

S.A.S.

Applicant

- v -

France

Respondent Government

THIRD PARTY INTERVENTION SUBMISSIONS BY ARTICLE 19

Introduction

1. This third-party intervention is submitted on behalf of ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation that works around the world to protect and promote the right to freedom of expression and the right to freedom of information. It takes its name from Article 19 of the Universal Declaration on Human Rights. ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends and develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally.
2. ARTICLE 19 welcomes the opportunity to intervene as a third party in this case, by the leave of the Deputy Registrar of the Grand Chamber that was granted on 13 June 2013 pursuant to Rule 44 (3) of the Rules of Court (Ref no: CEDH-LF14.8bP3, TPA/YW/afy).
3. In ARTICLE 19's view, the core issue raised by the present case is the compatibility of any criminal ban on concealing one's face in public with the right to freedom of expression under Article 10 of the Convention, the right to freedom of thought, conscience and religion under Article 9 of the Convention, as well as the prohibition of discrimination under Article 14 of the Convention.
4. ARTICLE 19 believes that this case presents the Court with an important opportunity to clearly set forth the appropriate scope of laws restricting religious attire on the basis of national security, public order, women's rights and gender equality, and national values such as secularism. In these submissions, ARTICLE 19 addresses relevant international standards and comparative law material and national trends on striking the balance between these competing rights and interests.

Full-face coverings and international human rights law

Religious dress and symbols as an expressive act and as a manifestation of religious belief:

5. The right to freedom of expression protects religious and cultural expression, and has been widely recognised by international and regional human rights bodies as encompassing the choice of one's clothing or the wearing of religious symbols.¹ Moreover, this right protects the expression of information or ideas that are unpopular or even offensive, thus religious dress cannot be circumscribed merely because a majority of people dislike it or support circumscription. At the same time, the wearing of religious dress or symbols is recognised as a manifestation of religious belief,² and as a consequence is additionally protected by the right to freedom of religion or belief.³ The Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, has stated

that “[t]he possibility to wear religious symbols in the public sphere, including in the school context, thus appears to be a natural result of the freedom to manifest one’s religion or belief.”⁴

6. What is more, States are under an obligation to “promote” as well as “protect” the right to freedom of religion or belief. Significantly, the UN Human Rights Council, in Resolution 16/18 of March 2011, called upon States by consensus to “foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society.”
7. Any restriction on the wearing of religious dress or symbols therefore infringes on both individuals’ rights to freedom of expression and the freedom of religion or belief. The UN Special Rapporteur on Freedom of Religion or Belief has made clear that preventing individuals from identifying themselves through the display of religious symbols restricts the positive exercise of their freedom of religion or belief.⁵ The Human Rights Committee (HR Committee) has further indicated that rules on clothing potentially violate a range human rights guarantees, including the right to freedom of expression.⁶

[R]egulations [on clothing to be worn by women in public] may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.

8. In *Hudoyberganova v. Uzbekistan*, the HR Committee stated that “the freedom to manifest one’s religion encompasses the right to wear clothes or attire in public which is in conformity with the individual’s faith or religion”, and that “to prevent a person from wearing religious clothing in public or private may constitute a violation of Article 18, paragraph 2, which prohibits any coercion that would impair the individual’s freedom to have or adopt a religion.”⁷

Limiting the rights to freedom of expression and freedom of religion or belief

9. The rights to freedom of expression and freedom of religion and belief are not absolute, and international standards require that any limitation on the right to freedom of expression and the right to freedom of religion or belief must be: (i) provided for (or “prescribed”) by law;⁸ (ii) be based on a specific legitimate aim (which differ in relation to the respective rights); and (iii), be necessary and proportionate to that aim.
10. The legitimate aims specified under international human rights law allow States to prohibit religious dress or symbols in order to accommodate competing human rights and public interests. To this end, the UN Special Rapporteur on freedom of religion or belief has recognised the complexity of human rights and public interest arguments that may be advanced in favour and against the wearing of religious symbols:

