



AMNESTY INTERNATIONAL'S ADVOCACY BRIEFING

Analysis of the impact of measures taken in the name of secularism on the enjoyment of human rights of Muslim women and girls in France

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The question of the conformity of the wearing of religious symbols with secularism is a recurring debate in France. Unfortunately, however, analyses of these issues too often fail to be read through the prism of international human rights law, and in particular the right to non-discrimination.

In this advocacy briefing, Amnesty International analyzes the impact of measures taken in the name of secularism on the enjoyment of human rights of Muslim women and girls in France.

In order to be able to analyze the issue of secularism in France with regard to international human rights law (IHRL), it should be recalled that Amnesty International's analyses are based on the principle of impartiality. The principle of impartiality means that Amnesty International does not take a position on the political organization of a country, nor on the political visions and ideologies of its leaders. Amnesty International does not support or oppose any ideology, culture or religion as a matter of principle.

Amnesty International's analysis focuses on assessing, through our research, state compliance with its obligations to respect, protect and fulfill human rights. Amnesty International analyzes government laws, policies and practices to ascertain their impact on human rights, using an intersectional lens to identify the different and particular ways in which these impact rights holders.

In France, secularism is a structuring principle of political organization. Established by the law of 1905 according to which "The Republic ensures freedom of conscience. It guarantees the free exercise of religions under the only restrictions laid down ... in the interest of public order."¹ The principle of secularism also has constitutional value, since according to the first article of the Constitution: "France is an indivisible, secular, democratic and social Republic. It ensures the

¹ Law of December 9, 1905 concerning the separation of Church and State;
<https://www.legifrance.gouv.fr/loda/id/LEGISCTA000006085398>



equality of all citizens before the law, without distinction of origin, race or religion. It respects all beliefs.”²

The drafting of these texts is not in itself contrary to international law.

However, *in concreto*, as the following briefing will attempt to demonstrate, the measures taken over the past 20 years in the name of secularism, and in particular the measures aimed at prohibiting the wearing of religious symbols, have negative consequences for Muslim women and girls. The measure places the French State in breach of its obligations to respect, protect and fulfill Muslim women and girls’ human rights, including their rights to non-discrimination, health, equality, and a range of other human rights. Additionally, these measures do not meet the criteria laid down by international human rights law for restrictions on freedom of conscience.

Thus, it is not secularism that Amnesty International analyzes, nor its merits, nor even the merits of the different definitions of secularism that are made by the various French political actors; but rather the impact of the measures taken in its name on the enjoyment of human rights.

The following briefing focuses on the impacts of restrictions on the wearing of religious symbols taken as a whole, that is as a succession of restrictions both specific to particular areas of life (school, employment, sport), and general as to their temporality and geography (all the time, throughout France). These restrictions, though applicable to particular areas, form by their multiplicity a generalized restriction on the wearing of religious symbols (several areas of women’s lives, all the time and throughout France). The analysis is based on the following measures:

- Law No. 2004-228 of March 15, 2004, restricting—in application of the principle of secularism—the wearing of signs or clothing showing religious affiliation in public schools and high schools, which led to the prohibition of the veil in public schools;
- Law No. 2010-1192 of October 11, 2010, prohibiting the concealment of one’s face in public spaces, which led to the prohibition of concealment of one’s face in public spaces;
- Amendment of Article L 1321-2-1 of the French Labor Code by Law No. 2016-1088 of August 8, 2016, on work, the modernization of social dialogue and the securing of career paths, which provides for the possibility for employers to impose religious neutrality at work;
- Statutes of the French Football Federation, article 1, 2016, prohibiting the wearing of any sign or clothing ostensibly expressing a political, philosophical, religious or trade union affiliation during competitions or events organized by the federation throughout the territory, confirmed by the decision of the Council of State n°458088, 459547, 463408, of June 28, 2023;
- Swimming pools regulations prohibiting the wearing of full covering bathing suits³, such as the city of Paris’ equipment regulations, of February 14, 2019;

² French Constitution of October 4, 1958, Article 1;

https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356?init=true&page=1&query=constitution+1958&searchField=ALL&tab_selection=all

³ The number and location of swimming pools, public or private, that have regulations that address the wearing of swimwear such as burkinis, is unknown to Amnesty International.



