



BELGIUM:
**Concerns Regarding the Violation of
CEDAW by the Banning of the Islamic
Headscarf and other forms of
discrimination against Muslim women**

Islamic Human Rights Commission
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Executive Summary

A discussion of the effects of various policies and by-laws in Belgium on Muslim women is demonstrably absent from the Belgian government's latest report to CEDAW. This report looks at the situation and takes issue with claims by Belgian authorities that they are enforcing constitutional notions of 'neutrality' and protecting equality between the sexes.

IHRC's overriding concern is that there is a huge sense of disillusion in the Belgian legal system and its commitments to equality that has led Muslim women to refrain from litigating or seeking redress from discrimination. Further, in some cases, women have accepted degrading treatment and discrimination for fear of state reprisals.

IHRC's overall recommendation is for an overhaul of Belgium's commitment to anti-discrimination that removes the anomaly that leaves Muslim women discriminated against and excluded.

Measures to Eliminate Discrimination: Convention Article 1

Equalities bodies in Belgium have failed to take up cases where women have been excluded and discriminated against because of their dress.

Recommendation

IHRC recommends urgent training of equal opportunities officers in official bodies in (a) how the various bans violate CEDAW and other rights based conventions and covenants, (b) the impact such discrimination has had on Muslim women.

Guarantee of Basic Human Rights and Fundamental Freedoms: Convention Article 3

In summary, the bans impact on a number of basic human rights including: the Right to Education, Right to Employment, Freedom from Discrimination and Freedom of Thought, Conscience and Religion.

Some politicians and other activists have claimed that the bans protect women's rights and their human rights. IHRC challenges this notion and the imposition of a universal form of female emancipation according to the Belgian government. This disempowers women of colour and Muslim women especially. In particular, IHRC objects to the Belgian government's claims in its report that wearing the headscarf affects social cohesion negatively.

Recommendations

IHRC recommends the Belgian government initiate dialogue with Muslim women's NGOs and civil society groups that have worked on this issue in order to effect actual cohesion, rather than promote 'cohesion' as a racialised concept.

IHRC also recommends that the government adopt a more rigorous and conceptually consistent approach to human rights and women's rights.

Sex Role Stereotyping and Prejudice: Convention Article 5

Pervasive stereotypes of Muslim women as oppressed come from all sectors of public life. Combined with lack of access to the media and public life for Muslim women, this increases their marginalisation.

Recommendation

IHRC urges CEDAW to impress upon the Belgian authorities to refrain from stereotyping and work instead upon developing robust anti-discrimination policies. IHRC urges CEDAW to stress that irresponsible comments by ministers have led to increased demonisation and impacts on policymakers who have implemented and created policies that marginalise and discriminate against Muslim women.

Political and Public Life: Convention Article 7

The prevention of Muslim women with scarves from acting as assessors at elections in 2006 in the Brussels-Capital region, and the refusal of Muslim women to participate as council volunteers in Antwerp are discussed.

Recommendations

Muslim women must be allowed to participate in civic duties regardless of their apparel.

Representation: Convention Article 8

There is little representation of Muslim women in public life, and bans have compounded this lack, with civil servants being expelled from work due to dress concerns.

Recommendations

IHRC recommends that the bans by public authorities and government bodies be lifted to allow, women greater access to political life, and to ensure that concepts of human rights including religious freedom and the rights of women are promoted through awareness raising.

In the short term there must be a focus on training government members and workers about diversity and inclusion.

Nationality: Convention Article 9

Ambiguous guidelines have been interpreted against Muslim women by passport agencies. Statements have to be signed for ID cards requiring Muslim women to state the reasons for their headscarf.

Recommendations

Women must be allowed to wear hijab in photographs for residency and nationality documentation including ID cards and passports.

Further, there needs to be training of passport agency employees to ensure that they do not discriminate against Muslim women.

Education: Convention Article 10

The cases of schools have seen the concept of neutrality against Muslim girls who wear scarves. Further, despite a shortage of teachers, Muslim women who wear the headscarf have been prevented from entering the teaching profession.

Recommendations

Needless to say, IHRC calls for all bans for students and teachers to be lifted. The same intervention that has seen community ministers try to issue bans should be invoked to remove the bans.

IHRC further supports MRAX's call for the interpretation of constitutional notions of 'neutrality'¹ to mean equality and the encompassing of religious freedom and expression.

Employment, Health, Economic and Social Benefits and Law: Convention: Articles 11, 12, 13, and 15

There is a pervasive atmosphere that Muslim women with hijab in some towns need not apply for a job whether in the public or private sectors. Cases of discrimination in other spheres of life range from denial of social benefits to withdrawal of funds from banks. Various commune bans on and fines for burka / burqa and niqab / nikab are discussed as undermining equality commitments through barely disguised racist discourse.

Recommendations

The ban on public sector workers / government employees from wearing 'ostentatious' religious symbols, hitherto argued to be based upon enforcing neutrality, should be lifted.

A more robust understanding of anti-discrimination needs to be taken on board by the Belgian government, and this needs to be transmitted to equalities bodies and public institutions.

Consultation with NGOs and activists to review how many employment or other discrimination cases that have gone through the courts or been settled outside with regard to discrimination faced by Muslim women, needs to be urgently held, and measures and policies that facilitate headscarf wearing women's role in the public and private sectors implemented.

¹ Article 24, section 1, paragraph 3 of the Constitution states that "the community organises a pedagogy which is neutral. Neutrality implies notably respect for the philosophical, ideological or religious perceptions of parent and students" from Bouhlal, Radouane, 'Can Secularism Engender Racism?' in *Du bon usage de la laïcité*, eds. Aden, June 2008, p 118.

Court officials, judges and lawyers need to be trained in effective anti-discrimination practices that ensures the spirit of anti-discrimination is consistent in judgements and cases, and that women are not excluded from work for their choice of dress.

Judges need to be trained in the effects regarding stereotyping that such decisions have.

Actions by professional bodies that target minority women and adversely affect them need public condemnation from government.

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Islamic Human Rights Commission

Introduction

This report by IHRC overviews NGOs and activists concerns regarding the violation of CEDAW by the banning of the Islamic Headscarf (also referred to hereunder as the 'Islamic kerchief' and 'hijab') in various arenas by various authorities in Belgium, and the other impact of policy on Muslim women due to a rise in anti-Muslim and Islamophobic discourse, which have resulted in the exclusion of Muslim women and women of colour from education and employment, and prevented their full and equal participation in society.

Unless otherwise stated, IHRC's recommendations are aimed (with due regard to remit) at all governmental structures in Belgium, including the federal governments, the regional governments and where education is concerned-the Communities.

Many grassroots activists and associations were interviewed as part of the research undertaken for this report, and include Muslim women from various ethnicities, Muslim and non-Muslim feminists and women's activists, as well as Muslim and non-Muslim associations working in the field of minority rights.

Various cases of schools excluding girls who wear the headscarf have been reported over a number of years, and attempts to introduce all encompassing bans mooted at the federal government level, after the French ban in 2004. However, further bans and cases of discrimination have missed the spotlight, significantly the ban introduced by Antwerp mayor Patrick Janssens, against front office council workers wearing the headscarf. Unlike France, there is no

national (in this case federal) law that bans the scarf in public office, and local councils are left to determine these issues for themselves. Areas with a high Muslim population, notably Brussels and Antwerp have witnessed such bans, widely perceived to be a form of legitimised racism and Islamophobia, as well as sexism, despite certain claims about equality and neutrality. Other councils have opposed such bans with Louis Tabbacq, the mayor of Leuven explicitly opposing such bans.

Similar and more extensive bans to those in Brussels and Antwerp in local government have followed, and the effects as this report documents, are pervasive.

IHRC is deeply concerned that the report of the Belgian government mentions very little about these issues. One mention is made of various bans on school students in the Brussels Capital region, and contextualised as being “upheld in the name of social cohesion, the fight against discrimination, equality and diversity.” This report documents the opposite effect. IHRC further questions the motivation cited by the Belgian government and suggests that a combination of racist discourse by far-right parties and elements in society combined with political opportunism by opposition parties (including socialist parties) to regain support from the far-right have led to Muslim women being further discriminated against, above the dual discrimination they already face as women and (of being mostly) members of ethnic minorities.

