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Intersectionality of Freedom of Religion or Belief and Women's Rights: The "Burqa Issue" in the EU

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The intersectionality of freedom of religion or belief and women's rights is one of the most complex human rights issues faced by the world today. Down through the centuries, religious extremism and interpretation of holy books have shaped traditions and cultural stereotypes in a number of patriarchal societies. Some of these traditions and stereotypes have been detrimental to women, and have survived until the 3rd millennium.

The religious, sacred and cultural are sometimes so intimately interwoven that it is difficult to differentiate between them. Societies dominated by men and by the rule of religion have adopted a number of practices which are not explicitly prescribed by their holy books, such as the preservation of girls' virginity by genital mutilation, or the eradication of sinful sexual relations by honor killings. Clothing restrictions and obligations imposed by states or by religious groups (but also freely chosen by women), whether they are rooted in religious principles or not, are debated publicly, not only in Muslim countries but also in European, American and Asian countries where Islam is a minority religion.

Problems arising from the problematic coexistence of women's rights and freedom of religion or belief are not only acute in countries, regions or societies where Islam has been dominating the culture and the traditions for centuries. Tensions between freedom of religion or belief on one side and women's rights on the other are also increasingly experienced in the open societies of the European Union where religion has lost its dominating position in politics, society and the daily lives of the citizens. Throughout the last decades, the regular flow of asylum-seekers from Muslim, Hindu and Buddhist countries has introduced an increasing diversity of religions, cultures and traditions in European societies, a number of which have failed to address modernity in due time and to integrate the culture of human rights. This slow but steady process has resulted in overreaction, and even hostility between some autochthonous populations and some categories of migrants on such issues as the veil or the minarets. This has also reactivated sensitive debates on integration in Western societies, on the defense of national identity and European values.

With regard to the wearing of religious, ethno-religious and cultural symbols, the EU member states have adopted a variety of policies ranging from the ban, to the accommodation in the public sphere, in schools and in state institutions.

This report addresses the issue of the full veil¹ in public space as an example of the political management of intersectionality between freedom of religion or belief and women's rights by a number of EU member states.

¹ This term will be mostly used in this report to designate the burqa, the niqab or any other garment fully covering the face and the body from head to toe of a Muslim woman.

Definitions

The full veil whose purpose is to conceal the face and physical features of the woman's body can take several forms²: the hijab, the niqab, the burqa and the chadri, just to name a few.

The hijab is an Arabic word meaning barrier or partition. The literal definition is defined as veil, screen, cover(ing), or curtain. In Islam, hijab is considered the principle of modesty that is required in the Qur'an and includes behavior as well as dress. The practice of hijab is observed through the wearing of a headscarf by Muslim women, sometimes including a veil that covers the entire face except for the eyes. Muslim communities have differing beliefs and practices regarding how hijab should be enforced.³

A niqab is a face veil covering the lower part of the face (up to the eyes).⁴

The burqa refers to a full head to toe body covering with a small opening for the eyes.

The chadri, also referred to as the Afgan burqa, covers the entire face except for a small region about the eyes, which is covered by a concealing net or grille.

As a wide variety of clothing is used to practice hijab in the Muslim world, it is sometimes difficult to distinguish between the various veils. Therefore, the terms niqab and burqa are often used interchangeably.⁵

The full veil: a historical perspective

The oldest name of the practice of secluding women from public view is *pardah*⁶. It was a practice among women in certain societies of living in a separate room or behind a curtain, or dressing in all-enveloping clothes in order to stay out of sight of non-related men or strangers in the Middle East and parts of South-East Asia. The purpose was gender segregation.

Purdah first appeared in ancient Persia and evidence suggests it was also common in Babylon. The word itself comes from Urdu, a language closely related to Persian, and literally means 'screen' or 'veil'. The Arabic translation is 'hijab'. Before the spread of Islam, such all enveloping garments were worn in the deserts of Arabia for protection against biting sand and wind.

In India, strict pardah denoted a high social standing. In this respect, the covering of the face and

² See pictures at http://atheism.about.com/od/womeninislam/ig/Women-in-Islam--Buraqa--Chador/index_g.htm

³ LAKII.com. Definition of the Hijab. Feb 2010.

