



When Discrimination Masquerades as Equality: The Impact of France's Ban of Religious Attire in Public Schools

A Shadow Report by the International Center for Advocates Against Discrimination (ICAAD)
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Prepared by: Principal Authors, Editors, and Researchers

Tejinder Singh (J.D.), Senior Advisor, Counsel at Goldstein & Russell, P.C.

Hansdeep Singh (J.D., L.L.M. in International Law), Director of Legal Programs

Jaspreet Singh (J.D.), Director of Policy & Advocacy

Ranjit Singh (L.L.B., L.L.M.), Ph.D. candidate in Public Law at Sorbonne Law School

Tel: +1 917-971-5713

Email: info@icaadglobal.org

Website: www.icaadglobal.org

The International Center for Advocates Against Discrimination (ICAAD) was founded for the purpose of combating structural discrimination globally and promoting human rights norms consistent with public international law.

ICAAD works to empower marginalized communities to address structural discrimination in their legal systems. By leveraging partnerships with global law firms, law school clinics, data scientists, and technology companies, ICAAD works to enhance the capacity of local NGOs to combat system failures and improve access to justice. Previously, we submitted a UPR Report on France regarding religious manifestation in 2012 and have participated in Minority Forums in Geneva where we provided oral testimony regarding the treatment of minorities in France. And finally, members of our staff were part of the team that originally filed before the United Nations Human Rights Committee on the *Bikramjit Singh* case.

** This Shadow Report is being submitted early, so that the questions it raises will be accepted as part of the List of Issues to be adopted during the upcoming Human Rights Committee review in July of 2014.*

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I. Introduction and Summary

The International Center for Advocates Against Discrimination (ICAAD) submits this report to highlight concerns regarding France’s Law No. 2004-228 of 15 March 2004 (the Act), which prohibits students in public primary schools, secondary schools, and lycées from wearing symbols and clothing manifesting a religious affiliation. French schools implementing the Act have expelled students who manifest their religion by wearing articles of faith to school.

The French government has taken the position that such expulsions do not constitute discrimination because the Act does not single out any religion, because it furthers the ideal of secularism, and because expelled children may pursue alternatives such as home schooling, correspondence courses, or private schools. French courts and the European Court of Human Rights have agreed: on December 5, 2007, the French Council of State ruled that given the importance attached to the principle of secularism in public schools, the permanent expulsion of a pupil who refuses to comply with the legal prohibition to wear external symbols denoting religious affiliation is not a disproportionate infringement of the freedom of religion as guaranteed by article 9 of the European Charter of Human Rights (ECHR), nor does it violate the principle of non-discrimination set forth by article 14 of the ECHR since it aims at ensuring compliance with the principle of secularism in public schools without discrimination between pupils’ faiths. However, these defenses were resoundingly rejected by the U.N. Human Rights Committee in the case of *Bikramjit Singh v. France*, Communication No. 1852/2008, CCPR/C/106/D/1852/2008, ¶ 8.7 (Feb. 4, 2013), which took the view that “*the expulsion of the author from his lycée was not necessary under article 18 paragraph 3 of the Covenant, infringed his right to manifest his religion and constitutes a violation of article 18 of the Covenant.*” In fact, the Committee held that the enforcement of the Act by the French Council of State violated Article 18 of the International Covenant on Civil and Political Rights (ICCPR) because it discriminated against a student for manifesting his faith, without any sound justification relating to public health or safety. Nevertheless, the government has adhered to the view that the Act is a legitimate expression of the ideal of secularism—including in its Fifth Periodic Report to this Committee. Indeed, the government—in statements both before and after this Committee’s decision—has not only reaffirmed its commitment to the Act, but has proposed measures further restricting religious freedom in public spaces, all based on the same logic that this Committee rejected.

The Act and the government’s defense of it raise grave concerns. Although the Act, on its face, does not single out any religion, several minority religions—including Judaism, Islam, and Sikhism—require manifestations of faith, while other religions, including the majority Catholic faith, do not. Children in these religions are therefore disproportionately affected. Moreover, the history of the Act demonstrates that its primary purpose is to prevent Muslim girls from wearing a *khimar*, or headscarf, and the law is commonly referred to as the “Headscarf Ban.” That history and shorthand belie the notion that the Act constitutes a general expression of secularism, as opposed to a targeted measure against minorities.