- Decision of the Court of Cassation, Appeal No. 20-20.185, of March 2, 2022, affirming that the Bar Council of a Bar Association may prohibit the wearing—with the lawyer's robe—of any sign ostensibly manifesting a religious, philosophical, community or political affiliation or opinion, after heated debates about the possibility for Muslim women lawyers to wear the hijab in court;
- Article 9.3 of the general sporting regulations of the French Basketball Federation which prohibits the wearing of any equipment with religious connotations to all players and actors of the matches (coaches, referees, officials) during all departmental, regional and national 5x5 and 3x3 competitions, throughout the territory;
- Official Bulletin of National Education, Youth and Sports No. 32, of August 31, 2023, prohibiting the wearing of the *abaya* and *qamis* for all students everywhere in France;
- Statutes of the French Volleyball Federation, referencing “secularism.” The reference is explained in a brochure issued on the occasion of its General Assembly, of October 28, 2023, making unequivocally clear that the Federation intends specifically to target Muslim women players. Additionally, in a media interview of October 30, 2023, the Federation’s President Éric Tanguy also confirmed that the aim of the statutes was to regulate the clothing choices of Muslim women and girls' players.

The following briefing will determine whether, with regard to international human rights law (and not with regard to the French law of 1905, nor the French Constitution), restrictions on the wearing of religious symbols are taken in accordance with the criteria defined by international law for imposing such restrictions. Additionally, and even more critically, the briefing will determine whether the impact of these restrictions on women and girls is in line with France's obligations in terms of respect, protection and fulfillment of the right to non-discrimination and economic, social and cultural rights.

ANALYSIS OF THE IMPACT OF THE BAN ON THE WEARING OF RELIGIOUS AND CULTURAL SYMBOLS ON THE ENJOYMENT OF THE RIGHT TO NON-DISCRIMINATION ON THE BASIS OF GENDER AND RACE

In the light of its international commitments, France undertook to guarantee that the rights enunciated in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights “will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴

⁴ Article 2 of the International Covenant on Economic, Social and Cultural Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> and the International Covenant on Civil and Political Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>



Yet, in France the measures aimed at restricting the wearing of religious symbols are part of a context of rising hate speech against Muslims, and especially women and girls wearing the headscarf.

The Defender of Rights, in her 2023 report on discrimination stated that “recent and ever-renewed controversies around the principle of secularism, sometimes interpreted extensively, have continued to reinforce the stigmatization of people of the Muslim faith or simply perceived as such”.⁵

Indeed, research shows that framing the wearing of religious symbols as a security threat or singling them out as a symbol of women’s oppression is imbued with negative and discriminatory stereotypes that are endemic to the “othering” of Muslim women and girls because of their religion.⁶

This observation is largely made by international human rights mechanisms, such as the European Commission Against Racism and Intolerance in its review of France in 2022, which recalled that “Intolerance towards Muslims remains high and is amplified by the political discourse equating Islam with terrorism and statements implying that Muslims do not integrate into French society, in particular stigmatizing the wearing of the veil.”⁷

Muslim women and girls are the target of political, legislative, regulatory, judicial and media attacks. These attacks violate and jeopardize a range of their human rights, including bodily autonomy, especially in terms of clothing. Muslim women and girls, especially when they wear the headscarf, are examined, judged, stigmatized, considered as submissive and devoid of agency.

Muslim women have testified at length to Amnesty International about the stigmatization and harm they are subjected to. Stressing on how Muslim women and girls are examined and judged, a 22-year-old student told Amnesty International: “If you go to the beach with a burkini, it causes controversy. In fact, you can’t. No one really forbids you, but you’re forbidden because of everything around it... if you want, you can wear a burkini but they’re going to take your picture. They’re going to film you, they’re going to put you on social media, they’re going to start criticizing, the media, they’re going to make a big deal out of it...” She added, talking about the 2024 Paris Olympic and Paralympic games celebrated as the first gender equal games by the French government (while French Muslim athletes were forbidden to wear a sports-hijab): “for me, it’s the hypocrisy of advocating for women’s rights because I don’t see how wearing the veil in France is incompatible with women’s rights. We are always told about Iran and in fact, ultimately, those who prevent us from wearing the veil are just like those who force Iranian women to wear it I was at conference at the City Hall where one of the deputies of the Mayor of Paris spoke about the Olympics, about women and how we are all together, etc., about how they managed to have

⁵ Defender of Rights, Discrimination and origins: the urgent need for action, 2020, p.48 ;

https://www.defenseurdesdroits.fr/sites/default/files/2023-07/ddd_rapport_discriminations-origines_2020_20200622.pdf