Freedom of religion or belief may be invoked both in terms of the positive freedom of persons who wish to wear or display a religious symbol and in terms of the negative freedom of persons who do not want to be confronted with or coerced into it. Another competing human right may be the equal right of men and women to the enjoyment of all civil and political rights, as well as the principle of the right to be protected from discrimination of any kind, including on the basis of race, colour sex, religion, political or other opinion, national or social origin, property, birth or other status. The right of everyone to education may be invoked by pupils who have been expelled for wearing religious

symbols in accordance with their religion or belief. Furthermore, the rights of parents or legal guardians to organize life within the family in accordance with their religion or belief and bearing in mind the moral education which they believe should inform the child's upbringing (see article 5(1) of the Declaration).⁹

11. In respect of the rights to freedom of religion or belief and freedom of expression, the legitimate aims for restricting either right are exhaustive under both Article 18(3) and Article 19(3) of the ICCPR. Under the latter, expression may be limited for the respect of the rights or reputations of others and for the protection of "national security or of public order (ordre public), or of public health or morals". Article 18(3) of the ICCPR, on the other hand, is narrower, omitting national security and the reputations of others. Thus, where an act is simultaneously an expression of information or ideas and a manifestation of religion or belief, only the legitimate aims common to Article 18(3) and Article 19(3) of the ICCPR may be relied upon to restrict that right.¹⁰
12. In addition, international standards are clear that any restriction on the right to freedom of expression or freedom of religion or belief must be necessary and proportionate.¹¹ The HR Committee have specified that "restrictive measures ... must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve their protective function ... it must demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."¹² Restrictions on religious dress cannot therefore be justified on the basis of speculation or assumption regarding the causal connection between the restriction and the public interest served, but must face a robust analysis under Article 18(3) and Article 19(3) of the ICCPR.
13. The UN Special Rapporteur on freedom of religion or belief established in her 2006 report an authoritative set of guidelines for considering the necessity and proportionality of restrictions on wearing religious dress or symbols. The Special Rapporteur advances "aggravating indicators" showing State action typically incompatible with international human rights law and "neutral indicators" showing that international standards are not contravened:

Aggravating indicators:

- The limitation amounts to the nullification of the individual's freedom to manifest his or her religion or belief;
- The restriction is intended to or leads to either overt discrimination or camouflaged differentiation depending on the religion or belief involved;
- Limitations on the freedom to manifest a religion or belief for the purpose of protecting morals are based on principles deriving exclusively from a single tradition;
- Exceptions to the prohibition of wearing religious symbols are, either expressly or tacitly, tailored to the predominant or incumbent religion or belief;
- In practice, State agencies apply an imposed restriction in a discriminatory manner or with a discriminatory purpose, e.g. by arbitrarily targeting certain communities, such as women;
- No due account is taken of specific features of religions or beliefs, e.g. a religion which prescribes wearing religious dress seems to be more deeply affected by a wholesale ban than a different religion or belief which places no particular emphasis on this issue;
- Use of coercive methods and sanctions applied to individuals who do not wish to wear a religious dress or a specific symbol seen as sanctioned by religion. This would include legal provisions or State policies allowing individuals, including parents, to use undue pressure, threats or violence to abide by such rules;

Neutral indicators:

- The language of the restriction or prohibition clause is worded in a neutral and all-embracing way;
- The application of the ban does not reveal inconsistencies or biases vis-à-vis certain religious or other minorities or vulnerable groups;
- As photographs on ID cards require by definition that the wearer might properly be identified, proportionate restrictions on permitted headgear for ID photographs appear to be legitimate, if reasonable accommodation of the individuals religious manifestation are foreseen by the State;
- The interference is crucial to protect the rights of women, religious minorities or vulnerable groups;
- Accommodating different situations according to the perceived vulnerability of the persons involved might in certain situations also be considered legitimate, e.g. in order to protect underage schoolchildren and the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.¹³

