate objective; and the specific interference in any particular instance must be proportionate to that objective.

Moreover, such restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner, and must not undermine the right itself. Both the wearing and the restricting of religious symbols and dress can impact in many different ways on the exercise of a range of human rights. This means that assessing the legitimacy of any restrictions always requires careful consideration on a case-by-case basis, by reference to demonstrable facts, not presumptions or speculation.

Amnesty International does not believe that a generally applicable ban on the wearing of full face veils in public is necessary or proportionate for any legitimate objective.

Some clearly defined restrictions on the wearing of full face veils for the purposes of public safety will be legitimate. This will be the case, for instance, for requirements to show one's face in certain demonstrably high-risk locations. Similarly, the requirement that individuals lift their veils when requested to do so for necessary identity checks will also be legitimate. However, in the absence of any demonstrable link between the wearing of full face veils and threats to public safety, general appeals to public safety cannot be invoked to justify the restriction on the freedom of expression and religion that a complete ban on the wearing of face veils in public places would entail.

While the protection of public morals is a legitimate purpose for imposing restrictions on freedom of expression or manifestation of religion or belief, this does not permit restrictions to be imposed on wearing the veil because a proportion of the population finds it objectionable. The European Court of Human Rights has reiterated on numerous occasions that the right to freedom of expression includes forms of expression "that offend, shock or disturb the state or any section of the population".

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. States must, therefore, take measures to protect women from being pressurised 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. The state response to this or any other form of pressure should not be to introduce a generalised ban that indiscriminately affects all wearers of face veils and denies them access to a host of services essential to the enjoyment of social and economic rights. Indeed a general prohibition risks being counter-productive, as a measure designed to protect women against harassment and oppression may well result in even greater confinement.

In so far as social or religious norms which prescribe dress codes are a reflection of discrimination against women, the state has a positive obligation to take steps to prevent such discrimination. But such steps should focus on addressing the discrimination itself and its underlying causes, not simply its symptoms. And such steps should not result in restrictions being imposed on women who are freely exercising their right to freedom of expression.

Women living in Muslim communities may face multiple forms of discrimination from both within and outside their communities, including as women, as Muslims, and as members of ethnic minorities. To purport to address discrimination within a community by imposing a measure which is itself discriminatory compounds this and reinforces the idea that discrimination can be legitimate. Such a measure is likely to be ineffective and counterproductive, with women who wear the veil as a response to family or community pressure becoming in practice even less able to exercise other human rights such as the right to work, to education and to freedom of movement. States should examine how these multiple forms of discrimination by both state and non-state actors disempower women, and should

take effective steps to address them. This requires developing a range of social and public policy measures in consultation with the women and communities concerned. These should include measures to address the prejudices feeding discrimination on the grounds of gender, religion, ethnicity and ensuring that the victims of such discrimination have access to an effective remedy.

Legal and social norms governing dress codes in a variety of countries and cultures have common underlying features. They often have a disproportionate impact on women, whose dress and appearance is subject to particular regulation because it is seen as the symbolic embodiment of the religious or cultural values of the community. They can be a manifestation of underlying discriminatory attitudes and reflect an underlying desire to control women's sexuality and bodily autonomy, objectifying women and their bodies. Whether imposed by the state or by non-state actors they not only affect the enjoyment by women of their freedom of expression, but can also impact on their exercise of other rights, such as the right to work, to education and to freedom of movement.

Every individual has the right to express their beliefs or personal convictions or identity by choosing how they dress. Governments have an obligation to respect, protect and ensure those rights by creating an environment in which every woman can make that choice free of coercion, threats or harassment, without restrictions which are not necessary or proportionate for a purpose recognized as legitimate in international human rights law, and without a negative impact on her exercise of other human rights.

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