

Submission to the UN Special Rapporteur on freedom of religion or belief

The Elimination of Intolerance and Discrimination Based on Religion and Belief and SDG 16 as Mutually Reinforcing Goals

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1. Although the right to thought, conscience and religion was intended to protect religious minorities from State interference with matters of conscience,¹ in practice, European States have increasingly sought to restrict the manifestation of religion by minorities originating from immigration, particularly Muslim and Sikh minorities. These restrictions are underpinned by a perceived threat to national values and the culture of the majority. This submission will highlight how these restrictions on religious practice directly undermine the achievement of Sustainable Development Goal (SDG) 16 and instead serve to entrench intolerance and prejudice against religious minorities. Specifically, it will draw out how the elimination of intolerance and discrimination based on religion or belief and SDG 16 are mutually reinforcing.
2. Over past 30 years, right-wing politicians and the media have sought to politicise the practice of Islam and portray it as a threat to the values and security of the majority. However, this discourse has become increasingly mainstream since the terrorist attacks of September 11, 2001.² A commensurate increase in discrimination, intolerance and hate crime in relation to both Jews and Muslims has been reported by the EU's Fundamental Rights Agency.³ Significantly, the Pew Research Center has demonstrated that intolerance of one religious minority correlates with intolerance of other religious minorities: 'those who express negative views of Muslims are also more likely to express negative views of Jews'.⁴ Thus, it appears that European States have become increasingly intolerant of religious diversity, contrary to SDG 16 which aims to achieve peaceful, just and inclusive societies.
3. A significant proportion of the population of European States believe that Islam is incompatible with national values⁵ and, thus, support restrictions on the practice of Islam.⁶ The visibility of minority religions is further constructed as unwillingness to integrate.⁷ As a result, European Muslims and Sikhs are facing increasing demands that they assimilate by shedding their religious identity contrary to article 18 of the International Covenant on Civil and Political Rights (ICCPR).⁸

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¹ SE Berry, 'A "good faith" interpretation of the right to manifest religion? The diverging approaches of the European Court of Human Rights and the UN Human Rights Committee' (2017) 37 *Legal Studies* 672, 681.

² HRC, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland* UN doc CCPR/C/GBR/CO/7 (2015) para 10; HRC, *Concluding observations on the fourth periodic report of Switzerland* UN doc CCPR/C/CHE/CO/4 (2017) para 20; CERD, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, UN doc. CERD/C/HUN/CO/18-25 (2019) at para. 16; CERD, *Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway* UN doc. CERD/C/NOR/CO/23-24 (2019) para 12.

³ See, generally, EU Fundamental Rights Agency, *Second European Union Minorities and Discrimination Survey (EU-Midis II): Muslims – Selected findings* (Publications Office of the European Union 2017); EU Fundamental Rights Agency, *Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU* (Publications Office of the European Union 2018).

⁴ Pew Research Center, *Being Christian in Western Europe* (29 May 2018) 50 <www.pewforum.org/2018/05/29/being-christian-in-western-europe/> accessed 13 May 2020.

⁵ *Ibid.*, 66.

⁶ *Ibid.*, 67.

⁷ ECRI, *Report on the Netherlands (fifth monitoring cycle)* adopted on 2 April 2019 para 28; ECRI, *Report on the United Kingdom (fifth monitoring cycle)* adopted on 29 June 2016 para 35; ECRI, *Report on France (fifth monitoring cycle)* adopted on 8 December 2015 para 35; ECRI, *Report on Denmark (fifth monitoring cycle)* adopted on March 2017 paras 27, 87.

⁸ Article 18 International Covenant on Civil and Political Rights 999 UNTS 171, entered into force 23 March 1976.