<http://www.lakii.com/lakiibooks.php?doWhat=showarticle&topicid=5&articleid=84>

⁴ Sensagent. Burqa/Nijab. February 2010. See <http://dictionary.sensagent.com/burqa/en->

⁵ Encyclopedia: Different terms for muslim dress <http://keywen.com/en/NIQAB>

⁶ See http://departments.kings.edu/womens_history/purdah.html

body was more a means of distancing oneself from lower class members of society, as opposed to making oneself invisible. Traditionally, the level of wealth or social standing of a certain family dictated the extent to which *pardah* could be observed. Richer families, in which it was not economically necessary for female family members to work and contribute, full *pardah* could be observed.

Pardah was adopted by Muslim invaders in the 7th Century. Historians have pointed out that the tent-style burqa became the dominant form of veiling only after the Muslims defeated the more advanced Persian and Eastern Byzantine empires. When these empires fell to the Arabs, the latter began to imitate this practice since they were the new upper class in society. Thus when the caliphate of Baghdad, under the Abbasids, had consolidated, the black burqa became a status symbol of upper class families and naturally those from the lower orders who wanted to enhance status would require their women to follow the same. Most of the *ahadith*, which prescribe complete coverage of women, were a product of the period that corresponds to the annexation of Asia Minor and Persia by Muslims.

Pardah was incorporated as one of the tenets of Islam by the prophet Mohammed, and through Muslim conquest, this practice of segregation spread throughout the Middle East. It is possible that crusading Islamic armies adopted it because it corresponded to teachings in the Qur'an regarding modest conduct and dress. In this respect, its roots are cultural as opposed to religious.

Families observing *pardah* in the past often upheld strict segregation of men and women inside the home; the women's quarters or *harem*, was a place that was off limits to all men. Women were not expected to leave the house except in extreme emergencies. In such cases, a special shrouded horse drawn carriage was used to transport the woman, in the company of a male relative.

The practice of *pardah* has almost disappeared in India, and is followed to varying degrees in Islamic countries. The burqa is the most visible surviving remnant of *pardah* in today's society.

The full veil in some Muslim countries

The status of the head-to-toe garment and the hijab in Muslim countries is hardly known by political decision-makers in Europe. The issue has however been investigated by Dr. Prof. Valentina Colombo, an Academic Researcher on Arab Women's Role in Democratization Processes in the Middle East at the European University of Rome, and was addressed by her at the 12 March 2010 Panel on "Women, Religion or Belief and Human Rights" at the UN in Geneva. Here is an excerpt of her presentation about the situation in several Muslim countries⁷.

⁷ See full text at <http://www.hudsonny.org/2010/03/behind-the-burqa-debate-in-europe.php>

Egypt

In March 2009, the Egyptian Ministry of Health prohibited the wearing of the niqab by nurses in hospitals. If they fail to respect the law, they could be taken to court and even fired. Huda Zaki, a representative of the Government, explained that “to be a nurse, like any other job, has some requirements, such as a specific dress code. A niqab prevents the nurse from doing simple actions, fundamental to their job, such as washing hands, which turns out to be impossible when wearing gloves.” This ordinance, which started in Cairo, was then applied to the whole of Egypt.

In October 2009, Shaykh Tantawi, the head of Al-Azhar university, the highest seat of learning in the Sunni world, ordered a school girl to remove her niqab during a visit to an Al-Azhar school, saying he would seek an official ban for the face-veil in schools as “the niqab is a tradition and has nothing to do with Islam.”

Iraq

The niqab was banned in a fatwa issued by the Iraqi Shaykh, Ahmad al-Qubaisi, who stated: “People have the right to know the identity of the person they are in front of in order not to feel deceived. The obligation of niqab was only for the Prophet’s wives as they were the mothers of all believers. Women who do not agree only have to look for another job in which they are not requested to show their faces”.

Kuwait

Women wearing the niqab have been banned from driving for security reasons, as the only hole in the veil allows no 180-degree perspective. Moreover, it would be impossible to recognize the driver in case of driving infraction.

Saudi Arabia

People in charge of public security have started a battle against the niqab after discovering that many Islamic terrorists have used it to hide in to commit terror attacks.

United Emirates

The niqab was banned in all public offices to fight unrestricted absenteeism.

The full veil in the EU

In November 2006, then European Commissioner Franco Frattini stated that he did not favour a ban on the burqa⁸ but the EU member states are now adopting a wide range of positions on the issue.