14. The Special Rapporteur goes on to recommend that the following questions be answered by the administration or judiciary when assessing the commensurability of restrictions on the wearing of religious symbols:

- Was the interference, which must be cable of protecting the legitimate interest that has been 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 interest?
- Would the chosen measure be likely to promote religious intolerance?
- Does the outcome of the measure avoid stigmatizing any particular religious community?¹⁴

15. The current mandate on freedom of religion or belief reiterated these principles in 2010.¹⁵ Extending this debate to the necessity and proportionality of restrictions on religious dress or symbols, including the full-face veil, in the educational context, Bielefeldt added a number of considerations. While noting the controversy in this area,¹⁶ he says there are “good reasons to start with a general presumption of the students’ right to wear religious symbols in the school” including head coverings, although he does not specify full-face veils.¹⁷ The criteria for possible limitations on the right to manifest one’s religion or belief must, he says, be applied with “diligence, precision and precaution”, with a “case-by-case” analysis of the “dynamics of majority and minority religious groupings in society at large and within particular contexts”. Considerations against the wearing of religious symbols in school include “to protect minority students from pressure exercised by schoolmates or their community”, or to mitigate against teachers who may have an “undue impact” on students, depending on the general behaviour of the teacher, the age of students and other factors. There is a particular need, he says, to distinguish teachers by their role and status from students when it comes to restrictions on dress.

16. A number of international treaty bodies have adopted views and made observations that support arguments that even targeted bans on religious dress or symbols in educational settings may be considered unnecessary and disproportionate.

17. In two complaints regarding restrictions on religious dress and symbols, the HR Committee have found violations of the right to freedom of religion or belief under Article 18 (2) of the ICCPR without assessing necessity or proportionality. In *Hudoyberganova v. Uzbekistan*, the HR Committee found that the expulsion of the author from a public educational institution for wearing a headscarf violated Article 18(2) of the ICCPR because Uzbekistan failed to provide any relevant justification for the restriction under Article 18(3) of the ICCPR.¹⁸ Conversely, in *Bhinder v. Canada*, the Human Rights Committee held that the requirement for Sikhs to wear safety headgear

during work was justified under Article 18(3) of the ICCPR, but without further specifying which of the grounds for limitation was most pertinent.¹⁹

18. The HR Committee addressed the question of necessity in *Singh v. France*, finding a violation of Article 18(2) of the ICCPR because the respondent State had failed to provide adequate reasoning for why restrictions on head coverings in identity document photographs were necessary to protect public order, as the complainants face was still visible.²⁰ In assessing proportionality, the HR Committee also considered that coercion to remove religious dress in identity documents is not a singular infringement, but one that is repeated each time the identity document has to be produced.
19. In its concluding observations on the second periodic report of France, the Committee on the Rights of the Child, raising concerns at an alleged rise in discrimination, including based on religion, observed that legislation (Law No. 2004-228 of 15 March 2004) banning “signs or dress through which pupils ostensibly indicate which religion they profess in public, primary and secondary schools” may be “counterproductive by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results”.²¹ They recommended that France continue to closely monitor the situation of girls being expelled from school as a result of this legislation, and to consider alternative means, such as mediation, for ensuring the secular character of schools.²² The concluding observations on the third and fourth consolidated report of France welcomes that mediators have since been established in the national public education system, but endorsed the conclusions of the Committee on the Elimination of Discrimination Against Women that the ban should not lead to a denial of the right to education for any girl and their inclusion into all facets of the State party’s society,²³ as well as those adopted by the Human Rights Committee that respect for a public culture of *laïcité* (secularism) would not seem to require forbidding wearing such common religious symbols.²⁴
20. Similar conclusions have been reached by the Committee on the Rights of the Child regarding prohibitions on the *hijab* in educational settings in Tunisia,²⁵ and in Azerbaijan, where the Committee encouraged the State party to give “due consideration to context-adapted and flexible alternatives to its school uniform policy, which prohibits the wearing of headscarves.”²⁶
21. In addition, arguments are often advanced that the full-face veil, in particular the *burqa*, may have an adverse impact on women’s physical and mental health.²⁷ However, the evidence bases for these claims have been criticised for being anecdotal and limited to specific contexts, and do not necessarily support calls to ban the veil in all public contexts, particularly where worn voluntarily.²⁸