Indeed, the Act’s broad scope makes it all the more pernicious. When facially neutral laws disproportionately affect minorities, discrimination masquerades as equality. But like the victims of more blatant forms of intolerance, children expelled from school under the Act face the stigma of being excluded from mainstream French society. Moreover, their identities are focal points for adverse treatment, a fact that surely signals to them, to other children, and to society more broadly that it is appropriate to discriminate on the basis of religious affiliation. Thus, far from

upholding the pluralistic ideal of secularism, the Act disadvantages minority religions in violation of international law, isolates children from their peers, and thus contributes to the very religious compartmentalization that France still seeks to prevent. Indeed, the evidence bears this out. The Act has not only resulted in marginalization for minority children, but it has also failed to abate social tensions, which have been exacerbated in recent years.

Although the Act contains measures ostensibly designed to soften its effect, these in fact only heighten the adverse impact on children. First, before expelling a child, school officials are required to hold a dialogue with her. But as explained in a circular issued in May 2004, that dialogue is one-sided: the school official is commanded to explain the rules to the child, and to attempt to convince the child to conform with the Act. If the child cannot be persuaded to forego his or her religious observance, France's position is that the Act requires expulsion.

The dialogue therefore does not require schools to compromise, but instead constitutes an ultimatum to the child. Second, France has taken the position that in lieu of public education, expelled children may attend private schools or take correspondence courses. But segregation on the basis of religion is neither lawful nor just. By closing the public schoolhouse door, the Act discriminates against minority children. That discrimination calls out for scrutiny and rebuttal from this Committee.

II. About the International Center for Advocates Against Discrimination (ICAAD)

ICAAD is a non-governmental organization (NGO) that combats structural discrimination by challenging legislation, case law, government policy, and cultural norms that negatively impact vulnerable communities. ICAAD leverages partnerships with law firms, universities, local NGOs, artists, and technology companies to achieve large scale systems change. ICAAD's three thematic areas include: women's rights, religious freedom, and minority rights. The organization has identified five key factors that contribute to structural discrimination:

- **Social exclusion:** Social exclusion refers to “the multi-dimensional and dynamic process of being shut out, fully or partially, from the economic, social and cultural systems that determine the social integration of a person in society.” It results from deeply-embedded societal norms that favor assimilation rather than integration and leads to the “othering” of individuals and communities that do not conform to the prevailing norms.
- **Formal equality/equality per se:** Formal equality, “the idea that rights protection can be grounded on an objective foundation of principles,” manifests in facially neutral laws, policies, or case-law that reflect majoritarian sentiment and leads to the disparate treatment or impact on specific communities.
- **Denial or suppression of identity:** Denial or suppression of identity occurs where the State views the distinctive identity of specific communities with suspicion or fear and uses majoritarian influence or legal means to mandate conformity.
- **Failure to protect:** Failure to protect refers to the obligation countries have in international law to protect communities from violence perpetrated by government officials or private persons. When the institutional systems that exist

to protect vulnerable communities from violence fail, the State bears the responsibility for the lack of accountability.

- **Cultural norms:** Cultural norms, such as caste-based and patriarchal ideologies, are deeply-embedded traditions that permeate all aspects of life. Even though the government may not directly sanction these traditions, the government may be unwilling or unable to enforce laws to remove these discriminatory barriers.

ICAAD attorneys have years of experience combating policies that deny religious accommodation through both advocacy and litigation, including regarding the Act. At the end of 2012, ICAAD was cited by the Office of High Commissioner for Human Rights (OHCHR) who produced Report for the Universal Periodic Review (UPR) process regarding the effect of the Act on minority children in France.¹ In February of 2013, ICAAD prepared a submission for the All Party Parliamentary Group regarding Article 18 of the ICCPR, which highlighted the discriminatory effect of the Act.² ICAAD's attorneys have also studied the Act in detail, spoken with advocates for both the Sikh and Muslim communities in France, and obtained firsthand testimony from affected individuals through our French Advisors.

III. History and Implementation of the Act

For decades, France has struggled to address the application of its constitutional principle of *laïcité*, or secularism. Originally a reaction against the dominance of the Catholic church, French secularism is a much stronger norm than, for example, the separation of church and state required by the Establishment Clause of the First Amendment to the Constitution of the United States. One of France's most substantial challenges has been reconciling its robust vision of secularism with the recent arrival of waves of religious minority immigrants, especially Muslims, who number approximately 5 million in France.³

In 2003, President Jacques Chirac established an investigative commission, headed by Bernard Stasi, to determine how secularism should apply in practice. The Stasi Commission Report produced a range of recommendations, the most controversial of which was that the government should ban the wearing of "ostentatious" religious symbols in schools.⁴ These symbols expressly included large crucifixes, the Jewish *kippah*, and the Muslim veil.⁵ The report based this recommendation on two objectives: first, to enforce the principle of secularism; and second, to abate coercion against some Muslim girls (typically by their families) who did not wish to wear the traditional headscarf.