Austria

In Austria, there is an ongoing debate initiated by Social Democrat Minister for Women, Gabriell Heinisch-Hoseck, towards formulating laws that would ban the full veil in public spaces if the number of women wearing it were to increase dramatically.⁹

Belgium

Legislation and practice

By now, a federal law has still not been adopted in Belgium to regulate the wearing of the burqa in public, outside of an internal police memo, retracted in early July 2009, instructing that inspections of women wearing the burqa be carried out by female police officers.

However, the lawmakers made a first move to adopt a federal law just after the fall of the government on 22 April 2010 and before the dismissal of the parliament one week later. On 29 April 2010, Belgium's lower house of parliament almost unanimously decided to ban burqa-type Islamic dress in public. The draft law still needs to be approved by the Senate as the bill must be approved by both houses of the parliament.

Belgium now faces early elections that will delay passage of the Belgian anti-burqa ban - Europe's first - by several months.

At this stage, the wearing of the full veil in public is only prohibited by local rules. In many municipalities, it is prohibited as per police regulations, particularly in Flanders. In late 2004, the Minister of the Interior of the Flemish Regional Government whose responsibilities also cover integration issues, sent a prototype regulation on the ban of the burqa in public to all Flemish municipalities. This also applies to the Brussels Region. In the police zone of Brussels West which covers five municipalities, the 2004 regulation provides that it is "forbidden to be masked or disguised in the public sphere" and the wearing of the burqa falls under the regulation. In the police zone covering the municipalities of Schaerbeek, Saint-Josse-ten-Noode and Evere, the 2005 regulation forbids "hiding one's face... in public space or in places accessible to the public." These bans are accompanied by administrative fines which can amount to 250 €.

As of December 2005, about twenty municipalities had already taken local decrees banning any garment covering the face so as to render identification impossible, with the exception of carnivals, and their number is increasing year after year. The local decrees usually make no explicit reference to some forms of full veil, but they were mainly adopted in communes of the

⁸ Reformatorisch dagblad (in Dutch): [Brussel tegen boerkaverbod](#), 30 November 2006.

⁹ See <http://www.france24.com/en/20100126-burqa-law-other-eu-countries-france-law-veil-ban>

Brussels Region that have sizable Muslim populations (like Molenbeek and Schaerbeek), and in Antwerp. Fines ranging between €75 and €150 have been occasionally imposed on women wearing a burqa.

In March 2008, the city of Verviers decided to introduce a city-wide ban on the burqa and any other form of headscarf covering the face. The justification was the need for police and other authorities to be able to recognise a person's face at all times.

In December 2008, the city of Londerzeel announced that - as of 2009 - it would ban the burkini from the city's swimming pool. The burkini - a two-part bathing suit with long sleeves, long pipes and a headscarf, which name is a composition of the words burqa and bikini - is worn by a number of Muslim girls in public swimming pools. The city declared that it decided to introduce the ban was motivated by hygienic reasons.¹⁰

Enforcement of the local rules remains spotty and fines usually range from 50 to 150 €.

In 2009, the city of Brussels fined only 29 women - down from 33 in 2008 - for wearing a burqa-type dress.

Public debate

Like elsewhere in Europe, Belgium struggles with anxieties that visible signs of Islam erode national identity and that women in traditional conservative Islamic dress, such as the burqa, the chador and the niqab, signal a refusal to assimilate in western society.

The author of the draft law adopted in April 2010, Daniel Bacquelaine, a Liberal, said a burqa is incompatible with basic security as everyone in public must be recognizable and clashes with the principles of an emancipated society that respects the rights of all.

In the last few years, members of parliament tabled several draft laws and resolutions limiting the wearing of the full veil, without being further explored. Some addressed the general question of wearing the burqa in public, while others focused on the wearing of this garment by public servants.

The Council of State was consulted about a draft law tabled on 7 November 2007 concerning the separation of the state and communities of faith or belief and said: "In the exercise of their occupation, public servants shall refrain from any external manifestation of any form of expression related to their beliefs, their religion, their community or their party." This obligation was to be applied to all public servants regardless of their function. In its advice, the Council of State reiterated that "the obligation [...] imposed on any public servant to be strictly neutral in

¹⁰ *De Morgen*, "Londerzeel verbiedt burkini in zwembad", 16 December 2008.