Prohibition on Discrimination

22. The prohibition on sex based discrimination under international human rights law²⁹ is often invoked in favour of prohibitions on the full-face veil, whereas at the same time, these prohibitions may in themselves lead to multiple and intersectional discrimination against Muslim women on the basis of their sex, religion, and often also because they constitute part of an ethnic or racial minority. This has been noted by the Special Rapporteur on freedom of religion or belief:

On the one hand, women belonging to communities that are discriminated against also often suffer from gender-based discrimination — for example, if a woman is discriminated against in the labour market because she has decided to wear a religious symbol. On the other hand, religious traditions or interpretations of religious doctrine sometimes appear to justify, or even call for, discrimination against women ... Women’s rights, and in particular the principle of equality between men and

women and the individual's freedom to wear or not wear religious symbols, should be duly taken into account.³⁰

23. In this context it is important to distinguish situations where women are coerced or compelled to wear the full-face veil from those where it is an exercise of choice, and therefore a manifestation of religious belief and an exercise of the right to freedom of expression. Coercion in respect of religious belief, practice or manifestation is prohibited by Article 18 of the ICCPR and cannot be imposed for discriminatory purposes or applied in a discriminatory manner.³¹ Indeed, States are under an obligation to modify or eliminate discriminatory practices against women, including those justified by traditional, cultural or religious values.³²
24. In assessing the necessity of prohibitions on the veil to combat discrimination on the grounds of sex, it is important to consider that such measures may be counterproductive. They may lead to confinement of women in the home, exclusion and marginalisation of women from public life, and legitimise discrimination, physical violence and verbal attacks against Muslim women.³³
25. As the EU guidelines on the promotion and protection of freedom of religion or belief (the EU guidelines) state, “[v]iolations of freedom of religion or belief may exacerbate intolerance and often constitute early indicators of potential violence and conflicts.”³⁴ For these reasons, a number of international bodies have called upon States to promote religious tolerance through positive measures.³⁵ The Parliamentary Assembly of the Council of Europe has called upon the Committee of Ministers to not institute general bans on the full-face veil:³⁶

[C]all on member states not to establish a general ban of the full veiling or other religious or special clothing, but to protect women from all physical and psychological duress as well as their free choice to wear religious or special clothing and to ensure equal opportunities for Muslim women to participate in public life and pursue education and professional activities; legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen.

26. The International Mechanisms for Promoting Freedom of Expression, representing the UN, OSCE, the Organisation of American States and African Commission on Human and Peoples' Rights, stressed in a 2008 Joint Declaration “on defamation of religions, and anti-terrorism and anti-extremism legislation” that “the primary means to address underlying social problems of prejudice is through open dialogue that exposes the harm prejudice causes and that combats negative stereotypes.”³⁷ They further recommended that “[r]estrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” The UN Special Rapporteur on freedom of religion has further noted that the manner in which debates on prohibiting religious garments take place can also have an exclusionary effect and undermine interreligious dialogue.³⁸

National trends

27. A variety of national laws that restrict the wearing of religious clothing or symbols in the public sphere have been adopted or proposed in recent years. A number apply to restrict all full or partial face coverings, whereas others specifically target Islamic headscarves, although most are time or location specific.
28. However, against this trend a number of countries have resisted populist calls for prohibitions on the full-face veil, or reversed or substantially limited existing prohibitions on religious dress.