¹ Human Rights Council (HRC), *Summary Prepared by the Office of High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: France* (Nov. 8, 2012), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/180/19/PDF/G1218019.pdf?OpenElement>.

² ICAAD, *Article 18: An Orphaned Right* (Feb. 8, 2013), http://www.icaadglobal.org/files/files/ICAAD_Submission-_Article_18_APPG.pdf

³ This figure is an estimate, rendered by the French Minister of the Interior in 2010 because France does not include religious identification in its census. See Michael Cosgrove, *How Does France Count its Muslim Population?*, *Mon Figaro*, July 7, 2011, <http://plus.lefigaro.fr/note/how-does-france-count-its-muslim-population-20110407-435643>.

⁴ The report, in its original French, used the word "ostensible." See Commission de Reflexion sur L'application du Principe de Laïcité Dans la Republique, *Rapport au President de la Republique* 41, 58-59 (Dec. 11, 2003).

⁵ *Id.* at 58-59.

President Chirac chose to act on the portion of the report recommending a ban on symbols at school. Thus, in 2004, the French legislature enacted the Act, which entered into force that school year, resulting in dozens of expulsions of minority children, mostly—but not exclusively—Muslim girls. France’s Report states that only 39 students were expelled in the first year of the Act’s implementation;⁶ the French newspaper *Le Monde* reported that in the first year of its implementation, the Act resulted in 47 students being excluded from school, and another 96 who voluntarily chose not to return.⁷ Approximately a dozen students returned to school wearing prohibited attire in the second year of implementation, and faced disciplinary proceedings.⁸ In subsequent years, fewer and fewer students have attempted to wear prohibited attire to French schools, although controversy emerged in 2013 after a girl was expelled from school for wearing a headband and a long skirt that school officials deemed “too religious.”⁹ Instead, students are now either attending different schools, or are attending public schools without their religiously mandated attire.

Since its enactment, the Act has been controversial. While large segments of the French population support it, it has also drawn substantial criticism, especially from human rights activists and religious minority groups—many of whom believe that the Act (along with similar laws elsewhere) was designed to pander to xenophobia and voter prejudice instead of furthering genuine understanding of religious minority views, or actually addressing the problems that it seeks to remedy.¹⁰ Additionally, during France’s last Universal Periodic Review cycle, several countries and NGOs, including ICAAD and Human Rights Watch (HRW), called upon France to repeal or amend the Act; France rejected those recommendations.¹¹ More recently, the Prime Minister requested a report containing recommendations to assist in integrating Muslims into French society; that report suggested that France consider repealing the Act because it stands as a barrier between Muslim women and French society.¹² The political establishment, including the Prime Minister, publicly rejected that recommendation as well.¹³

⁶ See France’s Fifth Periodic Report ¶ 412.

⁷ See *Les signes religieux ostensibles ont pratiquement disparu des écoles*, *Le Monde* (Sept. 9, 2005), available at http://www.lemonde.fr/societe/article/2005/09/29/les-signes-religieux-ostensibles-ont-pratiquement-disparu-des-ecoles_694106_3224.html.

⁸ *Id.*

⁹ See Nabila Ramdani, *Veil Row Reignites in France after 15-year-old Girl Expelled from School for Wearing a Headband and Long Skit Which Were Considered “Too Religious,”* Daily Mail Online (UK) (April 7, 2013), <http://www.dailymail.co.uk/news/article-2305314/Veil-row-reignites-France-15-year-old-girl-expelled-school-wearing-headband-long-skirt-considered-religious.html>.

¹⁰ See, e.g., Human Rights Watch, *France: Headscarf Ban Violates Religious Freedom* (Feb. 27, 2004), <http://www.hrw.org/en/news/2004/02/26/france-headscarf-ban-violates-religious-freedom>; Amnesty International, *Choice & Prejudice—A Summary 6-7* (2012).

¹¹ The recommendation was made in 2008 by Canada and Bangladesh. See U.N. Human Rights Council, *Response of France to the Recommendations Made During the Universal Periodic Review on 14 May 2008*, U.N. Doc. No. A/HRC/8/47/Add.1, at (Aug. 25, 2008). In 2013, several additional countries, including Egypt, Kuwait, Malaysia, Sudan, Thailand, and Uruguay made similar recommendations. UPR Info, *Recommendations & Pledges, France 3* (June 6, 2013), available at http://www.upr-info.org/IMG/pdf/recommendations_and_pledges_france_2013.pdf.

¹² See *France Should Allow Headscarves, Arabic in Schools: Report to PM*, Reuters (Dec. 13, 2013), available at <http://www.reuters.com/article/2013/12/13/us-france-integration-idUSBRE9BC0JK20131213>.