<http://www.demorgen.be/dm/nl/989/Binnenland/article/detail/555405/2008/12/16/Londerzeel-verbiedt-burkini-in-zwembad.dhtml>

his/her external presentation » was to be strictly motivated according to the principle of proportionality to prevent « the exclusion of the public sector on the sole ground that they exercise a fundamental right."

On 16 July 2009, senator Anne-Marie Lizin tabled a draft resolution on the creation of an ad hoc commission on the wearing of the burqa.

Denmark

In 2009, a proposal to impose a ban was withdrawn after the country's justice ministry ruled that the law would be legally problematic. The government is now considering a restriction to the wearing of the full veil in public, in schools and in courts and is awaiting recommendations from an ad hoc committee. The majority of Danes support the government's stance against the wearing of the veils by Muslim women in the streets. The penalty providing forcing a woman to wear the burqa has recently been increased to four years imprisonment.¹¹

A Copenhagen University report suggested that just 3 women wear a burqa in Denmark while around 200, mainly Danish converts, use the niqab but several politicians have queried these statistics. Prime Minister Lars Lokke Rasmussen has said that neither the niqab nor the burqa have any place in Danish Society and that the number of women involved is irrelevant to the government's stance.¹²

France

In France, the debate on the burqa cannot be disconnected from the "veil issue" and the adoption of Act No. 2004-228, introduced on 15 March 2004 which regulates, in accordance with the principle of secularism, the wearing of symbols or clothing in schools, colleges and public high schools which shows affiliation with a religion, the question of wearing the full veil in public has become an important public debate.

Legal framework

On 12 May 2010, the French parliament voted to condemn the full Islamic face veil, calling it "an affront to the nation's values of dignity and equality". The non-binding resolution was passed unanimously, although 30 communist deputies walked out in protest. Legislation to ban the full-face veil in public is expected later this year.

The proposal provoked intense debate about religious freedom in a secular society, and the position of Muslims in France.

¹¹ See *Euronews* 30/01/2010 <http://www.euronews.net/2010/01/30/burqa-ban-debate-gains-momentum-across-europe/>

¹² *Ice News*, 27 January 2010 <http://www.icenews.is/index.php/2010/01/27/denmark-calls-for-burka-ban-proposals>

In April 2010, President Nicolas Sarkozy ordered parliament to debate a ban. He described veils that conceal the face as oppressive to women and not welcome in France.

In 2008, several proposals were made on the wearing of the full veil in public.

On 27 June 2008, a decision was taken by the State Council to refuse French nationality to a Moroccan woman who wore a burqa on the grounds that she was "a radical religious practitioner, which is incompatible with the core values of the French community, particularly the principle of gender equality".

When consulted, the HALDE (High Authority against Discrimination and for Equality) said on 15 September 2008, that the ban on wearing the burqa in the context of a compulsory language training which in turn is part of a welcome and integration process, met the requirements of Articles 9 and 14 of the European Convention on Human Rights on the grounds that "the burqa suggests a form of female submission which goes beyond its religious significance and could be considered detrimental to republican values which govern the process of integration and organization of these lessons". The HALDE also highlighted the requirements of public safety and protection of the rights and freedoms of others.

In addition, on 23 September, 2008, Jacques Myard, MP, tabled a bill aimed at fighting violations of the dignity of women from certain religious practices, and whose purpose is to criminalize wearing a veil over the face to prevent any recognition or identification.

The debate took a new dimension in June 2009. On 9 June, 2009, Andre Gerin MP and others filed a resolution seeking to establish a commission of inquiry into the practice of wearing the burqa or niqab on national territory.

On 22 June, 2009, in his speech before Congress in Versailles, President Sarkozy seized upon this and said: "The issue of the burqa is not a religious issue, it is an issue of freedom, of the dignity of women [...]. I want to say solemnly, it [the burqa] is not welcome on the territory of the Republic. "

On 23 June, 2009 a parliamentary inquiry mission was established by the Conference of Presidents of the National Assembly. Its goal was to "establish an inventory of the practice of wearing the full veil in France" and also to consider its "practical consequences in social life" and "its relationship with the principles of the French Republic, and in particular, that of freedom and dignity of women." The mission plans to make its report and recommendations no later than the end of January 2010.