29. The Supreme Court of **Spain**, in February 2013, overturned a city authority ban in Catalonia that prohibited wearing face-coverings on the basis that it limits religious freedom and that the city authority lacked the authority to order such a prohibition.³⁹ A number of cities, including Barcelona, ban the veil in certain public places.
30. In **France**, in March 2013, the Court of Cassation held that a woman sacked from a privately run nursery for wearing an Islamic headscarf had been unlawfully dismissed.⁴⁰
31. In **Sweden**, in November 2010, the equality ombudsman ruled that a general prohibition to wear the *niqab* in schools was indirect discrimination on the grounds of ethnic origin or religion, as there was no objective justification in the circumstances and less intrusive measures could solve the pedagogical issue at stake.⁴¹ The Swedish National Board of Education has since ruled against a general ban on the *niqab* in schools, and has given specific guidance on the limited circumstances for restricting the garment.⁴²
32. In **Canada**, in December 2012, the Supreme Court issued a ruling limiting the circumstances under which women may be compelled to remove the *niqab* when testifying in court.⁴³ They held that directions to remove the veil should only be given if: (i) the infringement of the witness's sincerely held religious belief is necessary to prevent a serious risk to the accused's right to a fair trial, where reasonably available alternative measures will not prevent that risk;⁴⁴ and (ii) the salutary effects of requiring the witness to remove the *niqab*⁴⁵ outweigh the deleterious effects of doing so.⁴⁶ Notably, the Supreme Court stated that always requiring a woman to remove the *niqab* when testifying would be "extreme", "untenable", and at odds with the fundamental premise that rights should only be limited to the extent that they can be shown to be justified. The decision brings into question the existing prohibition on face coverings in citizenship oath ceremonies,⁴⁷ and the validity of prohibitions proposed in Quebec requiring people to show their faces when delivering and receiving government services.⁴⁸
33. The approach taken in the **United States** is worth noting. *Freeman v. Florida*⁴⁹ concerned a challenge to the requirement that the full face be visible in photographic identity cards, thus requiring women to remove the veil. In finding no violation of Freeman's rights, the 5th Circuit found she had failed to first demonstrate that being required to remove her veil in a photograph posed a "substantial burden" to a sincerely held religious belief.⁵⁰ Only once that burden is satisfied would it shift to the State to demonstrate the "heavy dual burden" that the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that interest.
34. In September 2012 lawmakers in **Switzerland** narrowly rejected a proposal to ban face-covering veils in public places by 93 votes to 87,⁵¹ with proponents of the ban claiming it was necessary for "public safety". While there has been popular support and agitation for bans on the full-face veil in **Denmark**,⁵² **Norway**,⁵³ and **the Netherlands**,⁵⁴ none have been instituted. While in the **United Kingdom** schools are permitted to set their own school uniforms,⁵⁵ prominent politicians have flatly rejected calls for broader restrictions on the veil as against national values of tolerance and mutual respect.⁵⁶
35. Despite the ban on full-face veils being found constitutional in **Belgium**, Ghent city council voted in May 2013 to lift a prohibition on civil servants wearing headscarves at public counters, following a petition signed by 10,000 people.⁵⁷
36. In **Turkey**, following a statement issued by the government in September 2010, almost all universities across the country began to permit the wearing of Islamic headscarves.⁵⁸ However, in

November 2012 the Constitutional Court overruled 2008 Constitutional amendments that eased restrictions on religious garments being worn in public.⁵⁹

37. At the same time, prohibitions on the veil have been upheld in a number of jurisdictions. The Supreme Court for the **Russian Federation** will in July 2013 consider a challenge to a regional law in Stavropol prohibiting the *hijab*, after the lower Stavropol Territorial Court rejected a challenge in March. Regional bans on religious dress have led many families to send their children to school in other parts of the country, and exacerbating religious tensions.⁶⁰
38. In **Belgium**, in December 2012, the Constitutional Court rejected a claim to annul Article 565 of the Criminal Code, which was amended in April 2011 to prohibit the wearing of full or partial facial coverings in public, with fines and imprisonment available as punishment. The applicant alleged a violation of her rights to freedom of religion, the right to freedom of expression, or the right to private life. While accepting the right to freedom of religion was engaged, the Court found the prohibition was necessary and proportionate to the aims of protecting public security, equality between men and women, and a “certain conception of ‘living together’ in society.”⁶¹
39. In **France**, 354 women were fined by the police for wearing the full-face veil within the first year of the garment being banned in all public places in April 2011.⁶² The full-face veil has been banned in schools since 2004. In addition, state employees in France are not permitted to wear prominent religious symbols in public schools or other government offices.
40. In **Australia**, New South Wales introduced on 23 December 2011 prohibitions on the wearing of face coverings while having their signatures officially witnessed.⁶³ Under the provisions, fines may be imposed against lawyers and judges who ignore the requirement.
41. In **Azerbaijan** the Law on Education, while prohibiting Islamic headscarves, is used to justify a de facto ban in schools.⁶⁴ Administrative laws penalising the wearing of Islamic headscarves were reportedly enforced for the first time in **Uzbekistan** in October 2011,⁶⁵ whereas in **Kazakhstan** a number of educational institutions have introduced restrictions.⁶⁶