¹³ See *id.*

Several individuals also challenged the Act in court, arguing that it interfered with their religious freedom by excluding them from public school if they refused to shed their religious identities. With one very notable exception, these challenges did not succeed.¹⁴ The French courts and the European Court of Human Rights all concluded that the Act was a legitimate measure to pursue secularism in France. These decisions did not include substantial reasoning weighing the rights of the affected individuals against the state's interest in secularism, nor did they explore whether the ban would actually assist Muslim girls resisting family pressure, or protect the public order. Instead, they merely held that France's interest in secularism justified the Act. As described in greater detail in Section IV, however, this Committee, after engaging in a careful analysis of the Act and its effect on students, reached a different result.

Although France contends that the implementation of the Act has been a success, and has not resulted in a substantial number of negative incidents, the evidence suggests otherwise.¹⁵ Although it is true that after the initial rash of expulsions, disciplinary actions in school have declined, that metric alone fails to address the effect that the Act has had on children and on relations between French religious minorities and French society.

Beginning with the children, a survey of 42 Sikh students in the Bobigny region of Paris showed that over half of the students felt humiliated and singled out, even as they complied with the law; moreover, over a third felt that they had lost their identity altogether.¹⁶ ICAAD recently solicited testimony from several additional Sikh boys, who likewise stated that they underwent significant hardship as a result of compliance with the law.¹⁷ Specifically, the students all endured bullying because their uncut hair was not covered in the Sikh style—their peers called the young boys girls, and they were continually singled out both because of their different identity and because the law required them to behave differently from other Sikhs (*i.e.*, Sikhs not in school). One of the children testified that he was considering leaving the country because of the law.

Muslim children have reported similar experiences. An organization founded to analyze the Act published a report estimating that at least 806 children were negatively affected by the Act in its first year, aggregating the number of children who had left school with those who chose to remain in school without their religious identities.¹⁸ The report also collects testimonies from individuals, including children affected by the law and those who defended them in their disciplinary hearings. The children report, in their own words, the intense shame and isolation they felt upon being commanded to remove headscarves, and also the negative impacts that these

¹⁴ See *Aktas* against France (petition no. 43563/08), *Bayrak* against France (no. 14308/08), *Gamaleddyn* against France (no. 18527/08), *Ghazal* against France (no. 29134/08), *J. Singh* against France (no. 25463/08) and *R. Singh* against France (no. 27561/08). The European Court of Human Rights declared all of these cases inadmissible. See European Court of Human Rights, Press Release, The Court Gives Several Decisions on Conspicuous Religious Symbols, July 17, 2009, available at [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2801594-3071237#{"itemid":\["003-2801594-3071237"\]}](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2801594-3071237#{).

¹⁵ See France's Fifth Periodic Report ¶¶ 412-15.

¹⁶ Hansdeep Singh & Ilana Ofgang, *Global Sikh Civil & Human Rights Report 2010: The State of the Global Sikh Nation* 55 (Jan. 2011), <http://www.unitedsikhs.org/globalconference/resources/GlobalSikhCivil&HumanRightsReport2010.pdf>.

¹⁷ Interview by Ranjit Singh of former French students (Oct. 1, 2013 - Dec. 15, 2013) (transcript on file with ICAAD, and available upon request).

¹⁸ See March 15 Freedom Committee, *The Headscarf Ban in French Schools: Truth Unveiled* 21 (2005).

interactions had on their relationships with their teachers and peers.¹⁹ Evidence is also mounting that many members of the public do not understand the full scope of the Act, and some have interpreted it to permit (indeed, to require) employment discrimination against observant Muslim women and girls.²⁰ France's focus on the decline of religious dress in schools fails to account for these harms, which are real and growing.

There is also evidence that the Act has failed to achieve its goal of easing social tensions, which are on the rise. In 2012, Muslims in France experienced a 28 percent increase in instances of assault, harassment, and vandalism versus the same time period in 2011.²¹ The number of physical and verbal attacks against Jews increased by 82 percent, resulting in a substantial number leaving the country.²² Indeed, all evidence indicates that the Act has only exacerbated religious fragmentation: religious minorities have either withdrawn from mainstream schooling, or are pursuing education under duress; meanwhile, the Act sends a clear message that minority children are not truly a part of French society. After all, the government itself has taken the position that students who wear "ostentatious" religious symbols are engaged in activity that "is tantamount to excessive religious proselytizing."²³ In other words, the Act signals that religious minorities are not merely different, but dangerous, because their beliefs threaten the cherished French value of secularism.