Public debate

According to the Interior Ministry, an estimated 2,000 women wear the burqa in France and this is seen by many as "a threat to the republic". Polls have indicated that 65 percent of the French population, including Muslims, would like a law banning the burqa. Though statistics are hard to come by, anecdotal evidence suggests that the popularity of the burqa is on the rise.

It may be recalled that the controversy started when French President Nicolas Sarkozy declared in 2009 that such attire had no place in France and was “contrary to the values of the republic”¹³. He asserted that the burqa was not a religious symbol; rather it symbolised the subjugation of women. The security risk linked to the burqa and its clash with French republican values are the two main arguments that have been put forth.

The State Council said in March 2010 that any such law could be a violation of the French constitution as well as the European Convention for the Protection of Human Rights but it added that rules requiring faces to be uncovered in public places could be justified for security reasons and to combat fraud.

In January 2010 a parliamentary commission recommended a ban on the full veil in public places like hospitals and schools, and on public transport. The commission stopped short of recommending a full ban because not all of the 32 commission members could agree. A parliamentary vote is due to take place in the coming months¹⁴. The Commission members maintained that their recommendation was by no means an intrusion into the privacy of Muslim women or an attempt to curtail their human rights. It was agreed, however, that donning the burqa was a sign of the demeaned status of Muslim women.

The ban was strongly endorsed by left-wing feminists such as Fadéla Amara, herself a Muslim and Secretary of State in the current French government. She argued that the burqa is “a kind of tomb for women” and that such garb is not their choice but it is imposed by male tradition.

Some members of the National Assembly think that a ban would be a positive step towards fostering integration as it breaks down barriers of perceived “separation.” But opponents say a ban could alienate and stigmatise France's large Muslim minority, and the country's highest administrative body - the State Council - has suggested it might be unconstitutional.

In February 2010, the French government refused to grant citizenship to a foreign national on the grounds that he forced his wife to wear the full Islamic veil. The man needed citizenship to settle in the country with his French wife but Immigration Minister Eric Besson said this was being refused because he was depriving his wife of the liberty to come and go with her face uncovered. Later, the minister stressed that French law required anyone seeking naturalisation to demonstrate their desire for integration.

¹³ France moves closer to a ban on burqas. Reuters, 26 January 2010

<http://blogs.reuters.com/faithworld/2010/01/26/france-takes-first-step-towards-banning-muslim-face-veils/>

¹⁴ Parliamentary report backs burqa ban (France 24, International News, 26 January 2010). See

http://www.france24.com/en/20100126-ban-burqa-gains-momentum-with-publication-parliamentary-report?ns_mchannel=SEM&ns_source=Google&ns_campaign=France%2024%20US_France&ns_linkname=France%20-%20islamic%20veil%20law_France%20burqa&ns_fee=0&gclid=CMHyqtObjaACFaFi4wodXG2Gdw

"It became apparent during the regulation investigation and the prior interview that this person was compelling his wife to wear the all-covering veil, depriving her of the freedom to come and go with her face uncovered, and rejected the principles of secularism and equality between men and women," he said.¹⁵

Germany

The Interior Ministry of the Federal Republic Germany, has no plans to implement any ban on the burqa as religious issues fall under the competence of its sixteen states (Länder). Up to now, 7 of Germany's 16 states have prohibited teachers from wearing Islamic headscarves in public schools. A recent move by an ultra conservative premier of the state of Hesse to ban burqas in educational institutions backfired when it was pointed out that no student was wearing a burqa in the state schools.

Despite the politicians' reluctance to clamp down in minority rights, some 50 per cent of the population favors a ban¹⁶.

Italy

The burqa is currently not referenced in Italian law. In October 2009, Italy's anti-immigration Northern League proposed a burqa ban but as of 1 March 2010 no such draft law had yet been debated by Parliament. However, there exists legislation that forbids covering the face in public places. This law was introduced in 1975 as a counter-terrorism measure against homegrown guerilla groups and makes no reference to religious expression. Some politicians have called for this decades-old anti-terror rule to be enforced against veiled Muslim women while others are opposed to any form of ban.