Conclusion

42. ARTICLE 19 respectfully submits that international standards on the right to freedom of expression and the right to freedom of opinion and belief and the right to equal treatment and non-discrimination do not support general prohibitions on facial coverings. However, restrictions on facial coverings may be justified in certain narrowly defined circumstances where provided for (or prescribed) by law, and where they are necessary and proportionate to achieve one of the legitimate aims common to both Article 19 of the ICCPR and Article 18 of the ICCPR, and where they comply with the principle of equal treatment and non-discrimination.

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ARTICLE 19

¹ Human Rights Committee, General Comment No. 34, the right to freedom of opinion and expression, 21 July 2011, paras. 11 - 12

² Human Rights Committee, General Comment No. 22, the right to freedom of thought, conscience and religion (Article 18), 30 July 1993, para. 4.

³ Article 18 of the Universal Declaration of Human Rights, Article 18(1) of the International Covenant on Civil and Political Rights, Article 12(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 1(1) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and Article 9(1) European Convention on Human Rights.

⁴ A/HRC/16/53, 15 December 2010, at para. 43.

⁵ E/CN.4/2006/5, 9 January 2006.

⁶ Human Rights Committee, General Comment No 28, Equality of rights between men and women (Article 3). CCPR/C/21/Rev.1/Add.10, 29 March 2000, para 13.

⁷ *Hudoyberganova v. Uzbekistan*, Communication No. 931/2000, CCPR/C/82/D/931/2000, 18 January 2005.

⁸ To be provided for (or prescribed) by law, any restriction on religious attire must be formulated in sufficiently precise terminology to enable individuals to reasonably foresee the consequences of any given action and regulate their conduct accordingly. HR Committee, General Comment No. 34, *op. cit.* para. 25. See also: Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4, 1984, paras 15 - 18.

⁹ The Special Rapporteur goes on: "On the other hand, the State may try to invoke the 'denominational neutrality of the school system' and the desire to '[preserve] religious harmony of schools' (see the Swiss Federal Court in the Dahlab case)." Report of Asma Jahangir, Special Rapporteur on freedom of religion or belief, E/CN.4/2006/5 9 January 2006, para. 52.

¹⁰ Human Rights Committee, General Comment No. 22, *op. cit.*, at para. 8

¹¹ Human Rights Committee, General Comment No. 34, *op. cit.*, para 33; see also report of Asma Jahangir, Special Rapporteur on freedom of religion or belief, *op. cit.*, 9 January 2006, para. 53

¹² Human Rights Committee, General Comment No. 34, *op. cit.*, para 34 - 35; See also: Human Rights Committee, General Comment No. 22, *op. cit.*, para. 8.

¹³ According to the Special Rapporteur, schoolchildren are generally considered vulnerable in view of their age, immaturity and the compulsory nature of education. In addition, parental rights are also put forward as justification for limiting teachings" positive freedom to manifest their religion or belief. In all actions concerning children, the best interests of the child shall be the primary consideration. University students, however, have normally reached the age of majority and are generally considered to be less easily influenced than schoolchildren, and parent rights are no longer involved.