Of course, not all of the increased tension is attributable to the Act. France, like the rest of Europe, has faced an economic downturn, which has contributed to xenophobia and resentment against immigrants and minorities. The rise of the far-right *Front National* party, which adopts an openly anti-Islamic platform, has also coincided with an uptick in nationalistic, exclusionary rhetoric.²⁴ And France has also enacted additional policies in the spirit of the Act. For example,

¹⁹ See, e.g., *id.* at 52 ("I cried for ten minutes before doing [removing my headscarf], but as I knew the importance of studying, I had no choice but to obey the principal's order."), 58 ("I could not stand being isolated and treated like a plague victim in quarantine at school."), 61 ("I have the feeling that I am not accepted as I am, since to be accepted I must remove something, which is part of me."), 64 ("The fact of being out school reduces my freedom and I feel excluded from teenagers of my age. I cannot laugh with them, I am always alone, it hurts me so much."), 67 ("We were placed in the part of the administration so as not to be seen by the pupils, we were like in cage."), 71 ("Some teachers wrote a letter against us in which they said that we were animals and extremists, that we were making propaganda and that we promoted inequality between men and women."), 78 ("We were excluded from school but also from the debate. We never saw a veiled girl talking on TV. When they announced my exclusion, I felt angry. They presented us as criminals while we were the victims."), 81 ("I have spent nights of anguish, having nightmares.").

²⁰ See Amnesty International, *Choice & Prejudice—A Summary 5* (2012) (citing example of a woman who was denied a job to "respect the principle of neutrality"); Beckett Fund for Religious Liberty, *Universal Periodic Review France* 3 n.7 (Feb. 8, 2008), http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/BFRL_FRA_UPR_S2_2008_BecketFundforReligiousLiberty_uprsubmission.pdf (explaining that "misinformation" about the scope of the Act has "lead to many episodes of headscarved Muslim women being denied service in shops or being insulted in public.").

²¹ See U.S. Department of State, *International Religious Freedom Report for 2012: France* 10 (2012), available at <http://www.state.gov/documents/organization/208526.pdf>.

²² See Palash Gosh, *Aliyah: French Jews Fleeing to Israel to Escape Rising Anti-Semitism, Muslim Extremism, and Economic Crisis*, *International Business Times* (Nov. 26, 2013), <http://www.ibtimes.com/aliyah-french-jews-fleeing-israel-escape-rising-anti-semitism-muslim-extremism-economic-crisis>.

²³ See National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1, U.N. Doc. No. A/HRC/WG.6/2/FRA/1, at ¶ 25 (May 2, 2008).

²⁴ For example, the leader of the National Front, Marine Le Pen, who obtained 17% of the vote in a presidential election, has called for a complete ban of Islamic veils and Jewish *kippahs* in public. See Jewish Telegraph Agency, *France's Marine Le Pen Calls for Public ban on Muslim Headscarf, Jewish Kippa*, *Ha'aretz* (Sept. 21, 2012),

in 2010, France banned the wearing of full veils in public—a measure that sparked rioting.²⁵ France also does not permit religious headcoverings in certain photo IDs, including passports and drivers licenses.²⁶ In 2013, a French court held that a private daycare facility was permitted to fire an employee who refused to remove her headscarf at work.²⁷ And recently, French officials have suggested a desire to expand the headscarf ban to universities, child care facilities, and businesses involved in public service.²⁸ While these measures are separate from the Act, they stem from the same aggressive view of secularism that France uses to justify that law. France has decided that by doing nothing more than manifesting their religion, members of religious minorities threaten public order. It is unsurprising that this view has had deleterious consequences for pluralism in France.

IV. The Act, as Enforced and Interpreted by French Courts, Violates Article 18 of the ICCPR

In addition to the practical concerns highlighted in the previous Part, the Act should be repealed because it violates Article 18 of the ICCPR. Article 18, paragraph 3, provides: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” By regulating students’ dress, the Act plainly abridges their right to manifest their religion or beliefs, and thus implicates this provision. The Act can therefore only comply with Article 18 if that limitation is “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

This Committee has already determined that in the ordinary case, the Act cannot carry that burden. In the case of *Bikramjit Singh v. France*,²⁹ a Sikh student, Bikramjit Singh, was expelled from his lycée because he wished to wear a *keski*, which is a small form of the Sikh turban. Singh brought a claim challenging his expulsion as a violation of, inter alia, Article 18 of the ICCPR. He explained, without contradiction, that “[t]he wearing of the turban is a categorical, explicit and mandatory religious precept in Sikhism,” and “an essential component of the Sikh identity.”³⁰ In Singh’s case, he was first barred from the classroom, then permitted to continue his studies but segregated away from his teachers and the other students in the school canteen.³¹ The matter was referred to a school disciplinary board, which recommended Singh’s immediate expulsion from school; the cited reason was: “Breach of Act No. 2004-228 of 15 March 2004, insofar as, after the dialogue phase, the pupil refused to remove the head covering which

<http://www.haaretz.com/news/world/france-s-marine-le-pen-calls-for-public-ban-on-muslim-headscarf-jewish-kippa-1.466147>.