4. A number of European States have sought to reduce the practice and visibility of Islam through a range of legislative and policy initiatives. Restrictions on Islamic clothing, including the *hijab*, *burqa*, *niqab* and *burkini* have been introduced through national legislation in Austria, Belgium, Denmark, France, the Netherlands, Latvia, with further restrictions implemented at a local level in Germany, Italy, Norway, Spain and Switzerland. Significantly, while the debates surrounding the adoption of these laws has focused on the incompatibility of Islamic practices with national values, the laws themselves are frequently framed ‘neutrally’ in order to avoid claims of direct discrimination. The net result is that other religious minorities that visibly manifest their religion, most notably Jews and Sikhs, are also impacted by these laws.
5. Muslim practices have been politicised in order to legitimise further restrictions on the manifestation of religion, including the Swiss minaret ban, restrictions on *halal* slaughter and the availability of *halal* food in public institutions, public prayers and shaking hands.⁹ Further, in 2018, Denmark adopted a new integration policy ostensibly with the aim of reducing the visibility of Islam in society: this policy requires that children born in ‘ghettos’ – low-income predominantly Muslim areas – must attend daycare from the age of one ‘for at least 25 hours a week, not including nap time, for mandatory instruction in “Danish values,” including the traditions of Christmas and Easter, and Danish language’.¹⁰ Consequently, not only have the right of religious minorities to manifest their religion in public – as provided by article 18 ICCPR – been subject to increasing restrictions throughout Europe but steps have been taken to eliminate Islam.
6. Restrictions that reduce the visible presence of Islam in society have further reaching consequences for the rights of religious minorities. Laws that prohibit the wearing of religious clothing have reduced the access of Jews, Muslims and Sikhs to mainstream education, employment and the public sphere more generally. While laws in France initially only prohibited ‘ostentatious religious symbols’ in State schools, this prohibition has gradually been extended through policy to public employment,¹¹ then private employment¹² and finally to the public sphere.¹³ Significantly, bans on religious clothing in public sector employment exclude *hijab* wearing Muslim women and other religious minorities that visibly manifest their religion from 21 per cent of employment opportunities in France.¹⁴ Not only do these restrictions undermine the socio-economic mobility of ethnic minorities but they also legitimise discrimination, intolerance and acts of hate in everyday interactions. Brems, for example, points to ‘several cases of women being refused access to services because of the fact that they are visible Muslims wearing a hijab’ including to ‘an ice-cream parlour, to the

⁹ Human Rights Committee, *Concluding Observations of the Human Rights Committee – Switzerland* 3 November 2009 UN doc CCPR/C/CHE/CO/3 para 8; ECRI France, above n. 7, paras 22, 26; ECRI, *Report on Switzerland (Sixth monitoring cycle)* adopted on 10 December 2019 para 32.

¹⁰ E Barry and M Selsoe Sorensen, ‘In Denmark, Harsh New Laws for Immigrant “Ghettos”’ *The New York Times* 1 July 2018 <www.nytimes.com/2018/07/01/world/europe/denmark-immigrant-ghettos.html> accessed 20 May 2020.

¹¹ *Ebrahimian v France* Application No 64846/11, Merits and Just Satisfaction, 26 November 2015.

¹² *Baby Loup case* Cass Ass Plén 25 June 2014, (2014) Rec D 1386; Case C-157/15 *Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 3 April 2015 — Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (2015) 58 Official Journal of the European Union C 205/24 at 17-18; Case C-188/15 *Asma Bougnaoui, Association de défense des droits de l’homme (ADDH) v Micropole Univers SA* (2015) 88 Official Journal of the European Union C 221/03 at 2–3.

¹³ R-S Alouane, *The French Council of State on the Burkini – Part 1: “Reflections on Public Order”* Oxford Human Rights Hub 12 October 2016 <ohrh.law.ox.ac.uk/the-french-council-of-state-on-the-burkini-part-1-reflections-on-public-order/> accessed 20 May 2020; E Brems, S Ouald Chaib and K Vanhees, “‘Burkini’ bans in Belgian municipal swimming pools: Banning as the Default Option’ (2018) 36 Netherlands Quarterly of Human Rights 270.

¹⁴ E Brems, ‘Ebrahimian v France: Headscarf Ban Upheld for Entire Public Sector’, Strasbourg Observers, 27 November 2015, <strasbourgobservers.com> accessed 9 July 2018.

terrace of a restaurant, and to gym facilities'.¹⁵ The visibility of Muslim women makes it more likely that they will be victims of hate crimes.¹⁶ Further, manifestations of intolerance have also been linked to religious minorities avoiding manifesting their religion in public.¹⁷

7. Rather than facilitating the attainment of peaceful, just and inclusive societies, the restrictions placed on the manifestation of religious minorities in Europe eliminate visible diversity and only serve to legitimise intolerance. Specifically, the current climate reduces the opportunities for all groups to adapt to the realities of living in a plural society and gain intercultural competence.¹⁸ This has repercussions for religious minorities, who in response are likely to experience heightened insecurity, alienation, marginalisation and vulnerability,¹⁹ which in turn has the potential to result in segregation rather than assimilation and has been linked to radicalisation.²⁰
8. Inclusive societies require that majorities adapt to the visible presence of minorities rather than eliminating the cause of insecurity.²¹ Here three key areas have been identified that have the potential to facilitate adaptation: an inclusive national identity;²² opportunities to gain knowledge of minorities;²³ and opportunities for interaction with minorities.²⁴ However, the current political climate in Europe actively militates against all three, particularly in relation to Muslim minorities.
9. While national identities should be fluid and constantly being remade,²⁵ within Europe, they are increasingly portrayed as rigid and exclusionary, in response to the perceived threat posed by Islam.²⁶ Elements of national identity have been emphasised or reinterpreted to exclude Muslims. For example, in France, the reformulation of *laïcité* following *l'affaire du foulard*, led visible religious practices to be interpreted as incompatible with societal membership.²⁷ Adherence to a rigid form of secularism that relegates religion to the private sphere, contrary to the text of article 18 ICCPR,²⁸ has increasingly been constructed as a precondition of societal membership in France.
10. Religious observance has also become an obstacle to citizenship. In France, prior to the adoption of the so-called *burqa* ban, Muslim women who wore the niqab were denied citizenship on the basis that they were insufficiently assimilated.²⁹ In 2018, Denmark