⁶ Amnesty International, Is a face mask used to fight COVID-19 really that different from a niqab?, 26 May 2020 ;

<https://www.amnesty.org/en/latest/news/2020/05/face-masks-and-niqabs/> ; and Amnesty International and Open Societies

Foundation, Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism (Index: EUR 01/3606/2021), February 2021, p.44 et 66 ; <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>

⁷ European Commission against Racism and Intolerance, Report on France (sixth monitoring cycle), June 28, 2022, para 43 ;

<https://rm.coe.int/sixieme-rapport-de-l-ecri-sur-la-france-adopte-le-28-juin-2022-publie-/1680a81884>



as many male as female athletes and I was listening in the room, saying to myself, “it’s really pure hypocrisy because it means that we, as women who wear the veil, do not count.” So we are invisible, we do not count among the women because you have excluded us.”

Basketball player H  l  ne pointed to the disproportionate prevalence and specific nature of violence that visibly Muslim women and girls face and experience: “Studies show that Muslim women who wear the hijab and who are more visible are more likely to suffer from violence—whether it’s verbal abuse or physical abuse—than men because we are visible. Because I think you’re perceived as inferior also by this society. And so they think that they can say and do things that they wouldn’t say to others”.⁸

The European Court of Human Rights recalled in the judgment in *S.A.S v. France*, concerning one of the restrictions on the wearing of religious and cultural symbols taken by France: “a State party cannot invoke gender equality to prohibit a practice that women claim in the context of the exercise of [their] rights ..., unless it accepts that it can be claimed as such to protect individuals against the exercise of their own rights and fundamental freedoms. The Court is aware that the garment in question is perceived as strange by many who observe it. It stresses, however, that, in its difference, it is the expression of a cultural identity that contributes to the pluralism on which democracy is nourished. In this respect, the Court observes the variability of the conceptions of virtue and decency applied to the unveiling of bodies.”⁹

In other words, while the court did consider that the French State was legitimate in implementing the ban in the name of “living together”, it recognizes that a measure aimed at governing women’s bodies against their will is by nature contrary to gender equality since it confiscates women’s autonomy.

It is in this logic that 6 United Nations experts alerted France in October 2023, reiterating “the importance of systematic respect for the bodily autonomy and freedom of women and girls, as well as their free and informed choices, while firmly rejecting any form of coercion or imposed codes of modesty resulting from patriarchal oppression.”¹⁰

Finally, in 2021, Ahmed Shaheed, UN Special Rapporteur on freedom of religion or belief recalled that “in Europe and North America, influential politicians, opinion makers and academics make statements online, on social networks and blogs, presenting Islam as inherently antithetical to democracy and human rights—in particular gender equality—often spreading the trope that all

⁸ Amnesty International, France: “We can’t breathe anymore. Even sports, we can’t do them anymore”. Violations of Muslim women’s and girls’ human rights through hijab bans in sports in France”, 16 July 2024, p.21, 24 and 28 ; <https://www.amnesty.org/en/documents/eur21/8195/2024/en/>

⁹ European Court of Human Rights, Case of *S.A.S. v. France*, (application no. 43835/11), 1 July 2014; <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-145466%22%5D%7D>

¹⁰ Letter addressed to the French government from Mandates of the Special Rapporteur on cultural rights; Special Rapporteur on the right to education Special Rapporteur on the right to education; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women and girls, its causes and consequences violence against women and girls, its causes and consequences, and the Working Group on Discrimination against women and girls, 27 October 2023, p. 5 ; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28534>



Muslim women are oppressed. Although these legislative provisions apply to all religious symbols, Muslim women are often disproportionately affected.”¹¹

Indeed, the measures limiting the wearing of religious and cultural symbols in the name of secularism never mention Muslims explicitly, yet in fact the political and media debates surrounding their adoption expressly target Muslims; thus making these measures discriminatory and harmful to Muslim people, especially Muslim women and girls.