²⁵ The translated name of the statute is Law 2010-1192 of Oct. 11, 2010 prohibiting the wearing of clothing covering one’s face in public spaces. See Angeliqe Chrisafis, *Paris Riots Sparked by Police Identity Check on Veiled Muslim Woman*, *The Guardian* (July 21, 2013), <http://www.theguardian.com/world/2013/jul/21/paris-riots-police-identity-check-muslim>. France defends this law in paragraphs 418-33 of its Report.

²⁶ This law has likewise been challenged, and those challenges have succeeded before this Committee. See *Shingara Mann Singh v. France*, Communication No. 1928/2010, CCPR/C/108/D/1928/2010 (Sept. 26, 2013); *Ranjit Singh v. France*, Communication No. 1876/2000, CCPR/C/102/D/1876/2009 (Sept. 27, 2011).

²⁷ See Editorial, *French Secularism on Trial*, *N.Y. Times* (Dec. 2, 2013).

²⁸ *Id.*

²⁹ Communication No. 1852/2008, CCPR/C/106/D/1852/2008 (Feb. 4, 2013).

³⁰ *Id.* ¶ 2.3.

³¹ *Id.* ¶ 2.5.

completely covered his hair, thereby manifesting his religious affiliation in a conspicuous manner.”³² Singh sought redress in the French courts, which was denied. He was thus expelled, and had to complete his education in a correspondence course—which he found difficult, and in fact he had to repeat his final year in a Catholic school.³³ Singh argued that his expulsion violated Article 18, and that France had no legitimate countervailing justification for expelling him.

France responded that the Act sought to end “tensions and incidents sparked by the wearing of religious symbols in public primary and secondary schools and to safeguard the neutrality of public education, in the interest of pluralism and freedom of others.”³⁴ The government noted that the scope of the Act is limited to children in public schools, while they are on the school premises, and that it does not ban religious belief, but instead only the conspicuous manifestation of religious affiliation.³⁵

The government placed a heavy emphasis on the fact that the Act does not, by its terms, single out any religion for mistreatment.³⁶ Instead, the government argued that “[t]he ban on the author wearing the Sikh mini-turban was intended, in pursuit of the constitutional principle of secularism, as a means of preserving respect for neutrality in public education,” and that “[i]f the [student] did not identify with French secularism, he was free to pursue his education” outside of the public schools.³⁷ In fact, it argued that “[i]t would run counter to the equality of all before the law and therefore be discriminatory to treat children belonging to the Sikh religion differently” by allowing them to wear a turban to school.³⁸ The government thus argued that the Act was both designed to pursue a legitimate aim (secularism), and that the hardship it imposed was proportionate to that aim.

The Committee rejected these arguments. It recognized the importance of the principle of secularism, and noted that there had been incidents where the wearing of religious attire had resulted in some conflict.³⁹ However, the Committee determined that France had “not furnished compelling evidence that, by wearing his *keski*, the [student] would have posed a threat to the rights and freedoms of other pupils or to order at the school.”⁴⁰ The Committee further concluded that “the penalty of the pupil’s permanent expulsion from the public school was disproportionate and led to serious effects on the education to which the [student], like any person of his age, was entitled”⁴¹. “Moreover, the State party imposed this harmful sanction on the [student], not because his personal conduct created any concrete risk, but solely because of his inclusion in a broad category of persons defined by their religious conduct.”⁴² The Committee thus condemned the enforcement of the Act as interpreted by French courts as incompatible with freedom of

³² *Id.* ¶ 2.6.

³³ *Id.* ¶¶ 2.9, 6.8.

³⁴ *Id.* ¶ 5.2.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* ¶ 5.8.

³⁸ *Id.*

³⁹ *Id.* ¶ 8.6.

⁴⁰ *Id.* ¶ 8.7.