Italy's far-right Northern League proposed a bill in 2009 that would impose a prison sentence of up to 2 years and a € 2,000 fine for those who "because of their religious affiliations are difficult or impossible to identify." The prefect of Treviso, Vittorio Capocelli, who represents the Interior Ministry in the city, says women should be allowed to wear the garment for religious motives as long as they can be identified if requested.¹⁷

According to a recent opinion poll¹⁸, 63 per cent of the Italians are in favor of a ban.

¹⁵ BBC News site: <http://news.bbc.co.uk/2/hi/europe/8494860.stm>

¹⁶ Financial Times, 1 March 2010,

http://www.ft.com/cms/s/0/e0c0e732-254d-11df-9cdb-00144feab49a.html?nclick_check=1

¹⁷ See adnkronos international "Northern city ignores outcry and lifts burqa ban"

<http://www.adnkronos.com/AKI/English/Religion/?id=1.0.1409234542>

¹⁸ Financial Times, 1 March 2010,

http://www.ft.com/cms/s/0/e0c0e732-254d-11df-9cdb-00144feab49a.html?nclick_check=1

Netherlands

Legislation in the Netherlands limits the wearing of the burqa and other total coverings on public transport or in schools. The Immigration Minister announced in November 2006 that the government was planning to fully ban the burqa and any other face-covering Islamic dress in public but since then and despite a motion tabled in the Dutch House of Representatives by the anti-immigration politician Geert Wilders,¹⁹ no such decision has been adopted by the parliament.

According to the Muslim community, only about 50 women are wearing the head-to-toe burqa or the niqab. They said a general ban would heighten alienation among the country's Muslims, who number approximately 1 million.

A February 2007 opinion poll indicated that 66 percent support a ban and 32 percent oppose it²⁰.

Sweden

In a radio debate between Swedish Prime Minister Fredrik Reinfeldt and leader of the opposition Mona Sahlin (Social Democrat), Reinfeldt refused to give a straight answer on the possibility of banning of burqas in Sweden. Sahlin said she was against a law, and that she is willing to fight for a woman's right to wear a burqa if she wants²¹.

According to Svenska Dagbladet (Independently moderate) none of the parties in parliament officially supports a ban on burqas and niqabs but individuals in the ruling coalition say they would like to introduce a ban.

According to a census made by Expressen (independently liberal) and the Swedish research consultancy Demoskop, 53 percent of the Swedish population wants a law against wearing burqa and niqab in public, while 46 percent is said to be against a prohibition.

The United Kingdom

No law prohibits the wearing of the full veil. Although Tony Blair called the burqa a "mark of separation," a ban on the full veil is currently not a major issue in the UK and on 22 January 2010, the British government reaffirmed its commitment to freedom of expression in terms of

¹⁹ See BBC "Dutch MPs to decide on burqa ban" <http://news.bbc.co.uk/2/hi/europe/4616664.stm>

²⁰ See <http://www.stop-killing.org/node/823>

²¹ See <http://sydsvenskan.se/opinion/signerat/matsskogkar/article624607/Beslojad-debatt.html>

both religion and dress. The UK's Education Ministry, however, published guidelines in 2007 allowing schools to ban the wearing of niqabs in class²².

In January 2010, the leader of the UKIP (United Kingdom Independence Party) appeared to align itself with the ultra right wing BNP by calling for a ban on burqas and headscarves in public. Justice secretary Jack Straw said that this would be "a waste of police time" and reiterated that the current administration had no intention of imposing such a ban.

57 per cent of the population favors a ban. Another survey found that 70 percent of Britons would be in favor of a ban in public places, schools, universities and airports.²³

Ban on the full veil: Pros and cons

Three categories of arguments are used by the supporters of a full or partial ban on the full veil: security, women's rights and integration in the European values system.

1. National and Human Security

Some states have banned or want to ban the full veil on the grounds of public safety and argue that the police need to see the faces of everybody on the streets in order to prevent criminal activities (i.e. hold ups) and suicide-bombings, to identify criminals or prisoners on the run, to find missing persons, and so on.

For security reasons, the veil and the full veil may also need to be banned at the workplace.

There may also be features of certain institutional settings which are incompatible with the wearing of a full veil. People must be identifiable by teachers and professors (for a university exam or), by healthcare institutions (for medical exams and surgery), by social and administrative services (for allowances, passports, ID cards)²⁴, at post-offices (to get a registered letter), on public transport (for holders of a pass), etc.