For example, debates in parliamentary sessions debating proposals banning the wearing of headscarves in sports in the name of secularism have been fueled by offensive and harmful stereotypes that have stigmatized Muslim women, framing Muslim women wearing a headscarf as inherently dangerous.¹² This is also the case with statements at the highest level of the State such as that of the President of the Republic in an interview explaining that according to him, the abaya is a way of affirming “I’m different” and adding that “we live in a society with a minority of people who, misusing a religion, challenge the Republic and secularism; and this has sometimes led to the worst: we can’t pretend that the terrorist attack and Samuel Paty’s assassination didn’t happen in our country”.¹³

From a media point of view, non-stop news channels are regularly called into question for allowing highly discriminatory debates and statements to proliferate against Muslims in general and women in particular. The regulatory authority for audiovisual and digital communication is therefore regularly seized of this matter.¹⁴

It is also in the face of this risk that the European Court of Human Rights, in its *S.A.S. v. France* ruling, stated: “that a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance.”¹⁵

It is above all because these speeches and measures have direct consequences in the lives of Muslim women and girls that Amnesty International concluded that the restrictive measures on the wearing of religious and cultural symbols taken by France in the name of secularism contravene France’s obligations to fight against discrimination based on gender and race. Amnesty International has investigated the ways in which discriminatory speeches, policies and measures have impacted Muslim women and girls’ human rights, particularly in relation to sport, and we concluded that they are discriminatory against Muslim women and girls and violate their

¹¹ United Nations General Assembly, Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, 13 April 2021, para 19 and 26 ;

<https://documents.un.org/doc/undoc/gen/g21/086/50/pdf/g2108650.pdf?token=BIPD27v2UQiAbXruCI&fe=true>

¹² Amnesty International, France: New Law Compels Reform of Football Policy that Discriminates against Muslim Women, 24 February 2022 ; <https://www.amnesty.org/en/documents/eur21/5267/2022/en/>; see as an example of parliamentary debates :

Senate Report No. 667 (2023-2024), Stéphane Piednoir, submitted on 5 June 2024; <https://www.senat.fr/rap/l23-667/l23-667.html>

¹³ Youtube channel, HugoDécrypte – Large format, The interview of Emmanuel Macron by HugoDécrypte, 4 September 2023, <https://www.youtube.com/watch?v=3Z6HnUJ3hcw>, from 43’29.

¹⁴ See as example: Sud Ouest, Anti-Muslim remarks on CNews: Arcom seized, channel dissociates itself from Jean-Claude Dassier, 29 December 2022; <https://www.sudouest.fr/culture/medias/propos-anti-musulmans-sur-cnews-l-arcom-saisie-la-chaine-se-desolidarise-de-jean-claude-dassier-13513645.php>

¹⁵ European Court of Human Rights, Case of *S.A.S. v. France*, (application no. 43835/11), 1 July 2014; <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-145466%22%5D%7D>



rights in multiple ways including their right to access sport without discrimination, and their right to health.¹⁶

Other actors have also documented human rights violations that Muslim women and girls face, such as the European Union Agency for Fundamental Rights, which reports that women wearing religious clothing face more racial discrimination than those who do not, especially when looking for work (45%). This goes up to 58% for young women (16-24 years) wearing religious clothing.¹⁷

The Collective Against Islamophobia in France, reports 828 Islamophobic facts in 2023, and among them 81.5%, concern women.¹⁸

In addition, according to a 2019 study commissioned by the Interministerial Delegation for the Fight against Racism, Anti-Semitism and Anti-LGBT Hatred, 60% of women who often wear the veil have been discriminated against at least once in their lives, while 37% of women who wear the veil have been exposed to insults or insults of a defamatory nature.¹⁹

ANALYSIS OF THE IMPACT OF THE BAN ON THE WEARING OF RELIGIOUS AND CULTURAL SYMBOLS ON THE ENJOYMENT OF ECONOMIC SOCIAL AND CULTURAL RIGHTS, IN THE LIGHT OF THE POSITIVE OBLIGATIONS OF THE STATE

Since 1980, France has been a party to the International Covenant on Economic, Social and Cultural Rights. According to Article 2 of the Covenant, States Parties undertake “to act, ... with a view to achieving progressively the full realization of the rights recognized in the Covenant.”²⁰ This commitment to the promotion of economic, social and cultural rights implies that States refrain from taking regressive measures; that is, measures that would make the realization of these rights more difficult.