⁴¹ *Id.*

⁴² *Id.*

religion, guaranteed under article 18 of the Covenant. The Committee determined that France was “under an obligation to provide the [student] with an effective remedy, including appropriate compensation,” and “to prevent similar violations in the future.”⁴³

The Committee’s decision is unambiguously correct, and it applies generally to the expulsion of students under the Act—not only to the case of Bikramjit Singh. This is because in enforcing the Act, France has transformed the pluralistic ideal of secularism into a demand that minority students shed their religious identities. In Singh’s case, for example, France did not dispute that the wearing of the turban is an essential element of Sikh identity—*i.e.*, for adherent Sikhs, it is not a matter of choice.⁴⁴ Nevertheless, France saw nothing wrong with prohibiting Singh from wearing his turban in public schools. The Act is therefore substantially identical to a law flatly prohibiting Sikh boys to attend public schools—a measure that would undoubtedly violate international non-discrimination norms.

France has attempted to distinguish the Act from a hypothetical law barring minorities from schools in two ways. First, it has argued that the Act does not single out any particular religion. But that is manifestly irrelevant. As the history of the Act and its implementation illustrate, the Act overwhelmingly impacts Muslim girls, Sikh boys, and Jewish boys. These religious minorities bear the brunt of the stigma and burden associated with the Act. By contrast, the Catholic majority of France does not have any religious directive to wear particular clothes. Moreover, the history of the Act reveals that this disproportionate impact is not an accident: the Act was deliberately passed in response to perceived concerns associated with Muslim headscarves. Thus, the fact that the Act is nominally neutral is irrelevant.

Second, France argues that the Act contains numerous mechanisms to soften the discriminatory blow. But none of these measures actually addresses the problems with the Act—indeed, some of these measures will likely heighten the Act’s discriminatory effect. For example, France argues that students may observe their religion outside of school. But that is not how religious practice works. Religious belief is a fundamental pillar of adherents’ identity; they cannot suspend it at will. Moreover, the negative signal associated with the Act, *i.e.*, that diverse religious identities threaten French public order, encourages discrimination and ill-will toward children who do practice their religions outside of school.

France’s argument that the Act requires dialogue likewise fails, because the dialogue only proceeds in one direction. Indeed, the French Education Minister himself “stressed that there is no room for negotiations.”⁴⁵ Instead, the purpose of the dialogue is for the school to convey the consequences of failure to conform to the Act, and to attempt to convince the student to comply with the Act notwithstanding the student’s religious beliefs. This account was confirmed by a mediator who testified that the “only purpose” of the dialogue was to convince the children “to take off their headgear. And everything was done to reach that goal: intimidation, discrediting, teasing of their dress, negative judgment of their religion and sometimes humiliation.”⁴⁶ This

⁴³ *Id.* ¶ 8.10.

⁴⁴ *See id.* ¶¶ 8.3 (“The fact that the Sikh religion requires its male members to wear a turban in public is not contested.”); 8.7 (“In the present case the Committee notes the author’s statement, not challenged by the State party, that for Sikh males, wearing a *keski* or turban is not simply a religious symbol, but an essential component of their identity and a mandatory religious precept.”).

⁴⁵ *French Scarf Ban Comes Into Force*, BBC News (Sept. 2, 2004), <http://news.bbc.co.uk/2/hi/3619988.stm>.

⁴⁶ *See* March 15 Freedom Committee, *The Headscarf Ban in French Schools: Truth Unveiled* 42 (2005).

alarming interaction itself borders on proselytizing: school administrators, in the name of secularism, are asked to attempt to convince religious students to engage in a course of conduct that the students believe is prohibited by their religion. But even putting that aside, a dialogue that cannot result in meaningful compromise in favor of the student is no dialogue, and does nothing to stem the discriminatory impact of the Act.

France's argument that children are free to pursue private school or correspondence courses also misses the mark. This segregation reinforces the message that minority students are inferior or dangerous. And, as Bikramjit Singh's case illustrates, the contemplated alternatives pose additional challenges that may result in academic failure or difficulty.

These points are especially sharp because France has never been able to present any evidence that the Act actually achieves its goal of facilitating a more unified, pluralistic society.

The issue did not present itself in Singh's case, but France has offered an alternate justification for the Act in cases involving Muslim girls, *i.e.*, that the Act protects these girls from religious coercion. Protecting girls from threats, violence, and undue influence is certainly a laudable objective. But the Act does no such thing, and France has never been able to explain otherwise. Specifically, France has not been able to explain how expelling the girls from school will either prevent or remedy family pressure to wear a headscarf. Moreover, the issue of coercion can be addressed independently, without burdening the religious freedom of girls who voluntarily wear a headscarf, or other religious minorities for whom this concern does not apply. For example, France's more recent law banning the wearing of full veils includes a separate article that makes it unlawful to any person to force another person to wear a veil.⁴⁷ But the Act—like the ban on veils—does not actually target coercion; instead, it punishes individuals by stripping them of their identity.