¹⁴ Report of Asma Jahangir, Special Rapporteur on freedom of religion or belief, *op. cit.*, 9 January 2006, para. 58.

¹⁵ Report of Heiner Bielefeldt, Special Rapporteur on Freedom of Religion or Belief, A/HRC/16/53, 15 December 2010, para. 46.

¹⁶ *Ibid.*, paras 41 – 43.

¹⁷ *Ibid.*, at para. 43.

¹⁸ *Hudoyberganova v. Uzbekistan*, *op. cit.* The HR Committee did qualify its finding, however, stating that "a State may be allowed to restrict forms of dress that directly interfere with effective pedagogy."

¹⁹ *Bhinder v. Canada*, Communication No. 208/1986, CCPR/C/37/D/208/1986, at para 6.2. Rather than specify "public health" or "public safety" under Article 18 (3) of the ICCPR, the respondent State referred to that subparagraph generically, and also invoked separately Article 7 (b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to ensure "safe and healthy working conditions", and claimed that Article 18 of the ICCPR should not interfere with the implementation of the ICESCR through uniformly applied safety requirements, see para. 4.2. In addition, the Committee did not find de facto discrimination against persons of the Sikh religion violating Article 26 of the ICCPR because the legislation was to be "regarded as reasonable and directed towards objective purposes that are compatible with the Covenant

²⁰ *Singh v. France*, Communication No. 1876/2000, CCPR/C/102/D/1876/2009, at para. 8.4.

²¹ Committee on the Rights of the Child, Concluding Observations: France, CRC/C/15/Add.240, 30 June 2004; para 25.

²² *Ibid.*, para. 26.

²³ Committee on the Elimination of Discrimination Against Women, CEDAW/C/FRA/CO/6, para. 20

²⁴ Human Rights Committee, CCPR/C/FRA/CO/4, para. 23

²⁵ Concluding observations of the Committee on the Rights of the Child, Tunisia, CRC/C/TUN/CO/3 (2010), 11 June 2010, para. 35 – 36.

²⁶ Concluding Observations of the Committee on the Rights of the Child, Azerbaijan, CRC/C/AZE/CO/3-4 (2012), 3 February 2012, para. 40.

²⁷ Physicians for Human Rights have noted that the garment may cause eye problems and poor vision, poor hearing, skin rash, headaches, increased cardiac problems and asthma, itching of the scalp, alopecia (hair loss), and depression. Physicians for Human Rights, *The Taliban's War on Women: A Health and Human Rights Crisis in Afghanistan* (Physicians for Human Rights, 1998).

²⁸ "The absence of evidence for banning burqas", Martin Robbins, *The Guardian*, 12 April 2011.

²⁹ See, in particular, Articles 2, 14 and 26 of the ICCPR and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

³⁰ Interim report of the Special Rapporteur on freedom of religion or belief, A/66/156, 18 July 2011, at 16 – 17.