Measures to Eliminate Discrimination: Convention Article 1

Activists reported to IHRC, that off the record conversations with senior members of the official Belgian equal opportunities and anti-racism bodies reveals that the internal culture is split between support for and opposition to the various headscarf bans.

The support of the bans within the equalities community has been described variously as emanating from a fear of the resurgence of religion in society, with Islam being cast in the same light as Catholicism past.

The President of MRAX², Radouane Bouhlal, states otherwise, in his critique of the increasing use of the concept of ‘laïcité’:

² Mouvement contre le racisme, le antisémitisme et la xénophobie.

“Initially motivated by the legitimate will to reinforce the separation of Church and State, the cornerstone of our democracy, this principle of neutrality – poorly interpreted – is implemented more and more, not to protect the State and its citizens from an intrusion of the religious into public affairs or vice versa, but to express more and more overtly the rejection of certain believers.”³

Other reasons for this attitude given to activists, included the desire not to play into the hands of the far-right by making the ‘Islamic kerchief’ an even bigger issue which could be used to further play the race card in Belgian politics. One direct quote from an equal opportunities officer is that ‘the hijab is a distraction from the real issues of discrimination, jobs etc.’ IHRC understands the concerns regarding the rise of the far-right in Belgian politics. However, it does not support the contention that the issue is a ‘distraction’ but rather a very potent symbol of the main problems with regard to minority issues in Belgium (be they Muslim or otherwise). With federal and community governments, officers, ministers and authorities making an issue of the hijab, moral leadership on the impact these policies have rests in the hands of equal opportunities workers. Their silence (there has been no official comment on the Antwerp and subsequent bans from the Centre for Equal Opportunities and Opposition to Racism), simply reinforces prevailing anti-Muslim women discourse.

This is in stark contrast to the Flemish Public Employment Agency (VDAB) which explicitly states in its mission statement that they support inclusive neutrality and are known to employ women who wear the headscarf.

In interviews with MRAX and the Minderheden Forum, as well as activists and Muslim women from Belgium, it was stated that many women did not want to pursue discrimination cases. Some felt that it was a pointless process which would only result in backlash against them personally and Muslims generally, others were afraid of direct reprisals from the state.

The state of alienation of Muslim women from the legal process and their sense of disillusion with Belgian anti-discrimination claims and institutions can be attributed to the rise in official bans from various Community authorities. The attitudes expressed by members of the equal opportunities community as described above, vindicates to a

³ Bouhlal, Radouane p118, ‘Can Secularism Engender Racism?’ in *Du bon usage de la laïcité*, eds. Aden, June 2008

large extent the disillusionment of Muslim women in the anti-discrimination process in Belgium.

Recommendation

IHRC recommends urgent training of equal opportunities officers in official bodies in (a) how the various bans violate CEDAW and other rights based conventions and covenants, (b) the impact such discrimination has had on Muslim women.

Guarantee of Basic Human Rights and Fundamental Freedoms: Convention Article 3

IHRC has analysed violations of international obligations with regard to various conventions and its briefing is appended as Appendix 1.

In summary, the bans impact on a number of basic human rights including: the Right to Education, Right to Employment, Freedom from Discrimination and Freedom of Thought, Conscience and Religion.

IHRC notes the concerns of women's activists that human rights as (a) concept(s) can undermine gender rights notably the promulgation of sexist stereotypes and pornography often defended under rights to free speech and expression etc.

IHRC further notes the Belgian government's report's reference to 'social cohesion'⁴. IHRC shares the concerns of activists and NGOs in Belgium and elsewhere that the bans promote exclusion of Muslim women and are divisive in effect rather than cohesive. Social cohesion in this context is understood as assimilation and reflects a European trend with regard to minorities per se and Muslims and Roma, Travellers and Gypsies in particular. Activists in Belgium, including feminist activists pointed out that support of the ban came from majority of the community, with Belgian women often claiming that the ban supported human rights and / or gender rights.

One feminist pointed out that there is a wave of racism amongst feminists in Belgium that sees all Muslim women as oppressed, and unable to comprehend the idea of Islamic feminism. Muslim activists complained that their attempts to have discussions with feminist groups had been rejected. Whilst IHRC notes that this is not a governmental concern, it includes this in this report as an indicator of

⁴ p87

the depth of anti-Muslim racism in Belgium and how this impacts on Muslim women in particular.

Muslim women activists pointed out that for many Muslim women, particularly of the younger generation, increased religious awareness was a very specific route to female emancipation for them from the various community patriarchies they had faced. This concurs with IHRC's findings regarding the headscarf, and its adoption amongst Muslim women in the United Kingdom⁵. Women further and variously stated that they wore hijab out of pure religious devotion, from feminist principles of rejection of the objectification and sexual exploitation of women, to subvert the male gaze and to display modesty and humility.

The Belgian government's assertions regarding 'social cohesion' and the 'principles of equality'⁶ simply prescribe its own form of women's emancipation on all women, and denies these women agency. This clearly has impact on Article 5: Stereotyping.

IHRC is concerned that the whole debate about the 'Islamic kerchief' is grounded in terms of social cohesion. The language of women's rights and human rights as they affect Muslim women in Belgium who wear the scarf and are excluded from society is totally absent from mainstream and political discussions. Advocacy organisations in particular pointed out this concern.

A feminist interviewed pointed out that the result was a de facto assumption that somehow majority women are much better off than Muslim women. This resulted in e.g. discussions by socialist men speaking to women's organisations in the socialist movement saying 'don't try to find minor equality issues, start talking of Muslim women who really are discriminated against.'

Activists pointed out that the polemic was of power politics and not about rights. The prevailing terms used by politicians and the media to discuss ethnic minorities, whether born and raised in Belgium or recent immigrants, focuses on their non-native status ('allochtonen' foreigners, or non-native as opposed to 'autochtonen' are frequently used in the Flemish region). Many women born in Belgium expressed frustration that Muslim had been assumed to be their only identity and that the prevailing terminology denied them and other members of

⁵ Ameli, S.R and Merali A.,(2005) "[*Hijab, Meaning, Identity, Otherization and Politics: British Muslim Women*](#)", Islamic Human Rights Commission, London.

⁶ ibid

Belgian society of non-Belgian and non-European heritage equal conceptual citizenship.

Recommendations

IHRC recommends the Belgian government initiate dialogue with Muslim women's NGOs and civil society groups that have worked on this issue in order to effect actual cohesion, rather than promote 'cohesion' as a racialised concept.

IHRC also recommends that the government adopt a more rigorous and conceptually consistent approach to human rights and women's rights.

Sex Role Stereotyping and Prejudice: Convention Article 5

Respondents pointed out a tendency of media and politicians to promote women who hail from Muslim backgrounds but who have left Islam or have called for its reform. These women and their often very real and painful experiences are promoted as the norm. This mirrors trends in other countries and has been dealt with in IHRC's report on France for the 40th session of CEDAW,⁷ and the relevant passage is appended as Appendix II.

Additionally, as discussed above, the idea of Muslim women in scarves as socially divisive and an obstacle to social cohesion are ideas that are promulgated at political levels and which demonstrate stereotyping. Comments include those of Patrick Dewael (VLD), Deputy Prime Minister and Minister for the Interior after the enactment in France of the 15th March 2004 law:

"Living together requires that all citizens of our country respect a certain number of substantial rules. These are fundamental laws which are so important that no derogation from them can be allowed. The tolerance which we must show to those who think otherwise cannot justify detracting from principles such as the separation of Church and State, freedom of expression, and equality amongst all human beings and particularly between men and women in the name of any interest, religion or even majority opinion"⁸

⁷ 'FRANCE: Concerns Regarding the Violation of CEDAW by the Banning of the Islamic Headscarf and other religious symbols in schools etc', January 2008, <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/IHRC.pdf>

⁸ Cited in Bouhlal, Radouane p118, 'Can Secularism Engender Racism?' in *Du bon usage de la laïcité*, eds. Aden, June 2008, p 105

One feminist remarks that not only do Muslim women have little access to the media to refute such arguments, but even those who write in their support find little space to put forward their arguments or even to respond.⁹

Recommendations

IHRC urges CEDAW to impress upon the Belgian authorities to refrain from stereotyping of Muslim women and work instead upon developing anti-discrimination policies that will allow Muslim women to enter the mainstream. IHRC urges CEDAW to impress upon the Belgian authorities that irresponsible comments by ministers has led to increased demonisation and impacts on policymakers who have implemented and created policies that marginalise and discriminate against Muslim women.