¹⁵ E Brems, 'ECJ headscarf series (5): The Field in which Achbita will Land – A Brief Sketch of Headscarf Persecution in Belgium' Strasbourg Observers, 16 September 2016 <strasbourgoobservers.com/2016/09/16/ecj-headscarf-series-5-the-field-in-which-achbita-will-land-a-brief-sketch-of-headscarf-persecution-in-belgium/> accessed 19 May 2020.

¹⁶ EU Fundamental Rights Agency (2017), above n. 3, 13.

¹⁷ EU Fundamental Rights Agency (2018), above n. 3, 37. See further, ECRI the Netherlands, above n. 7, para 56.

¹⁸ SE Berry, 'Aligning Interculturalism with International Human Rights Law: 'Living Together' without Assimilation' (2018) 18 Human Rights Law Review 441, 465.

¹⁹ ECRI the Netherlands, above n. 7, para 30; ECRI United Kingdom, above n. 7, paras 42 and 87.

²⁰ ECRI the Netherlands, above n. 7, para 30.

²¹ Berry, above n. 18, 446.

²² VM Esses, JF Dovidio, LM Jackson, TL Armstrong, 'The Immigration Dilemma: The Role of Perceived Group Competition, Ethnic Prejudice, and National Identity' (2001) 57 Journal of Social Issues 389

²³ F Mansouri and M Vergani, 'Intercultural contact, knowledge of Islam, and prejudice against Muslims in Australia' (2018) 66 International Journal of Cultural Relations 85.

²⁴ WG Stephan and CW Stephan, 'An Integrated Threat Theory of Prejudice' in S Oskamp (ed), *Reducing Prejudice and Discrimination* (Lawrence Erlbaum Associates 2000) 40-41; C Ward and A-M Masgoret, 'An integrative model of attitudes toward immigrants' (2006) 30 International Journal of Intercultural Relations 671, 678.

²⁵ Committee on Economic, Social and Cultural Rights, General Comment No 21: Article 15(1)(a) The right of everyone to take part in cultural life, 21 December 2009, UN doc E/C.12/GC/21 at para 11

²⁶ Berry, above n. 18, 462-63.

²⁷ For further discussion, see Berry, above n. 18, 462-63.

²⁸ For further discussion see, Berry, above n. 1, 685-91.

²⁹ A Vakulenko, 'Gender Equality as an Essential French Value: The Case of Mme M' (2009) 9 Human Rights Law Review 143.

introduced a law that made it mandatory to shake hands at naturalisation ceremonies, legitimised by the assertion that shaking hands is a national value.³⁰

11. Even if religious minorities were to conform with a narrow interpretation of national identity, many would still be excluded from belonging. The Pew Research Center has revealed that ‘half or more [respondents] in most [European] countries say one must have ancestry in the country, or that one must be born in the country, to truly share the national identity’.³¹ Consequently, religious minorities with a different ethnicity to the majority, such as Muslims and Sikhs, will continue to be excluded from societal membership by the majority. Unless States take steps to reimagine the national identity and provide space for diversity, it is likely that national identities in Europe will continue to be exclusionary rather than inclusive, contrary to SDG 16.
12. Knowledge of *the other* is key to reducing prejudice and the perception of threat.³² Social psychologists have notably demonstrated that ‘ignorance of Islam as a religion’ fuels prejudice against Muslims.³³ Further, ‘factual knowledge was associated with less prejudice, self-reported knowledge tended to be associated with more prejudice’.³⁴ Within Europe, majority populations are increasingly subject to misinformation about both Islam and Muslims, through social media, the press and politicians.³⁵ The politicisation of Islam frequently relies on the majority’s interpretation of religious practices, rather than the meaning attributed to it by adherents of the religion. Thus, lack of factual knowledge about Islam, has the potential to reinforce prejudice and heighten the majority’s perception that Islam poses a threat to their values or security. This prejudice and sense of threat serves to legitimate the adoption of measures that restrict the practice of Islam.
13. In order to counteract this phenomenon, States must adopt measures to increase knowledge of minority religions through both formal and informal education, including public awareness campaigns. However, the introduction of formal education on the religion of minority is likely to face opposition if it is perceived to pose a threat to the cultural values of the majority. For example, in the UK, parents are reported to have withdrawn their children from Religious Education lessons to prevent them from learning about Islam.³⁶ Formal education about minority religions may also pose challenges in States such as France that observe a strict division between Church and State. Furthermore, the majority is likely to reject information that challenges its worldview and negative perception of religious minorities.³⁷ Consequently, educational measures must be sustained on a large scale, at different levels of society. While there are good examples of civil society educational initiatives at a local and national level, most notably *Coexister* in France,³⁸ only the State has the capacity and reach to significantly increase knowledge of minority religions.