According to the Committee on Economic, Social and Cultural Rights, the denial of access to rights to certain individuals or specific groups is considered to be regressive measures, whether these measures are based “on legislation or on practice, the repeal or suspension of legislation

¹⁶ Amnesty International, France: “We can't breathe anymore. Even sports, we can't do them anymore”. Violations of Muslim women's and girls' human rights through hijab bans in sports in France”, 16 July 2024; <https://www.amnesty.org/en/documents/eur21/8195/2024/en/>

¹⁷ EU Agency for Fundamental Rights, Being Muslim in the EU, Press release, 24 October 2024; <https://fra.europa.eu/en/news/2024/muslims-europe-face-ever-more-racism-and-discrimination>

¹⁸ Collectif Contre l'Islamophobie en Europe, Rapport annuel du CCIE sur l'Islamophobie en Europe pour l'année 2023, p.11; <https://ccieurope.org/wp-content/uploads/2021/02/rapport-ccie-2023.pdf>

¹⁹ IFOP for Interministerial Delegation for Combating Racism, Anti-Semitism and Anti-LGBT Hatred, Etat des lieux des discriminations et des agressions envers les musulmans de France, 6 November 2019, p.8, 26; <https://www.dilcrah.gouv.fr/ressources/etude-les-comportements-racistes-et-les-discriminations-envers-les-musulmans-de-france>

²⁰ Article 2 of the International Covenant on Economic, Social and Cultural Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>



necessary for the exercise of the right ... or the adoption of laws or policies that are manifestly incompatible with international legal obligations.”²¹

The Committee also notes that regressive steps with regard to economic, social and cultural rights “would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant [on Economic Social and Cultural Rights].”²²

However, while the measures to restrict the wearing of religious or cultural symbols taken in the name of secularism are not intended, in principle, to restrict one's economic, social and cultural rights, they have this effect in practice.

In terms of access to sport, for example, women and girls who wish to wear the headscarf and/or cover their body are impeded from swimming. Indeed, some regions and/or municipalities prohibit the wearing of full covering swimsuits in their regulations. Though it is not known how many swimming pools in France have regulations forbidding full covering swimsuits, rights holders testified to Amnesty International that it is almost impossible for women who wish to wear a religious symbol or simply cover their body for religious or personal preference reasons, to swim in France.²³

In terms of licensed sports, several French federations, such as the French Football²⁴ and Basketball²⁵ Federations, prohibit the wearing of religious symbols during competitions or events organized by them. Since October 2023, this ban also applies to athletes in all disciplines representing France at the 2024 Olympic and Paralympic Games.²⁶

In terms of access to work, since 1983, the wearing of religious symbols has been strictly restricted in the public sector and in private companies with a public service mission in the name of secularism.²⁷ In the private sector, since 2016, the company's internal regulations may contain provisions enshrining the principle of neutrality and restricting the wearing of religious symbols by employees, if these restrictions are justified by the needs of the proper functioning of the company and if they are proportionate to the desired goal.²⁸

²¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, para 34;

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F18&Lang=en

²² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3 : The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, para 9;

<https://www.refworld.org/legal/general/cescr/1990/en/5613>

²³ Amnesty International, France: “We can't breathe anymore. Even sports, we can't do them anymore.” Violations of Muslim women's and girls' human rights through hijab bans in sports in France”, 16 July 2024, p.20 – 21 ;

<https://www.amnesty.org/en/documents/eur21/8195/2024/en/>

²⁴ Statutes of the French Football Federation, Article 1, 2016, prohibiting the wearing of the hijab during competitions and sports performances to athletes but also to female members, confirmed by the decision of the Council of State n°458088, 459547, 463408, 28 June 2023

²⁵ Article 9.3 of the General sporting regulations of the French Basketball Federation which prohibits the wearing of any equipment with religious connotations to all players and actors of the match (coaches, referees, officials), during all departmental, regional and national 5x5 and 3x3 competitions, throughout the territory

²⁶ L'Equipe, Amnesty International puts the hijab back on the Olympic Games menu, 16 July 2024, <https://www.lequipe.fr/Jo-2024-paris/Tous-sports/Article/Amnesty-international-remet-le-voile-au-menu-des-jeux-olympiques/1482848>

²⁷ Article 25 of Law No. 83-634 of 13 July 1983 on the rights and obligations of civil servants imposes an obligation of neutrality on a public official in his or her workplace. + Cass., ch. soc., 19 March 2013, n°11-28845, Baby-Loup judgment.

²⁸ Labor Law No. 2016-1088 of 8 August 2016 introduced a principle of neutrality in Article L1321-2-1 of the Labor Code



Finally, in terms of access to education, the wearing of religious symbols, including the headscarf, has been prohibited for students since 2004, and was extended in 2023 to the abaya. For example, women and girls who wish to wear a headscarf or an abaya in a public school in France are denied access to classrooms.

This constitutes a violation of their right to education, a flagrant failure to meet France's obligations under the International Covenant on Economic, Social and Cultural Rights, which stipulates that "States ... agree that education must aim at the full development of the human personality and the sense of his dignity and strengthen respect for human rights and fundamental freedoms. They further agree that education should enable everyone to play a useful role in a free society, and promote understanding, tolerance and friendship among all nations and racial, ethnic or religious groups."