Political and Public Life: Convention [Article 7](#)

IHRC notes the incident in the Brussels Capital region during Municipal elections in 2006, where Muslim women who wore hijab and answered the call to be election assessors found themselves told by presiding officers (who are always judges) that they were unable to fulfil that role as a result of their dress. They referred to form B5 issued for most of the communities in the Brussels-Capital region, which stated that "in order to guarantee the voter's freedom in his democratic choice, the outer display of any form of religious or philosophical expression is prohibited for members of the electoral office".¹⁰

When one asked the presiding officer how her hijab might influence voters, she was told that it might influence them to vote for the far-right.

MRAX publicly challenged Charles Picqué (PS), president of the government of the Brussels-Capital region, over this. He responded via press release that the form did not mean the 'veil'. However he went on to say the form only referred to 'ostentatious symbols'.

In the case of one volunteer in Antwerp who looked after children in public play areas on behalf of the city, she was not only removed from her volunteer position after refusing to remove her hijab, but was advised by the Mayor himself that the council would no longer use as many volunteers as a direct result of her challenging her treatment.

⁹ In interview with members of BOEH, May 2008

¹⁰ Ibid p117

This transference of blame onto a person denied their rights, is pernicious and undermines the Flanders region's claims to be promoting equality.

The cases of public servants banned from wearing scarves will be discussed below (see *Employment* p.15). IHRC notes in this section however that the number of bans, which started with the ban in Antwerp has extended to other councils, which in turn implies to the general public that Muslim women with hijab are inimical to public service.

Recommendations

Muslim women must be allowed to participate in civic duties regardless of their apparel.

Representation: Convention Article 8

IHRC notes that whilst Muslim women activists have been at the forefront of using political processes to address their concerns and that a Turkish heritage woman has been elected to the Flanders parliament, there is a distinct lack of Muslim women in public life, as either elected representatives or civil servants. In the Flanders region the various bans on Muslim women with scarves in local councils undermines the Flemish region's drive to have 4% ethnic minority employees by 2010. These bans manipulate the intake of the workforce in a way that is unrepresentative, and again excludes certain women.

Recommendations

IHRC recommends that the bans by public authorities and government bodies be lifted to allow women greater access to political life, and to ensure that concepts of human rights including religious freedom and the rights of women are promoted through awareness raising.

In the short term there must be a focus on training government members and workers about diversity and inclusion.

Nationality: Convention Article 9

Nationality, ID Cards, Passports

IHRC also notes the trend in recent years that has seen Muslim women forced to unveil for the purposes of receiving an identity card or a passport. Recent regulations issued in Flanders have been criticised for ambiguity. Further a number of cases have been reported where

women bringing photos and completed applications to passport issuing desks have been told to either remove their hijab or in some cases to tie it behind their neck and show part of the hairline.

One woman reported having to expedite her passport application and going through with the latter request, only to find subsequently that no such guidance had been issued on passport photos. She described the photo of herself as deeply humiliating.

In another case, a woman who questioned the order given by the officer at the desk, having read the guidelines before, was told that it was not a Flanders rule, but a European directive that they were enforcing. She subsequently challenged this and was able to get her passport wearing hijab.

Additionally when applying for an ID card, women wearing hijab in their photos were asked to sign a declaration as to whether they were wearing a scarf for health reasons or as a result of Islamic belief.

Refugees wishing to have documentation issued have reported similar problems, and one volunteer with a refugee organisation explained how she regularly had to battle officers who claimed that there were rules about photos and hijab in the same way. In this case, it was not just humiliating but caused additional expense to impoverished people, who often had to pay for two sets of photos to comply with the requests.

It is clear that there is a culture within passport issuing agencies whereby individual officers feel free to implement their own rules regarding photos and force women to undergo humiliating processes in some cases.

Recommendations

Women must be allowed to wear hijab in photographs for residency and nationality documentation including ID cards and passports.

Further there needs to be training of passport agency employees to ensure that they do not discriminate against Muslim women.

Education: Convention Article 10

IHRC notes that there are three 'Communities' that deal with education in Belgium, i.e. French, Flemish and German. Traditionally the responsibility of three Ministers (one from each community) is to

allocate funds, set curricula targets and recognise new schools. Schools are otherwise allowed full autonomy in their matters. Unusually since 2003 all three ministers have tried to introduce all encompassing bans.

Arguments put forward for the bans from ministers and individual schools which have enforced bans of their own accord are inconsistent: some have argued that the hijab is a threat to security, others that it denies equality between men and women, others that it is a form of proselytising etc.

This contradicts the Belgian government's claims that the hijab bans are the result of the internal organisation of schools.

Flanders Students

In the Flanders region, members of the NGO BOEH¹¹, reported that they were recently asked to visit Ghent at the invitation of a woman's organisation to talk to groups of young girls aged 14 – 16. The inviting organisation stated that the girls in the area were showing signs of depression and were disengaging from the education process, often stating they felt there was no future for them in Belgium, in particular that they could not have a profession. The women from BOEH were asked to encourage the girls. Whilst they did so, they recounted to IHRC in an interview the numerous ways in which the young girls' disillusionment was founded on real expectations.

They point out that in Antwerp, almost half the children at school have a second language, and that the majority of these children hail from Moroccan and Turkish communities. BOEH themselves outlined many cases where young women were becoming more and more disinclined to continue education and were retreating into the home as a result of the bans.

Teachers and potential teachers

Additionally, activists reported that women wanting to teach were also prevented from doing so as a result of the constitutional decree that schools should be neutral (see section on the French Community below for arguments on the interpretation of 'neutrality'). One graduate who had completed teacher training, of Moroccan descent explained how on calling a school she met with positive feedback, until she mentioned her name, at which point the tone of the school changed. At this point

¹¹ A women's organisation comprising of Muslim and non-Muslim women activists challenging the council ban in Antwerp

she explained that she wore hijab, to which the school rejected her application for a training placement. Many more such cases were reported.

This is despite the fact that there is a shortage of teachers in the region and the country. Further, Belgium does not have many women teaching certain subjects notably sciences and economics. One member of an Economics faculty pointed out that there were quite a few women who had graduated in Economics and Political and Social sciences but were denied the ability to teach as a result of the prohibitions.

Whilst no Minister decreed ban exists in Flanders, the two Turkish schools that have been set up (which allow students to wear hijab), have refused to have teachers wearing hijab, believing (wrongly) that there is a government decree banning teachers from wearing hijab. When they have been advised otherwise by activists they have expressed fears of having their funding revoked should they employ women with hijab.

French Community

Brussels-Capital Region

The Belgian government in its report has provided some statistics regarding the various bans in schools in Belgium. Whilst IHRC cannot corroborate these statistics, it notes that the Belgian government claims that eight schools in the Brussels region allow girls with scarves citing an article of 2005. An advocacy organisation in Brussels reported to IHRC that this figure was now 2 schools. IHRC is concerned that the figures submitted by the government were inaccurate and by their own sourcing considerably out of date. The increase in the ban exemplifies IHRC's concerns regarding the marginalisation of Muslim women and girls.

Nevertheless the figures given by the Belgian government's report show the pervasive nature of the ban. It is unclear as to how many women and girls have been affected by these bans. Some will have dropped out of schools; those who stay in and are forced to remove their scarves may suffer other forms of psychological trauma and scarring.

Other French Community issues

MRAX has brought a legal action against the French Community Minister Marie Arena, for the issuance of school rules for secondary schools in Gilly and Vauban which expressly provided from the

beginning of the school year 2005-2006 the ban on all types of hat, and by extension the headscarf.