Notwithstanding the Committee's decision, the French courts and the European Court of Human Rights, applying the Convention for the Protection of Human Rights and Fundamental Freedoms, have concluded that France's policy is legitimate.⁴⁸ ICAAD submits that these decisions have been unduly deferential to France's articulation of its interests. The European Court has applied the "margin of appreciation" doctrine to justify deferring to France's vision of secularism. Without delving too deeply into that doctrine—which has been roundly criticized by scholars and even judges on the European Court itself⁴⁹—it should suffice to say that the doctrine cannot constitute *carte blanche* for the French government to elevate its aggressive vision of secularism above the obligations it assumed when it ratified the ICCPR. When, as before this Committee, France was called to present actual evidence that the Act serves a beneficial purpose, and that the harm it visits upon students was not disproportionate to those purposes, it simply could not do so. That failure is decisive.

In sum, this Committee correctly recognized that the justifications for the Act do not support the harm it inflicts upon minority children. Enforcement of the Act thus violates Article 18, paragraph 3 of the ICCPR.

⁴⁷ See Law 2010-1192 of Oct. 11, 2010, art. 4.

⁴⁸ See note 14, *supra*.

⁴⁹ See, e.g., *Z. vs Finland*, 25 February 1997, Application No. 22009/93 (Feb. 25, 1997) (De Meyer, J., dissenting) ("I believe that it is high time for the Court to banish that concept [of margin of appreciation] from its reasoning. It has already delayed too long in abandoning this hackneyed phrase and recanting the relativism it implies.").

V. Conclusion

The Act, and the policies modeled after it, constitute an affront to religious freedom and minority rights, and only serve to undermine the goals of pluralism and democracy that they seek to uphold. They should be repealed, or at least substantially narrowed to focus on the legitimate state interest of preventing coercion, without unduly compromising the religious freedom of other minority children.

Recommended questions and recommendations for France are appended to this Report.

Appendix A: Recommended Questions the Committee Should Ask France

- In light of the decisions rendered by the HRC finding France in violation of Article 18 of the ICCPR, what steps is France taking to amend its legislation and policies to conform with the HRC ruling?
- If France is unwilling to take substantive steps to remedy violations under Article 18, why shouldn't the Special Rapporteur on Follow-up to Views commence a state specific investigation of violations that have occurred over the past decade as well as for continuing violations?
- HRC General Comment 31 explains that States Parties must "take the necessary steps to give effect to the Covenant rights in the domestic order," including making "such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant." In the event of a conflict between the Covenant and domestic law, domestic law must give way. The Comment further explains that "[c]essation of an ongoing violation is an essential element of the right to an effective remedy," and that a failure to investigate violations and provide a remedy may "in and of itself give rise to a separate breach of the Covenant." The Covenant also recognizes the "specific vulnerability" of children. If France is not willing to repeal Law No. 2004-22 of Mar. 15, 2004, or take other corrective action to provide a remedy for the affected students, why wouldn't this give rise to an additional breach of the covenant?
- Why shouldn't France's reservation to Article 27 of the ICCPR not be "severed" as being incompatible with the object and purpose of the treaty?

Appendix B: Recommendations to France

The French government should:

- **Repeal Law No. 2004-22 of Mar. 15, 2004.** Manifestation of one's religious identity and secular values are not mutually exclusive. By pitting these two values against each other, Law No. 2004-22 does not lead to further tolerance between communities nor does it foster appreciation for secular values. Since the lynchpin of secularism is neutrality it is undermined by laws that disproportionately impact minority communities.
- **Withdraw its Reservations to Article 27 of the ICCPR.** For France to outright state that a provision of the ICCPR is not applicable, and thereby, ignoring the rights of minorities (including religious minorities), in effect, works against the object and purpose of the ICCPR. This Committee as well as individual members of the Committee have expressed that France's reservation is unacceptable (Concluding Comments on France, UN Doc. CCPR/C/79/Add.80 (1997); T.K. v. France communication no. 220/1987 and H.K. v. France communication no. 222/1987 Individual opinion of Rosalyn Higgins).
- **Set up an Independent Commission to Monitor the Impact the Law has had on Muslim, Sikh, and Jewish Children.** Disaggregating data based on racial, ethnic, and religious grounds is crucial to identifying problems, and thereby, providing meaningful solutions. Robust analysis of data on minorities will allow France to tailor its laws, policies, and programs to empower its citizens rather than have the effect of discriminating against them. This will in turn foster voluntary integration into society and produce a stronger sense of national identity. The key to a pluralistic society is to recognize that a one size fits all approach stands in stark contrast to valuing diversity.