In addition, the Convention on the Rights of the Child, ratified by France in 1990, stipulates that "States Parties recognize the right of the child to education, ... encourage the organization of different forms of secondary education, both general and vocational, and make them open and accessible to every child".

Yet in France, private Muslim education is virtually non-existent, establishments that wish to open are being prevented from doing so,²⁹ leaving women and girls who wish to wear the headscarf or abaya with no educational option.

Finally, as the United Nations Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt recalled in 2015, "the pressure exerted on students to divert them from their religion or beliefs can once again represent a simultaneous violation of the rights of the child and the rights of his or her parents. In such cases, the rights of people belonging to religious minorities may also be at risk."³⁰

All the aforementioned prohibitions and restrictions are violative and breach multiple human rights. Their multiplicity materially prevents Muslim women and girls from working, studying or playing sports. In addition, as the Human Rights Committee points out, laws such as the French ban on the wearing of religious or cultural symbols can have the effect of "confining Muslim women to their homes, hindering their access to public services and exposing them to abuse and marginalization."³¹

Moreover, these bans give rise to humiliating scenes for women and girls, and lead to mental health problems and isolation, so much so that in October 2023, 6 United Nations experts expressed their concern in a letter to the French government, stating that "the measures taken to ensure the principle of secularism ... has in practice infringed on the freedom of Muslim women to manifest their religion or belief. We are also gravely concerned about the violations of the right

²⁹ Mediapart, Muslim school targeted by authorities after erroneous "Charlie Hebdo" article , 11 October 2022; <https://www.mediapart.fr/journal/france/111022/une-ecole-musulmane-ciblee-par-les-autorites-apres-un-article-errone-de-charlie-hebdo>

³⁰ UN General Assembly, Progress Report of the Special Rapporteur on Freedom of Religion or Belief, 5 August 2015, para 8 et 13; <https://docs.un.org/en/A/70/286>

³¹ UN Special Rapporteur on freedom of religion or belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (UN Doc. A/HRC/46/30), 13 April 2021, para 18; <https://www.ohchr.org/en/calls-for-input/report-countering-islamophobiaanti-muslim-hatred-eliminate-discrimination-and>



of girls and women wearing the hijab to education and work, as well as their right to participate in cultural life, which includes the right to express their cultural identity and the right to participate in sport. Such measures not only exclude large numbers of Muslim women and girls from access to education, cultural life and sports, but can also fuel intolerance and discrimination against them.”³²

Similarly, according to the Collective Against Islamophobia in Europe 2023 report, the focus on the abaya gives rise to degrading situations for the young girls concerned: “some principals have thus taken the liberty of ordering that students wear clothes that allow them to “see their curves”, clothes that do not “cover their behinds”, to ask what the students wore under their skirts, to ask them to undress, etc.”³³

As Lallab association denounced on the occasion of International Women's Day in 2020: “We are tired of this daily dehumanization that stems from national controversies where everyone has a say, except us. We are tired of struggling to have access to education, the job market, gyms, restaurants, decent jobs and housing, papers, to be able to accompany our children on school trips. We are tired of fighting every day to stop the humiliation and to preserve our most basic rights that are constantly being taken away from us. Whether we are women excluded from the education system, from the job market, exploited cleaners, objectified racialized women, we are tired bodies. We are exhausted.”³⁴

Finally, as described by H el ene B a, basketball player and founding member of the association Basket pour Toutes about the request made by a referee at the beginning of a match that she take off her sports hat and her long-sleeved t-shirt to be able to play: “What disturbed me the most that day was that the referee did not come to tell me directly, he told my coach, and almost the whole room knew about it before me. I felt a little disoriented. I finished the warm-up trying not to let anything show, but I couldn't process the information.”³⁵

Faced with this field observation, Amnesty International concluded that France was violating its obligations under the International Covenant on Economic, Social and Cultural Rights, since it stipulates that “States Parties ... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”³⁶ and to “participate in cultural life.”³⁷

³² Letter addressed to the French government from Mandates of the Special Rapporteur on cultural rights; Special Rapporteur on the right to education Special Rapporteur on the right to education; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women and girls, its causes and consequences violence against women and girls, its causes and consequences, and the Working Group on discrimination against women and girls, 27 October 2023, p. 6; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28534>