MRAX bases its case on articles 10 and 11 of the constitution and articles 9 and 14 of the European Convention on Human Rights. It argues that pluralism is the correct definition of neutrality in the context of the constitution and that the right to equality and freedom from discrimination are violated by this ban. The case is ongoing. As a result of bringing this case, MRAX reports a backlash from political sectors and some parts of civil society which have accused them of supporting inequality and being radicalised. This has resulted in loss of some funding for the organisation.

Recommendations

Needless to say, IHRC calls for all bans for students and teachers to be lifted. The same intervention that has seen community ministers try to issue bans should be invoked to remove the bans.

IHRC further supports MRAX's call for the interpretation of constitutional notions of 'neutrality'¹² to mean equality and the encompassing of religious freedom and expression.

Employment, Health, Economic and Social Benefits and Law: Convention: Articles 11, 12, 13, and 15

IHRC notes that the bans of front office is in some cases extended to back office staff in various councils. Whilst the numbers of women affected may not be considerable (six are said to have been affected by the initial Antwerp ban), such actions (a) prevent further women from applying, and (b) legitimise such discrimination against women in the public and private employment sectors.

Reference has been made above to the situation of teachers.

Activists mentioned that in some towns, whilst no public sector bans existed, it was a given that a woman wearing a hijab was unable to get a job.

¹² Article 24, section 1, paragraph 3 of the Constitution states that "the community organises a pedagogy which is neutral. Neutrality implies notably respect for the philosophical, ideological or religious perceptions of parent and students" from Bouhlal, Radouane, 'Can Secularism Engender Racism?' in *Du bon usage de la laïcité*, eds. Aden, June 2008, p 118

Health workers expressed concerns that attempts had been made to ban hijab in all public institutions including hospitals in 2004 as a response to the French ban in schools¹³.

In Antwerp, one hospital allowed doctors to wear a headcovering that left the neck open. Activists reported that this was the only hospital that had attempted to integrate hijab into uniform for healthcare workers.

Health

Activist and NGOs universally complained about the actions of the Flemish Association for Obstetrics and Gynaecology ([Vlaamse Vereniging voor Obstetrie en Gynaecologie -VVOG](#)).

Guidance was issued by VVOG that in cases of emergencies women would not be allowed to refuse medical treatment by male gynaecologists, and that in instances where a fracas was caused by the implementation of the policy, staff were allowed to take whatever action was necessary i.e. call the police.

This was said to be in response to the 'refusal of Muslim men to allow their wives to see male gynaecologists'. On the issuance of these guidelines, support from Imams was sought and received.

The complaints regarding this action included the following:

- (i) The guidelines were issued over isolated incidences during emergencies, that did not typify Muslim behaviour
- (ii) That constitutionally all Belgians were allowed to choose which doctor they wished to treat them (indeed a former employee at Antwerp council pointed out that at the point of employment all staff were given forms in which they were to declare that if a health emergency involving them arose, what gender doctor they wished to attend them).
- (iii) As a result of the guidelines, many Muslim women reported not choosing a female doctor for fear of bringing a spotlight on them, or that they would receive adverse treatment. As a result these women often felt degraded.
- (iv) That the right to call the police in cases of disturbance had always existed in hospitals;

¹³ See p213, ¹³ McGoldrick, D., (2006) "*Human Rights and Religion – the Islamic Headscarf Debate in Europe*", Hart Publishing (Oregon),

- (v) That in highlighting this as a Muslim issue, the VVOG were 'declaring war against Muslim women'
- (vi) That no consultation with Muslim women had been made before the issuance of the guidelines.
- (vii) That exceptions for healthcare officials when treating women existed on religious grounds, namely permission for Catholic doctors to refuse to perform abortions on religious grounds.

Issue (iii) above is of deepest concern in that Muslim women are being pressurised into not receiving the medical treatment that is their right and preference.

As regards issue (vi), women interviewed suggested their own recommendations, including that doctors should explain the legal position early on in pregnancies to couples, namely that they cannot refuse emergency treatment on the basis of the gender of the doctor, rather than in an emergency situation as had been the case hitherto.

Denial of social security benefits

MRAX reported a case in Wavre in October 2006, whereby a woman claimant for benefits was asked to remove her hijab at her interview. Upon refusing to do so, she received a letter in which it was stated:

"On this 11th October, you presented yourself before the special social services committee to be heard by them. On this occasion you were wearing a distinctive religious sign in an ostentatious manner which covered your hair. The special committee asked you to take off your veil you refused to comply with that request and therefore consequently with the hearing to which you had been summoned. In light of this refusal the special social services committee is particularly anxious to remind you that it is itself an administrative body which is duty bound to respect the constitutional principle of neutrality as much on the level of freedom of expression as at the level of freedom of religion for fear of causing discrimination between eligible parties."

The committee that adjudicated her application as headed and chaired by the president of Wavre Public Centre for Social Services in person. Whilst this case was later resolved by MRAX, IHRC is concerned that there may be many such cases which do not become public due to the reluctance of Muslim women to come forward for fear of reprisals. This fear is one that has been expressed by respondents and their representatives throughout this research.

Bans on hijab, burka and nikab in public spaces and places

A trip to one of the parliamentary bodies by students and their teacher resulted in them being refused entry because one student wore a headscarf. Again this was resolved by the intervention of MRAX and they have been assured that no such 'misunderstandings' will arise in the future.

In another case, which was resolved through MRAX's intervention, a woman was refused permission to remove money from a bank unless she removed her hijab.

IHRC notes that these cases were resolved, but is concerned that these cases are just the tip of an unquantifiable iceberg.

In 2003, a number of communes introduced bans on burqa and nikab (a face covering of various forms) in public places. By 2004 this number had increased to 20, including Antwerp, Maaseik, Ghent, Antwerp, Sint-Truden and Lebbeke. A fine of EUR 150 was also introduced.¹⁴ In 2005, Khadija El Ouazzani was fined EUR 75 under the police rules in Maaseik. She challenged this together with four other women in the Maaseik magistrates court, but lost in April 2006. This mirrors the experiences of Muslim students and their families who have taken their school related cases to court¹⁵. IHRC is concerned that legal recourse in discrimination cases against Muslim women is not a course that is open to Muslim women who see consistent judgments against them, on various issues.

Recommendations

The ban on public sector workers / government employees from wearing 'ostentatious' religious symbols, hitherto argued to be based upon enforcing neutrality, should be lifted.

A more robust understanding of anti-discrimination needs to be taken on board by the Belgian government, and this needs to be transmitted to equalities bodies and public institutions.

Consultation with NGOs and activists to review how many employment or other discrimination cases that have gone through the courts or been settled outside with regard to discrimination faced by Muslim women, needs to be urgently held, and measures and policies that

¹⁴ McGoldrick, D., (2006) "*Human Rights and Religion – the Islamic Headscarf Debate in Europe*", Hart Publishing (Oregon), p212

¹⁵ *ibid*

facilitate headscarf wearing women's role in the public and private sectors implemented.

Court officials, judges and lawyers need to be trained in effective anti-discrimination practices that ensures the spirit of anti-discrimination is consistent in judgements and cases, and that women are not excluded from work for their choice of dress.

Judges need to be trained in the effects regarding stereotyping that such decisions have.

Actions by professional bodies that target minority women and adversely affect them, need public condemnation from government.

Concluding remarks

IHRC encourages the Committee to look thoroughly at the consequences under CEDAW of the cases outlined. It is IHRC's submission that although affecting primarily Muslim women, these cases affect the equality of all women in one way or another and must be urgently addressed by the Belgian government.

Whilst there has been frenetic activity pushing for further bans in Belgium since the enactment of the 15 March 2004 Act in France, IHRC notes that arguments used for the bans in Belgium vary and that whilst there has been some attempt to argue that notions of 'neutrality' (rather than laïcité) reflected a similar notion of laïcité, it is but one of many arguments that essentially carry racist overtones and practically serve simply to exclude Muslim women who wear the headscarf.