Some argue that in some cases terrorists and criminals have worn a burqa to hide from the police and the authorities and that one of the suspects of the failed attempts to bomb London in 2005 wore a niqab, as a disguise. Al Qaeda and the Talibans have drafted young men and

²² British headteachers can impose their own dress codes and many schools insist that their pupils wear uniform.

²³ See public opinion survey http://www.visioncritical.com/wp-content/uploads/2010/01/2010.01.26_Burqa_BRI.pdf

²⁴ In France, there have been cases of social security abuses whereby foreigners assuming the identity of a social security-entitled French citizen were treated in healthcare institutions free of charge.

occasionally women into suicide bombing missions, sometimes using a burqa to avoid any suspicion or control. Such tactics have created fear and anxiety among governments. Banning the burqa is one way of reducing the terrorist risk factor, if not eliminating it, some think.

2. Women's rights

According to the well-known Pakistani Islamist, Dr Israr Ahmed, men in the West have lost their manliness because they are in contact and work with women. That affects their perception of their sexuality. By strictly segregating men and women, Islam keeps men in their most natural state of virility and the burqa contributes to that “positive segregation,” he teaches.

To the Western world as well as to many Muslim women, the discriminatory and humiliating treatment of women throughout history under Islam is symbolized by the compulsory wearing of the full veil. Under Islam, many women traditionally must remain covered, are denied contact with non-related men, can be denied the ability to get jobs and education to the same extent as men, are subject to violence and forced marriage, are treated as having less political or social worth than men, and are discriminated against in a variety of ways. Can a civilisation that treats its women as inferior and its men as sexually uncontrollable claim to be the bearer of the best values of common humanity? This is another strong argument used in the debate on the burqa in France.

Westerners, non-Muslims, and many Muslim women are actively fighting what they consider the subjugation and subordination of women through the imposition of the full veil. However, a ban could further worsen the plight of those who are coerced by family or by the dictates of tradition to cover themselves in public. Many believe that by making the burqa and the niqab illegal, a lot of women would be forced to stay at home, which would further alienate them and deprive them of their freedom of movement and their right to education.

Liberal Muslims and women's rights groups are advocating the cessation of compulsory enforcement of the burqa or niqab so that women can choose if they want to wear it. Indeed, a number of Muslim women do want to wear the full veil, including converted European citizens, and claim that their choice is also part of women's rights. A Frenchwoman, who took to the burqa entirely through her own volition, protested: “France is supposed to be a free country. Nowadays, women have the right to take their clothes off, but not to put them on.”²⁵

Muslim women in Europe are pulled in all directions by contradictory forces: traditions which often dictate conservative dress codes and conduct, strong familial and cultural obligations, but also pressure from the larger community to be seen as visibly liberated, modern and empowered- in other words, integrated.

²⁵ See http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=5&article_id=111679

Our world is everything but static and the whole rationale behind a woman's right to keep her body invisible to men's eyes is now challenged by new technological progress as body scanners making possible an inspection of even the most private parts of the human body are being installed in international airports. In March 2010, two Muslim women refused to go through a body scan in a British airport and were not allowed to board...

3. National Values, Identity & Integration

The starting point of most discussions on the identity issue is the idea that a community needs a common set of values and references to ensure its coherence, to guide its actions and to endow these with legitimacy and meaning.²⁶

One of the most pervasive underlying assumptions in the discourse on European Muslim integration is that Muslim religiosity is incompatible with and a threat to European values.

In France, President Sarkozy held that wearing a full veil is incompatible with France's national values. In June 2009, he started a controversy when he said in an ornate chamber of the Palace of Versailles: "In our country we cannot accept that women be prisoners behind a screen, cut off from all social life, deprived of all identity. The burqa is not a religious sign. It is a sign of subservience, a sign of debasement. It will not be welcome on the territory of the French republic." The public debate on French national identity was hereby reactivated with the endorsement of the president but it soon turned out to be a Pandora box and to backfire as xenophobia and anti-immigration arguments quickly dominated the discussions. Opposition political parties (with the exception of the extreme-right) and civil society organizations have refused to contribute to such a debate and up to now, the members of the French government have been unable to construe what they understand by national values.