³³ Collectif Contre l'islamophobie en Europe, Rapport annuel du CCIE sur l'islamophobie en Europe pour l'ann ee 2023, p.19; <https://ccieurope.org/wp-content/uploads/2021/02/rapport-ccie-2023.pdf>

³⁴Lallab, Communiqu e du 8 mars 2020, Nous sommes fatigu es; <https://www.lallab.org/communiquelallab-8-mars-2020-nous-sommes-fatigues/>

³⁵ En qu ete des possibles podcast, 2024 Games: Paris Sportif for everyone?, 8 January 2024; <https://www.sogoodstories.com/episode/jeux-2024-paris-sportif-pour-toutes-et-tous/>, min 53

³⁶ Article 12 of the International Covenant on Economic, Social and Cultural Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³⁷ Article 15 of the International Covenant on Economic, Social and Cultural Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>



ANALYSIS OF THE LEGITIMACY, NECESSITY AND PROPORTIONALITY OF RESTRICTIONS ON CIVIL AND POLITICAL RIGHTS IN THE NAME OF SECULARISM

As stated in the introduction, it is in the name of the principle of secularism that restrictions on freedom of conscience are taken by French decision-makers through measures restricting the wearing of religious and cultural symbols.

In international law, the rights impacted by these restrictions are freedom of thought, conscience, religion and expression. These rights are provided for in the International Covenant on Civil and Political Rights, ratified by France in 1984.

According to the Covenant, freedom of thought, conscience and religion includes “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”³⁸; as well as freedom of expression, which is the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”³⁹

The wearing of religious and cultural symbols, including the wearing of headscarves by Muslim women and girls, thus corresponds to the definition of freedom of thought, conscience, religion and expression.

Restrictions on these freedoms may be put in place if, according to the International Covenant on Civil and Political Rights, they are “provided by law are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant.”⁴⁰

In France, restrictions on the rights to freedom of thought, conscience, religion and expression in the name of secularism are indeed provided for by law. However, it is the aim pursued by those restrictions, and the necessity of the measures taken in order to achieve the aim pursued, which are called into question by Amnesty International.

Indeed, as far as the aim is concerned, the one that is often alleged is respect for secularism. However, secularism (from which derives neutrality) is not a legitimate reason to impose restrictions on freedom of thought, conscience, religion and expression. The concept of secularism is not listed in the International Covenant on Civil and Political Rights; nor in the Siracusa Principles, which specify the conditions and modalities under which restrictions may be placed on the enjoyment of the rights contained in the Covenant. The Syracuse Principles thus remind us that “no restriction or ground for restriction of the rights guaranteed by the Covenant is permissible unless it is expressly mentioned in the Covenant itself.”⁴¹

³⁸ Article 18 of the International Covenant on Civil and Political Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³⁹ Article 19 of the International Covenant on Civil and Political Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁴⁰ Article 12 of the International Covenant on Civil and Political Rights; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁴¹ Syracuse Principle on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights Principle 1, 1985; <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>



Otherwise, it is often alleged that restrictions in the wearing of religious or cultural symbol aim at protecting national security and/or public order by combating what would be “separatism”, “radicalization” and ultimately “terrorism” within Muslim communities.⁴² In addition to the fact that these allegations are fueled by racist representations of Muslims portraying them as inherently dangerous (see part I), they are refuted by the Institute of Advanced Studies of the Ministry of the Interior itself, concerning sports clubs and associations. In a report on radicalization in associative sport the Institute concludes that “the data collected in interviews fail to show a structural or even significant phenomenon of radicalization or communitarianism in sport. The “radicalized” are significantly less athletic than the general population. Sports associations are very little affected, and less than other types of structures, by communitarianism. In the end, the data collected do not support a specific role of the practice of sport per se or of the sports association in radicalization.”⁴³

With respect to the necessity of the measures, let us consider, for the sake of demonstration solely, that the restrictions on the freedoms guaranteed in the International Covenant on Civil and Political Rights are intended to preserve public order, public morals, or the rights and freedoms of others. In that case the measures would have to be “proportionate to that aim”⁴⁴; bearing in mind that “any assessment of the necessity of a restriction must be based on objective considerations”, and that “it is for the State to justify the restriction of a right guaranteed by the Covenant.”⁴⁵

However, in France, the measures taken by decision makers that limit the wearing of religious and cultural symbols, particularly to Muslim women and girls – which are over a dozen – concern at least three aspects of the economic and social rights of women and girls (school, work, sport; the private and public sectors) and are generalized to the entire territory without any time limit (see list of measures listed in the introduction).