Appendix 1

Freedom of Religion in Belgium and the Hijab

<http://www.ihrc.org.uk/show.php?id=3149>

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1. Introduction

In Belgium there are three main areas in which religious clothing is seen as causing problems; pupils wearing hijab (hijab and headscarf will be used interchangeably) in school, civil servants wearing hijab, and the wearing of niqab and burka in public spaces. The headscarf has become an issue especially within the educational sector, which has been documented since the middle of the 1970s. The debate intensified towards the end of 1989, following on from similar debates in France¹. There is, however, no national legislation regulating the wearing of religious symbols in Belgium. Bans have been introduced into regulations and bylaws by schools and local authorities. The majority of Belgian schools now prohibit pupils and teachers from wearing the hijab². Belgium has a small Muslim population, around 375,000, which makes up 4% of the country's total population³. Belgium is a federal state with segregated political power into three levels: the federal government; three communities; and three regions⁴.

2. Documented Incidents 2000 -2007

2.1 Hijab in Schools

In Belgium, everything related to education is under the jurisdiction of the Communities⁵. Since the 1990s schools introduced hijab bans through existing bylaws that allow schools to regulate school uniforms⁶. In December 2003, two Belgian Senators presented a draft law to the Belgian Senate to prohibit the wearing of the hijab and other overt religious symbols in state schools. Interior minister Patrick Dewael said,

'[t]he government should remain neutral...in all circumstances and be represented as such...that means no distinctive religious symbols or veils for police officers, judges, clerks or teachers at public schools'.

Furthermore, Senator Anne-Marie Lizin said that the ban was needed to oppose Islamic sexism, as 'the veil amounts to the oppression of the individual in the name of religion'. However, the senators were unable to acquire the necessary support and the draft was not taken any further⁷. By 2004 both the government of the French and the Flemish community had handed the responsibility over to schools under their authority to prohibit the wearing of headscarves⁸. In 2005 the Antwerp Court of Appeal ruled that the Belgian anti-discrimination law did not prohibit school from banning headscarves. The appellants challenged a general prohibition on head coverings in a school in Hasselt. The Court held that public schools can limit freedom of religion in cases where such a measure is considered necessary to ensure the proper organization of school work and/or to guarantee the safety or the rights of other students⁹.

French Community Prime Minister Marie Arena approved in August 2005 a regulation implemented by the state secondary schools Gilly and Vauban (in Charleroi) banning the wearing of any form of head garment. Following this approval by a minister the anti-racism movement MRAX took legal action in the Belgian Conseil d' Etat (Supreme Administrative Court of Belgium) to overturn school regulations banning the hijab. The case is pending before the Court, and it is expected to be decided in 2009¹⁰. By late 2005, approximately 70% of secondary schools under the authority of the French community had introduced a hijab ban, compared with 41% in 2000. In Brussels only eight schools out of 111 allowed pupils to wear headscarf¹¹. A number of complaints were filed with regard to school bans on headscarves. In 2006 only two secondary schools in the municipal educational system of Antwerp allowed their students to wear headscarves. More and more schools elsewhere in Flanders are introducing headscarf bans into their regulations¹². The result of the governments of the French and the Flemish communities handing public schools the right to ban the hijab has been a lack of uniformity. In the individual cases that have gone to court, the courts have consistently held that the principles of equality and neutrality of state education take precedent over freedom of religion.

2.2 Burqa & Niqab

In 2003 a few municipalities introduced a ban on wearing the burqa in public places into their police regulations. This has been done through an old law prohibiting the wearing of masks in public. In 2004, the number of communes where such bans applied increased considerably to a total of more than 20 communes out of a total of 75 municipalities¹³. In April 2005 a woman was fined 75 euro for wearing the burqa in public¹⁴. A police inspector in Maaseik said that women wearing the burqa alarmed the locals. He said that 'you cannot identify or recognize someone when they're wearing a burqa, especially at night. It is

not normal; we don't have that in our culture'¹⁵.

2.3 Civil Servants

In 2003 five public hospitals in Brussels banned their staff from wearing the headscarf¹⁶. In 2006 two hijab-wearing teachers were sacked for not complying with "religious neutrality" rules¹⁷. Local councils of Antwerp and Lokeren and Ghent have introduced new staff regulations prohibiting visible religious symbols. Frontdesk staff are not allowed to show external religious characteristics, like Muslim headscarves¹⁸. In 2007 The Federal Council of Education introduced a general headscarf ban for teachers, with the exception of religious education teachers who teach Islam. The authorities of the Brussels Capital Region want to pass a new staff regulation that will not allow external religious characteristics, even in back-office functions¹⁹.

3. Applicable National and International Law

3.1 National Law

Freedom of religion is provided for in (A.) 19 of the Belgian constitution. The prohibition of discrimination on the grounds of religion is provided for in A.s 10 and 11 of the Constitution. The anti discrimination law of 25 February 2003 prohibits discrimination on grounds of religion²⁰. In Belgium international treaties signed by Belgium, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), take precedence over all national legislation and can be directly enforced by judges in Belgian courts²¹.

3.2 International Law

3.2.1 Freedom of Thought, Conscience and Religion

The Universal Declaration of Human Rights 1948 spoke of the 'advent of a world in which human beings shall enjoy freedom of speech and belief'. Freedom of thought, conscience and religion is considered a fundamental human right. As recognised by many international human rights treaties; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief 1981 ('1981 Declaration'); ICCPR A. 18; and A. 9(1) of the European Convention on Human Rights;

Everyone has the right to freedom of thought, conscience and religion; this right includes...freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance ²².

The European Court of Human Rights (ECtHR) has consistently stated that this right is at the core of a democratic society, claiming that '[i]t is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been won over the centuries, depends on it' ²³.

The second part of A.9(1) protects the freedom to 'manifest' ones religion or belief 'in public or in private, alone or with others'. The manifestation may include 'worship, teaching, practice or observance'. In *Vereniging v Netherlands*²⁴, the European Commission of Human Rights stated 'A.9 primarily protects the sphere of personal beliefs and religious creeds....[i]n addition it protects acts which are intimately linked to these attitudes such as acts of worship or devotion which are aspects of the practice of the religion or belief in a recognised form'. Indeed, in *Mannousakis v Greece*²⁵, the Court held that the right of manifestation of belief excludes the discretion of states to determine 'whether religious beliefs or the means used to express them are legitimate'.

Under A.9(2) ECHR, '[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of rights and freedoms of others'. Indeed, the right enshrined in A.9 is so fundamental that the limitations in A.9(2) are even narrower than those relating to the freedom of expression, association and assembly contained in the ECHR. The European Court has consistently stated that there must be a narrow construction of these limitations together with a broad interpretation of the freedoms guaranteed. Any restrictions on freedoms must be 'construed strictly' and can be justified only by 'convincing and compelling reasons' ²⁶. Freedom of religion is also contained in the International Covenant on Civil and Political Rights in A. 18, and in A. 14 of the International Convention on the Rights of the Child.

3.2.2 Freedom from Discrimination

The ECHR prohibits discrimination. A. 14 in conjunction with A.9 prohibits discrimination in the enjoyment of one's freedom of religion. A. 14 provides that the Convention rights 'shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. The European Court has stated that discrimination on the basis of certain grounds, such as race and sex, is particularly serious and has stated that 'very weighty reasons' would have to be advanced before such treatment could be regarded as compatible with the Convention²⁷. Freedom from discrimination is also secured by A. 26 ICCPR, and the International Convention on the Elimination of All Forms of Racial Discrimination, Belgium has ratified both.

A ban on the hijab, turban and kippa is unfairly discriminatory towards particular ethnic groups – namely Jews, Sikhs and generally Muslims from a particular racial group.

The United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance stated in his report in 2007 that; the prohibition of visible signs of religion in State schools and the workplace; prohibiting the wearing of the burka in the street and public places; statements claiming that the veil or the burka is antisocial; are all signs of Islamophobia and that these manifestations "attest to an insidious climate of undeclared wars between civilizations and religions which, because of their globalized images and their reciprocal effects, gradually poison and pervert movement and human, cultural and political relations at the global level, and create negative and antagonistic attitudes among the general public" ²⁸.