As the full veil problem primarily concerns female migrants and women living or staying temporarily in France, asylum or visas should only be granted in the French logic to those who declare that they share those values and that they will respect them. A detailed questionnaire and a statement to be signed might even be submitted to the applicants.

If the French government ever manages to give some concrete and measurable content to the French republican values and to legislate, it will give strong arguments to such hardliners as Iran's President Mahmoud Ahmadinejad who will be too happy to defend the Iranian republican values and impose a strict dress code to all women. Is that what the supporters of the defense of national values and identity really want?

²⁶ Euractive article <http://www.euractiv.com/en/culture/european-values-identity/article-154441>

Conclusions

Freedom of religion or belief may be invoked both in terms of the *negative freedom* of persons who do not want to be confronted with, or coerced into wearing or displaying a religious symbol, and in terms of the *positive freedom* of persons who wish not to hide their religious affiliation. Some women do want to wear the full veil in public on religious grounds. Women's rights have two faces, but one common denominator: freedom of choice. Therefore a total ban on the full veil in the public sphere cannot be justified by the only desire to free women from male coercion.

The ground on which the supporters of the protection of Western values and national identity in EU countries have built their argumentation to ban the full veil is shaky and may be counter-productive in our global world.

National and human security concerns are legitimate and certainly deserve the most attention. If restriction measures are to be envisaged, a number of old and new considerations raised at the UN level must however be kept in mind.

In his 1959 study of discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/200/Rev.1, p. 33), the then Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, Arcot Krishnaswami, said: "A prohibition of the wearing of religious apparel in certain institutions, such as public schools, may be motivated by the desire to preserve the non-denominational character of these institutions. It would therefore be difficult to formulate a rule of general application as to the right to wear religious apparel, even though it is desirable that persons whose faith prescribes such apparel should not be unreasonably prevented from wearing it."

In her report about her fact-mission in Macedonia in 2009, UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir wrote: "If a policy decision has been taken at the national level that interferes with the freedom to manifest one's religion or belief with regard to wearing religious symbols, issues of proportionality and religious tolerance need to be thoroughly respected. In this regard, the Special Rapporteur would like to reiterate that the following questions should be answered in the affirmative: Was the interference, which must be capable of protecting the legitimate interest that has been put at risk, appropriate? Is the chosen measure the least restrictive of the right or freedom concerned? Was the measure proportionate, i.e. balancing of the competing interests? Would the chosen measure be likely to promote religious tolerance? Does the outcome of the measure avoid stigmatizing any particular religious community?"

A last but not least question should also be raised: Should the state alone bear the burden of accommodating specific religious and cultural practices? There is sometimes a price to be paid by the persons who choose to put their conscience above the law. Jehovah's Witnesses and non-religious pacifists who are conscientious objectors to military service have accepted for decades in many countries to pay a high price for their choice: a prison term, a criminal record and the denial of access to employment in the public sector. Women who have chosen to wear the full veil in a country where such a garment is fully or partly banned may also have to pay a price for their choice. Time will tell whether their commitment is genuine or if most of them will find some form of reasonable accommodation with a modern world in constant evolution.

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Women - Religion or Belief - Human Rights Panel

WOW - Worldwide Organization for Women, WUNRN - Women's UN Report Network and WILPF -
Women's International League for Peace and Freedom

March 12, 2010
3:00 - 5:00 p.m.
Salle XXIII
UN Palais des Nations
Geneva, Switzerland

During the 13th Session of the United Nations Human Rights Council

Speakers:

*Ms. Asma Jahangir - UN Special Rapporteur on Freedom of Religion or Belief

*Mme. Fatimatou Mansour - First Secretary for Human Rights - Permanent Mission of Morocco -
Geneva, Switzerland

*Rev. Doju Dinajara Freire- Soto Zen Buddhist Nun - Global Peace Initiative of Women

*Ms. Berhane Ras-Work - President, Inter-African Committee

*Mr. Willy Fautre - Director, Human Rights Without Frontiers International

*Dr. Prof. Valentina Colombo, Academic Research on Arab Women's Role in Democratization
Processes in the Middle East - European University of Rome

*Ms. Lois A. Herman - Coordinator WUNRN, Women's UN Report Network

Moderator:

*Ms. Ruth Kobia, M.Div., UN Geneva Representative - Women, Environment and Health -
Worldwide Organization for Women