However, the French State has not publicly and objectively demonstrated the necessity and proportionality of these measures in order to ensure respect for secularism (assuming that this aim is legitimate under international law, which has been demonstrated in the negative, see above), nor public order.

The French government, in the declarations that accompany the adoption and implementation of restrictions on freedom of thought, conscience, religion and expression, simply recall the principle

⁴² These terms are polysemic and have no definition in international law. They are present in the various political discourses that preside over the adoption of measures prohibiting the wearing of religious symbols; as well as in certain legislations.

⁴³ Institute of Advanced Studies of the Ministry of the Interior, Radicalization or prevention? Exploration of radicalizations in associative sport, March 2022; <https://prev-radicalites.org/actualites-0/rapport-sur-la-radicalisation-dans-le-sport-associatif>

⁴⁴ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights Principle, Principle 10, 1985; <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

⁴⁵ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights Principle, 1985; <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>



of secularism as the foundation of the French Republic and/or calls for the preservation of women's rights and/or the fight against "Islamism" or "radical Islam."⁴⁶

Of all these justifications, only the preservation of women's rights can be considered a legitimate aim within the meaning of the International Covenant on Civil and Political Rights (understood as "rights and freedoms of others"). However, in this case, as in any other case, the government does not demonstrate at the time of taking the measures how they would promote the realization of women's rights, nor does it monitor the impact of the measures on the enjoyment of fundamental freedoms. Even worse, the restrictions imposed contravene the rights of the women they are supposed to protect and contribute to the stigmatization of Muslim individuals and communities (see part I).

Finally, the proportionality of the measure must be understood in a very strict sense, as recalled in many of the General Comments of the Human Rights Committee on the various articles of the International Covenant on Civil and Political Rights. For example, Recommendation No. 34 tells us that: "restrictions should not be too broad in scope."⁴⁷ Recommendation 27 states that "Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected. The principle of proportionality has to be respected not just in the law that frames the restrictions."⁴⁸ Finally, drawing from recommendation n°37 on the right to peaceful assembly, restrictions on rights "should be based on a differentiated or individualized assessment Blanket restrictions ... are presumptively disproportionate."⁴⁹

Thus, not only do the measures prohibiting the wearing of religious and cultural symbols, since they apply throughout the country to all women and girls regardless of their situation for an unlimited period of time, not meet the necessity and proportionality criteria the French State is obligated to abide by; but, even if they did, the measures would nonetheless violate Muslim women and girls' rights due to their discriminatory intent and their discriminatory impact on Muslim women and girls' enjoyment of economic social and cultural rights (see parts I. and II).

⁴⁶ See for example declarations and justifications to the banning of abaya in public schools: Amnesty International, France: Authorities must repeal discriminatory ban on the wearing of abaya in public schools, 3 October 2023, <https://www.amnesty.org/en/documents/eur21/7280/2023/en/> and justifications to a bill banning the wearing of religious symbols in sports: Senate Report No. 667 (2023-2024), Stéphane Piednoir, submitted on 5 June 2024; <https://www.senat.fr/rap/123-667/123-667.html>

⁴⁷ Human Rights Committee, General comment No. 34 on Article 19: Freedoms of opinion and expression , 29 July 2011, para 34; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2011%2FRev.1%2FAdd.9&Lang=en

⁴⁸ Human Rights Committee, General Comment No. 27, 1 November 1999, para 14, 15; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2011%2FRev.1%2FAdd.9&Lang=en

⁴⁹ Human Rights Committee, General Comment No. 37 on Article 21 (Right of peaceful assembly), 17 September 2020, para 38; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2011%2FRev.1%2FAdd.9&Lang=en



RECOMMENDATIONS

Amnesty International's analysis, based on the principle of impartiality, shows that measures adopted in the name of secularism have a concrete and negative impact on the enjoyment of human rights in France. Consequently, without calling into question the principle of secularism itself, Amnesty International denounces the application of this principle when it infringes on the respect, protection and fulfillment of rights France is bound by under international human rights law.

Amnesty International thus recommends the repeal of the widespread restrictions on the wearing of religious and cultural symbols, discussed in this briefing, as they:

- exacerbate discrimination against Muslim women and girls;
- violate Muslim women and girls' economic, social and cultural rights and breaches the obligations the French government has to respect, protect and fulfill those rights;
- contravene the criteria of international human rights law to restrict freedom of thought, conscience, religion and expression.