The Convention on the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW), which Belgium has ratified, provides that the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women...on a basis of equality of men and women, of human rights and fundamental freedoms...' ²⁹. A.2 places an obligation on states to 'condemn discrimination against women in all its forms' and 'to pursue by all appropriate means and without delay a policy of eliminating discrimination against women...'

3.2.3 Right to Education

The right to education is recognised in many major human rights instruments, including the Convention on the Rights of the Child 1989 (A.28) and CEDAW, which provides for equal rights for men and women in the field of education (A.10) and employment (A.11)³⁰. UNICEF has recently reported that millions of children worldwide are still denied the basic right to education – with gender disparity ensuring that the majority of those children (65 million) are girls³¹, many of them being in the Arab states or sub-Saharan Africa. Perhaps it is then ironic that the ban on headscarves in public schools will deny girls access to schooling in countries of the so called 'developed' world. No child should have to choose between practicing the tenets of their faith and acquiring a basic education – yet for Muslim girls in certain European countries – this may be the stark choice that they face.

4. Scrutinising the Arguments

Against this background the arguments used to legitimatise the prohibition on religious symbols in Belgium will be scrutinised.

The Rights of Others

Introducing prohibitions on the hijab or religious symbols into school regulations are often justified by the argument that the hijab exerts religious pressure on fellow students. In particular school authorities seem concerned with the impact on other Muslim girls who do not wear the hijab. Under international law, states can only limit religious practices when there is a compelling public safety reason, when the manifestation of religious beliefs would impinge on the rights of others. However, it has not been shown that 'the right to be free from religious pressure' has indeed been infringed. Muslim headscarves, Sikh turbans, Jewish skullcaps and large Christian crosses do not pose a threat to public health, order or morals; they have no effect on the fundamental rights and freedoms of other students; and they do not undermine a school's educational function³². In other words, it has not been shown in what way the hijab would have such influence on fellow students. International human rights law obliges state authorities to avoid coercion in matters of religious freedom, and this obligation must be taken into account when devising school dress codes³³.

The flipside of this argument is that religious students have the right to be protected from secular pressure. The pressure exerted by the institutionalized educational system, the teachers and fellow students is surely greater than the pressure by some Muslim girls wearing hijab.

Gender Equality

An important argument for banning the hijab in schools is gender equality. Perhaps due to the great importance of this concept in Europe since the 20th century, this argument is accepted at face value. This view is summed up by Senator Anne-Marie Lizin who said that the ban was needed to oppose 'Islamic sexism', as 'the veil amounts to the oppression of the individual in the name of religion'.

However, no evidence has been produced to support this stance. In the ECtHR case *Leyla Sahin v Turkey*, Judge Françoise Tulkens of Belgium, highlighted this utter lack of evidence in her dissent: "What, in fact, is the connection between the [headscarf] ban and sexual equality? The judgment does not say [The headscarf] does not necessarily symbolize the submission of women to men and there are those who maintain that, in certain cases, it can even be a means of emancipating women. What is lacking in this debate is the opinion of women, both those who wear the headscarf and those who choose not to." 34

Wearing the hijab is, in most instances, an act of free, individual, informed, rational choice and agency. It can in certain circumstances be an instrument of oppression, but it is impossible to maintain that it is necessarily so in all circumstances³⁵. There is an implied assumption in the gender equality argument that this is the case. The result is that girls and women are told that they are oppressed and are forced to sacrifice their religious beliefs in the name of freedom. This has a deep emotional, psychological impact. Girls and women are forced to choose between their religious beliefs and their education or employment. This causes disillusion and distrust for the state, alienating a generation of women.

Rights of the Child

A further argument being made to support the ban is that children's autonomy is being overridden by parents and communities who are coercing them into wearing the hijab. However, once again, there is little evidence to support this and even if this is the case - it is impossible to justify replacing parental control over a child's actions with state control over the dress of individuals of an entire section of the community. Indeed, the idea of human rights is based on the notion that for each individual there is an area of personal liberty immune from state invasion. In recognition of this principle, A.2 of the First Protocol to the ECHR (1952), to which Belgium is a signatory, '[n]o person shall be denied the right to education...the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'. This is one example of the intention of international legislation to endorse the right of parents to protect children against the use of educational institutions by the state for ideological indoctrination of its own ideas.

It shall also be remembered that the Convention on the Rights of the Child, A. 14, guarantees a child's right to freedom of religion. Thus if a child wants to wear the hijab against her parents wishes, the state has a duty to protect and enforce her right.

Public Order arguments

The Hasselt court of first instance accepted the argument that the prohibition had been introduced as a reaction of disturbance caused by militant behaviour by a number of Muslim girls at the school defying teachers and co-pupils. The Antwerpen Court of Appeal, which dealt with the appeal of this case, also accepted this argument³⁶. Again there is no evidence which shows a direct link between misbehaviour by pupils and the headscarf.

Security

The main argument used to justify the bans on niqab and burqa is that public safety is undermined if members of the public are allowed to hide their identity.

In the public sphere, where people go about their daily lives, there is no apparent or urgent need to ban the niqab. In fact, the ECHR requires that any limitation on the freedom of religion must be based on a pressing social need. There is no evidence that crimes are being committed by people wearing niqab or the burqa, thus hindering the course of justice. It is likely that the real motive for banning the niqab and burqa stems from a fear of the unknown. As the police inspector said, the locals were 'alarmed' by the burqa. The appropriate course of action for the public authorities would be to foster understanding between the inhabitants. Belgium in its Country Report to the Committee on the Elimination of all Forms of Discrimination Against Women noted that it will promote initiatives 'that will promote the emancipation and integration of women of foreign origin, within a spirit of inter-cultural dialogue'.³⁷ The British Judicial Studies Board's guidelines regarding niqab and burqa in woman's involvement in the criminal, civil justice, or tribunal system acknowledges that "It is important to acknowledge from the outset that for Muslim women who do choose to

wear the niqab, it is an important element of their religious and cultural identity. To force a choice between that identity, and the woman...as a witness, party, member of court staff or legal office-holder may well have a significant impact on that woman's sense of dignity and would likely serve to exclude and marginalise further women with limited visibility in courts and tribunals." 38

Neutrality arguments

This is probably the strongest argument regarding religious symbols. In Belgium, Art. 24 of the Constitution provides for the neutrality of public education and thus is generally interpreted as proscribing the wearing of religious insignia by teachers³⁹. Interior minister Patrick Dewael said,

'[t]he government should remain neutral...in all circumstances and be represented as such...that means no distinctive religious symbols or veils for police officers, judges, clerks or teachers at public schools'⁴⁰.

Arguments regarding the hijab worn by teachers and civil servants often refer to the need of a secular state educational system and public services to remain neutral. However, this is an argument about secularism in disguise. A liberal notion of secularism does not prohibit individual manifestations of religion or belief in the public sphere or even inside public institutions. On the contrary, A. 9 ECHR explicitly gives right to exercise freedom of religion in public- which can only be limited by strict criteria in A. 9.241. The argument that public institutions have to be 'neutral', meaning devoid of any religious affiliations/symbols, comes close to fundamentalist secularism, which imposes a secularist way of life on all individuals when they enter the public domain. The ECtHR has addressed the relationship between neutrality and tolerance, underlining that neutrality is meant to serve among other things the fostering of tolerance: "The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society." 42

In the context of education, by imposing a fictional absence of religion in schools it is arguable that the Government is simply promoting the development of uniform intolerant attitudes within young minds. It is arguable that the principle of neutrality should require, in a country enjoying actual religious peace that students can see in their own school an evidence of the religious pluralism existing in society. Allowing religious pluralism is more consistent with a neutral attitude of the State and more educative for the students, than a fictional absence of religion in the school environment⁴³. In fact, a study for the British government has found that at all-white schools youths are more likely to believe they are superior to those from other races, and their attitudes are more of a barrier to integration than those of Muslims.⁴⁴

People also argue that the hijab amounts to proselytism, and therefore violates the principle of neutrality. However this is not a legitimate reason under international human rights law to ban it from being worn. In fact, proselytism is protected under ECHR A.9⁴⁵. Also A.10 ECHR protects the right to 'freedom to hold opinions and to receive and impart information and ideas without interference'. This right is often considered the cornerstone of personal freedom and is vigorously upheld. Indeed, the Court has stated that it 'constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man' and applies to the freedom to express an opinion, even when it might 'offend, shock or disturb'⁴⁶. In reality, this is the same freedom of expression advocated by European countries which criticise states such as Saudi Arabia or Afghanistan for their human rights standards.