³⁰ M Selsoe Sorensen, ‘Denmark, With an Eye on Muslims, Requires New Citizens to Shake Hands’ *The New York Times* 20 December 2018 <www.nytimes.com/2018/12/20/world/europe/denmark-muslims-handshake-law.html> accessed 20 May 2020

³¹ Pew Research Center, above n. 4, 52.

³² Stephan and Stephan, above n. 24, 38.

³³ Mansouri and Vergani, above n. 23, 92.

³⁴ *Ibid.*

³⁵ ECRI France, above n. 7, para 26; ECRI the Netherlands, above n. 7, paras 9, 32; ECRI United Kingdom, above n. 7, paras 35, 41, 85; ECRI Denmark, above n. 7, para 27.

³⁶ P Smalley, ‘Parents are pulling children from RE lessons – so they don’t learn about Islam’ *The Conversation* 8 May 2018 <https://theconversation.com/parents-are-pulling-children-from-re-lessons-so-they-dont-learn-about-islam-95235>

³⁷ N Haslam and S Loughan, ‘Dehumanization and Infrhumanization’, (2014) 64 *Annual Review of Psychology* 399, 416.

³⁸ *Coexister* <www.coexister.fr> accessed 20 May 2020.

14. Intercultural contact is a prerequisite of peaceful, just and inclusive societies. Specifically, contact, in positive, personal and cooperative conditions, has been demonstrated to ‘decrease intergroup anxiety’ and, thereby, reduce prejudice.³⁹ While States can fund or encourage programmes that enable intergroup contact, for example in schools, ideally contact should take place organically at a societal and individual level. Significantly, civil society initiatives again have successfully broken-down barriers and fostered interreligious dialogue.⁴⁰ However, the potential impact of these initiatives is restricted by the current climate in Europe that directly militate against intercultural contact.
15. Laws and policies that prohibit religious clothing reduce opportunities for interactions as religious minorities are prevented from entering mainstream education and employment. As highlighted above, discrimination against visible diversity also prevents religious minorities from accessing public services and, therefore, from participating in the social life of the State. Research has also demonstrated that the so-called *burqa* ban has prevented Muslim women from socialising and going outdoors more generally.⁴¹ The potential for intercultural contact to challenge prejudice is also undermined by the artificial homogenisation of the public sphere, as the source of conflict is removed from interactions that take place in everyday life.
16. The elimination of intolerance and discrimination based on religion or belief and SDG 16 are mutually reinforcing. Currently, in Europe, restrictions on the rights of religious minorities not only undermine the right to freedom of thought, conscience and religion but also directly undermine societal cohesion. Rather than requiring the adaptation of the majority, the current situation has resulted in the hardening of national identities, increased misinformation about minority religions and reduced opportunities for intercultural contact. This must be counteracted if peaceful, just and inclusive societies are to become a reality.

³⁹ Ward and Masgoret, above n. 24, 671. See, further, SE Berry, ‘A Positive State Obligation to Counter Dehumanisation under International Human Rights Law’ (2020) *forthcoming*, *Erasmus Law Review* (Available on request).

⁴⁰ F Petito, SE Berry and M Mancinelli, *Interreligious Engagement Strategies: A Policy Tool to Advance Freedom of Religion or Belief* (2018) 20-25 < forbforeignpolicy.net/wp-content/uploads/2018/12/FoRBFPI-Policy-Report.pdf> accessed 19 May 2020. See also *Coexister* <www.coexister.fr> accessed 20 May 2020.

⁴¹ Open Society Justice Initiative, *After the Ban: The Experiences of 35 Women of the Full-Face Veil in France* September 2013 <www.justiceinitiative.org/uploads/86f41710-a2a5-4ae0-a3e7-37cd66f9001d/after-the-ban-experience-full-face-veil-france-20140210.pdf> accessed 20 May 2020.