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- ³¹ Human Rights Committee, General Comment No. 22, *op. cit.*, para. 8.
- ³² See, for example: CEDAW, article 5.
- ³³ Parliamentary Assembly of the Council of Europe, Resolution 1743 (2010), para 17.
- ³⁴ Council of the European Union, EU Guidelines on the promotion and protection of freedom of religion or belief, Foreign Affairs Council meeting, 24 June 2013, para. 1
- ³⁵ See also UN Human Rights Council Resolution 16/18, *ibid.*
- ³⁶ Parliamentary Assembly of the Council of Europe, Recommendation 1927 (2010) on Islam, Islamism and Islamophobia in Europe
- ³⁷ International Mechanisms for Promoting Freedom of Expression, Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, 9 December 2008.
- ³⁸ Interim report of the Special Rapporteur on freedom of religion or belief, *op. cit.*, 18 July 2011, para. 46.
- ³⁹ Tribunal Supremo, Sala de lo Contencioso-administrativo, Case number 4118/2011, 06 February 2013.
- ⁴⁰ Arrêt n° 536 du 19 mars 2013 (11-28.845) - Cour de cassation - Chambre sociale - ECLI:FR:CCASS:2013:S000536, Madame Fatima X, épouse Y et L'association Baby Loup.
- ⁴¹ Equality ombudsman case 2009/103, 30 November 2010.
- ⁴² "Swedish teachers given permission to ban niqabs in classrooms", National Secular Society, 13 January 2012.
- ⁴³ *R. v. N.S.*, 2012 SCC (Supreme Court of Canada) 72, 20 December 2012.
- ⁴⁴ I.e. due to the importance of seeing a witness's face for effective cross-examination and credibility assessment.
- ⁴⁵ E.g. the centrality of the witness's testimony to the case and the possibility of a wrongful conviction.
- ⁴⁶ E.g. what harm would compulsory removal of the veil do to the witness, what is the importance of the religious practice to the witness, the situation in the courtroom including who is present, and the broader societal harms of potentially discouraging niqab-wearing women from reporting offences and participating in the justice system.
- ⁴⁷ "Canada bans veils at citizenship oath ceremony", BBC News, 12 December 2011.
- ⁴⁸ The measure, known as "Bill 94", was tabled in March 2010. See: "Quebec will require bare face for service", CBC News, March 24 2010.
- ⁴⁹ *Freeman v. State of Florida*, 25 F. 3d, (5TH C.), 1060 – 1994.
- ⁵⁰ Described as a compulsion to engage in conduct that one's religion forbids, or which forbids one from engaging in conduct that one's religion requires.
- ⁵¹ "Switzerland Burqa Ban Rejected", Huffington Post, 28 September 2012.
- ⁵² In January 2010 the government stated that the full-face veil is out of sync with Danish values, but have not legislated against the garment. See: "Burqa and niqab have no place in Denmark, says PM", The Times of India, 21 January 2010.
- ⁵³ The Justice Committee of the Norwegian Parliament rejected in May 2010 the proposal of the Progress Party to prohibit the use of the Islamic full veil in public spaces. In August 2010 the Equality Tribunal issued a non-binding opinion that banning female police officers from wearing the *hijab* violates freedom of religion and antidiscrimination laws.
- ⁵⁴ A bill to prohibit the full-face veil was stalled in Parliament in mid-2012. The Council of State advised against the bill: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/06/advies-raad-van-state-wetsvoorstel-algemeen-verbod-op-gelaatsbedekkende-kleding.html>
- ⁵⁵ *R (Begum) v. Governors of Denbigh High School*, [2006] UK House of Lords 15, in which the House of Lords ruled that it did not violate a student's right to freedom of religion or belief or the right to education to refuse to accommodate her request to where a jilbab (a long coat-like garment).
- ⁵⁶ "Copying French ban on burqa would be un-British, says minister", Sunday 18 July 2010.
- ⁵⁷ "Belgian city scraps headscarf ban", National Security Society, 28 May 2013.
- ⁵⁸ "A quiet end to Turkey's college headscarf ban", BBC News, 31 December 2010.
- ⁵⁹ "Turkey: Constitutional Court Annuls 2008 Law That Had Lifted Ban on Wearing Headscarves at Universities", Library of Congress, 3 December 2012.
- ⁶⁰ "Local Russian Hijab Ban Puts Muslims in a Squeeze", New York Times, 18 March 2013.
- ⁶¹ Arrêt n° 145/2012, 6 December 2012
- ⁶² Law n° 2010-1192, 11th October 2010.
- ⁶³ "Australia Muslim Veil Law Requires Women to Remove Face-Covering Niqab in New South Wales", Huffington Post, 3 May 2012.
- ⁶⁴ "Kazakh University Students to Sue Over Hijab Ban", Radio Free Europe, 3 July 2013.
- ⁶⁵ "Woman in Uzbekistan convicted for wearing hijab", uznews.net, 09.02.12.
- ⁶⁶ "Kazakh University Students to Sue Over Hijab Ban", Radio Free Europe, 3 July 2013.