Conclusion

Human rights law is not specific to culture or country – it exists precisely to contradict every form of state oppression - whether it be in the name of religion or secularism. A further argument being made to support the ban is that children's autonomy is being overridden by parents and communities who are coercing them into wearing the hijab. However, once again, there is little evidence to support this and even if this is the case – it is impossible to justify replacing parental control over a child's actions with state control over the dress of individuals of an entire section of the community. Indeed, the idea of human rights is based on the notion that for each individual there is an area of personal liberty immune from state invasion. In recognition of this principle, A.2 of the First Protocol to the ECHR states, '[n]o person shall be denied the right to education...the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'. This is one example of the intention of international legislation to endorse the right of parents to protect children against the use of educational institutions by the state for ideological indoctrination of its own ideas.

Furthermore, the long lasting results of forcibly hindering girls and women from wearing the hijab are seldom discussed. The psychological impact is likely to have a negative impact on integration, which is, after all, a

two way process. Belgium cannot expect Muslim girls to become its integrated citizens while marginalizing them by effectively denying them education. Banning the hijab would lead to increased educational exclusion, lack of employment opportunities and thus social deprivation - ironically adding to the myth of the 'oppressed' Muslim woman in a veil. As for women working for public authorities, banning the hijab leads to less employment opportunities, exclusion and alienation from society. It also sets a dangerous precedent for private employers and encourages them to discriminate against women who wear the hijab. Emancipation through work is effectively hampered by such policies. In fact, in 2002 an employer unilaterally changed the employment terms of his Muslim employee, although the latter had clearly expressed her wish at the start of the contract not to be obliged to wear the summer uniform which the company imposes on its employees⁴⁷. In 2006 a Belgian firm sacked one of its workers, a female receptionist who insisted on wearing the headscarf⁴⁸. In 2007 the National Railway Company of Belgium decided that train conductors cannot wear hijab⁴⁹. The end result would be the creation of an 'apartheid' system in the heart of Europe – discrimination against a group of citizens who are denied education (or forced into substandard educational systems) and effectively the right to work thus forcing them into a spiral of economic and social isolation.

5. Remedies

5.1 ECtHR

The ECHR has well developed enforcement machinery enabling an individual who believes his rights have been violated to bring a case before its Court in Strasbourg. Whilst an increasing number of cases are being taken to the Court, the process is not ideal – it can be costly and time consuming because all remedies before national courts must be exhausted first. Thus, even if a girl seeking to challenge the hijab ban in Belgium knows that she will not succeed in Belgium's Courts, she must take her case up to the highest Court (a process which may take years) before she is able to make an application to the European Court in Strasbourg. Furthermore, the Court receives a large number of applications and it can take several years for a case to be decided. Added to this, many cases which are lodged before the Court are declared 'inadmissible' on various criterion and therefore do not even get to the Court for a full hearing. Finally, a problem that may be of significance in this area is that a ban of religious symbols in schools concerns children. Under the ECHR, children are unable to make a claim to the Court directly – an application must be made by an adult on their behalf.

5.2 CEDAW

Under CEDAW, states must implement measures to abolish all discriminatory laws and ensure the effective protection of women against discrimination. CEDAW does not give an individual the right to complain against discriminatory treatment – it merely requires states to submit a report to its Committee at least every 4 years indicating the measures they have adopted to give effect to the provisions of the CEDAW. The Committee discusses these reports and action to be taken with the country concerned. The idea is that a report will force states to undertake a self evaluating exercise and result in an improvement in the law. The reality is that reports can often lack detail and the Committee has no force of its own to ensure that a report is submitted on time or to enforce its rulings⁵⁰. This reporting mechanism has been used in the past by CEDAW to criticise the gender disparity in the social and economic treatment of women in, for example, Arab states. It remains to be seen whether such critical treatment will be voiced by UN bodies on the current prejudicial treatment of girls facing a hijab ban in European countries.

6. Conclusion

It is important to remember that it is States that have primary responsibility for enforcement of human rights standards, which must be protected first and foremost, at the national level. By its citizens, law is seen as the principle carrier of the values shared by the community and national laws must not become neglectful when it comes to the protection of individual rights. It is only where national laws fail that international law has its most crucial role to play – to step in and safeguard fundamental freedoms that would otherwise be overridden.

ENDNOTES

1. Page 54, W. Shadid P. S. Van Koningsveld, Muslim Dress In Europe: Debates On The Headscarf, *Journal of Islamic Studies* 16:1 (2005) pp 35–61
2. Eva Brems, Antidiscriminatiewet faalt tegen hoofdzoekverbod op school, *De Juristenkrant*, 14 september 2005, 3.

3. Page 210, Dominic McGoldrick, Human Rights and Religion: The Islamic Headscarf Debate in Europe, Hart Publishing (2006)
4. Wikipedia, Belgium, [Online] http://en.wikipedia.org/wiki/Belgium#_ref-rolandwillemys_0 [Accessed 12 January 2008]
5. Page 77 CEDAW Combined fifth and sixth periodic reports of States parties Belgium, CEDAW/C/BEL/6 2007
6. Page 55, W. Shadid P. S. Van Koningsveld, Muslim Dress In Europe: Debates On The Headscarf, Journal of Islamic Studies 16:1 (2005) pp 35–61
7. The times (2004), Belgium next in line as Europe's veil ban spreads. [Online] <http://www.timesonline.co.uk/tol/news/world/article997977.ece> [Accessed 26 November 2007]
8. Page 7, 2004 Annual Report on Human Rights in Belgium, Human Rights Without Frontiers Int [Online] http://www.hrwf.net/belgium/ext/human_rights_in_belgium_2004.pdf [Accessed 5 October 2007]
9. Page 407, Eva Brems, Het recht van leerlingen om een hoofddoek te dragen op school: recente ontwikkelingen, CDPK 2006, 406-414.
10. Internet Centre Anti Racism Europe (2005), <http://www.icare.to/archive-augusttoseptember2005.htm#LEGAL%20BATTLE%20OV> [Accessed 15 November 2007]
11. Page 87 CEDAW Combined fifth and sixth periodic reports of States parties Belgium, CEDAW/C/BEL/6 2007
12. Page 76, IHF report 2006 Human Rights in the OSCE Region, [Online] http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057 [Accessed 25 October 2007]
13. Page 8, 2004 Annual Report on Human Rights in Belgium, Human Rights Without Frontiers Int. [Online] http://www.hrwf.net/belgium/ext/human_rights_in_belgium_2004.pdf [Accessed 5 October 2007]
14. AD (2006) Burka-verbod is succes in België, [Online] <http://www.ad.nl/binnenland/article823685.ece> [Accessed 10 January 2008]
15. page 212, Dominic McGoldrick, Human Rights and Religion: The Islamic Headscarf Debate in Europe, Hart Publishing (2006)
16. Page 8, 2004 Annual Report on Human Rights in Belgium, Human Rights Without Frontiers Int. [Online] http://www.hrwf.net/belgium/ext/human_rights_in_belgium_2004.pdf [Accessed 5 October 2007]
17. The Guardian (2006), The veil controversy: White pupils less tolerant, survey shows, [Online] <http://education.guardian.co.uk/raceinschools/story/0,,1929207,00.html> [Accessed 2 November 2007]
18. Ali El Bouchtaoui, (2007) Minderhedenforum (www.minderhedenforum.be)
19. Minderhedenforum (2007) Persbericht: nieuwe regeling hoofddoek is pure discriminatie [Online] <http://www.minderhedenforum.be/zoek.htm?zoek=26/10/2007> [Accessed 12 December 2007]
20. Eva Brems, Antidiscriminatiewet faalt tegen hoofddoekverbod op school, De Juristenkrant, 14 september 2005, 3.
21. Page 638, On the Permissible scope of legal limitations on the freedom of religion or belief in: Belgium, Rik Torfs, 19 Emory Int'l L. Rev. 637 (2005)

22. This is also guaranteed by the 1981 Declaration. Further, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities 1992 provides that
- 'States shall protect the existence and the...religious...identity of minorities within their respective territories' (A.1). Further, it provides that minorities have the 'right to enjoy their own culture, to profess and practise their own religion...freely and without any interference or any form of discrimination' (A.2).
23. Kokkinakis v Greece, 25 May 1993, p.31.
24. (1995) App. No. 16616/90
25. 23 EHRR 387 (1996)
26. United Communist Party of Turkey v Turkey, 30 January 1998
27. Inze v Austria, App. No. 8695/79
28. Paragraph 39, Report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance 2007, to the Fourth session of the Human Rights Council (A/HRC/4/19)
29. Article 1 CEDAW
30. Belgium in its Country Report to the Committee on the Elimination of all Forms of Discrimination Against Women noted that it will promote initiatives 'that will promote the emancipation and integration of women of foreign origin, within a spirit of inter-cultural dialogue', Combined third and fourth periodic reports, 2002, p.6
31. State of the World's Children 2004, Ch.3.
32. Human Rights Watch, (2004) France: Headscarf Ban Violates Religious Freedom Human rights Watch [Online]
<http://www.hrw.org/english/docs/2004/02/26/france7666.htm>
 [Accessed 15 November 2007]
33. Human Rights Watch, (2004) France: Headscarf Ban Violates Religious Freedom Human rights Watch [Online]
<http://www.hrw.org/english/docs/2004/02/26/france7666.htm>
 [Accessed 15 November 2007]
34. Leyla Sahin v Turkey, App. No. 44774/98, Eur. Ct. H.R. (2004)
35. Page 14, Dominic McGoldrick, Human Rights and Religion: The Islamic Headscarf Debate in Europe, Hart Publishing (2006)
36. Page 407, Eva Brems, Het recht van leerlingen om een hoofddoek te dragen op school: recente ontwikkelingen, CDPK 2006, 406-414.
37. Combined third and fourth periodic reports, 2002
38. Paragraph 3.3, Judicial Studies Board 2007, Equal Treatment Advisory Committee
39. <http://www.fed-parl.be/gwuk0002.htm#E11E2>
40. see note 5 above.
41. Page 2, Ingvill Thorson Plesner, The European Court on Human Rights between fundamentalist and liberal secularism, Paper for the seminar on The Islamic head scarf Controversy and the Future of Freedom of Religion or Belief Strasbourg, France 28-30 July 2005
42. page 10, Ingvill Thorson Plesner, The European Court on Human Rights between fundamentalist and liberal secularism, Paper for the seminar on The Islamic head scarf Controversy and the Future of Freedom of Religion or Belief Strasbourg, France 28-30 July 2005

43. Page 622, Javier Martinez-Torron, Limitations On Religious Freedom In The Case Law Of The European Court Of Human Rights, 9 Emory Int'l L. Rev. 587

44. The Burnley Project: Evaluating The Contribution Of Interfaith Dialogue To Community Cohesion, Lancaster University, Interim Report (2006)

45. Kokinakkis v Greece

46. Handyside v UK (1976), para. 49

47. Industrial tribunal, Brussels 7th chamber, 17 October 2002, Rachida v ONEM (R.G. no 40.571), J.D.J. no 220, December 2002

48. De Standaard (2006), Geen hoofddoek op de werkvloer, [Online]
<http://www.standaard.be/Artikel/Detail.aspx?artikelId=GE7TT6E6&word=Group+4+Securicor+hoofddoek>
[Accessed 5 December 2007]

49. De Standaard (2007), 'Conducteur mag geen hoofddoek dragen', the Manager of NMBS Marc Deschenmaecker said 'I don't have a problem with the headscarf, but a train conductor cannot wear a headscarf.' [Online]
<http://www.standaard.be/Artikel/Detail.aspx?artikelId=U41GUJFP&word=NMBS+hoofddoek>
[Accessed 5 December 2007]

50. On a more positive note, a 'Communications Procedure' has recently been established which gives individuals and groups of women the right to address complaints directly to the Committee. Furthermore, an Inquiry procedure now enables the Committee to conduct inquiries into grave or systematic abuse of women's human rights in countries - Optional Protocol to CEDAW passed by the UN General Assembly in 1999, signed by Belgium and ratified by France and Germany.

APPENDIX II

'FRANCE: Concerns Regarding the Violation of CEDAW by the Banning of the Islamic Headscarf and other religious symbols in schools etc', January 2008,

<http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/IHRC.pdf>

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IHRC notes that the operation of structural prejudices in whichever national context prevent those marginalised from accessing mainstream discourse, unless it is on the terms of the majority community i.e. it conforms to the majority's understanding of that minority¹⁶ (see Kramarae's (1981) 'Muted Group Theory'¹⁷).

On the issue of the headscarf in France, notable public figures including actresses Emmanuelle Beart, Isabelle Adjani and the designer Sonia Rykiel have made public statements that speak to the majority perception of the headscarf regarding women's status that supposes a superiority on the part of those making the comments.¹⁸ Such comments only serve to undermine progress for universal women's rights by disempowering minority women from tackling either their own particular patriarchies (as they see them) or to contribute to cross cultural struggles against sexism.

IHRC shares the concerns and pessimism of Geissner¹⁹ and Amiraux²⁰ that the prevailing context in which Muslims in France are discussed are so negative as to simply feed the 'stereotypical representations of how Muslims think, eat, love, and look.'²¹

IHRC shares Amiraux's concern that some of the prevailing stereotypes emanate from the public recognition of works from Muslims that typify majority stereotypes about Muslim (particularly Muslim women's experiences).²² Whilst IHRC (nor Amiraux) do not challenge the authenticity of the personal experiences described in such works, IHRC notes that the celebration of such work to the exclusion of counter or simply different narratives, exemplifies the muting of other Muslim women.

The promulgation of such stereotypes must be acknowledged and addressed in the same way as sexism against majority community women. This requires a sea change in political and media cultures, as well as an understanding within legal circles (including practically training of lawyers and judges) as to the normative issues involved. This is clearly an enormous task, but the level of prejudice currently exhibited at the highest levels of French society is of extreme concern.

¹⁶ See also Ameli, S.R., Marandai, S., Ahmed, S.T., Kara, S. and Merali A. (2007) *The British Media and Muslim Representation: The Ideology of Demonisation*, Islamic Human Rights Commission, (London)

¹⁷ Baer, J. (1998) *Muted Group Theory by Chris Kramarae*, Human Communication Theory, Colorado: University of Colorado.

¹⁸ Beart, Adjani and Rykiel joined 57 other women to sign a petition that calling for a ban on headscarves as "this visible symbol of the submission of women"

¹⁹ Geisser, V. (2003), *La nouvelle islamophobie*, (Paris, La Découverte)

²⁰ Amiraux, V' Speaking as a Muslim :Avoiding Religion in French Public Space', in eds Jonker, G. and Amiraux, V. *Politics of Visibility: Young Muslims in European Public Spaces*,(2006), Transaction Publishers, New Jersey

²¹ Ibid pp25-26

²² Ibid pp26-27

IHRC notes that 'traditional' concerns regarding tensions between human rights concepts and gender justice, where the rights of individuals trump those of groups (e.g. the right of a woman to be a pornographer against the right of women to be free from sexual exploitation²³) is in this context inverted. Instead, as Amiraux suggests: 'In the public debates on Islam that center on secular issues, the expert becomes marginal and the individual, having directly experienced difficult situations, becomes the referee.'²⁴

²³ See Kappeler, S. *The Pornography of Representation*, on the striking down of Minneapolis City Council ordinance on pornography in 1983, pp11-15

²⁴ Ibid p.27