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**United Nations Human Rights Council
Universal Periodic Review: France**

**Submission of the International Center for Advocates Against Discrimination
(ICAAD)**

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The International Center for Advocates Against Discrimination (ICAAD) submits its analysis on Law No. 2004-22 of Mar. 15, 2004 (also known as the “French Headscarf Ban”) as a contribution to the Universal Periodic Review (UPR) of UNHRC member-state France.

(I) About International Center for Advocates Against Discrimination (ICAAD)

(1) ICAAD seeks to address a major gap in the law: the absence of a model that focuses on the prevention of violence against disfavored and minority groups. By combating both structural (institutionalized) discrimination and the State’s failure to protect vulnerable communities, ICAAD seeks to remove the key factors that contribute to discrimination and violence. ICAAD has identified three salient features of structural discrimination:

- **Social Exclusion:** Deeply embedded societal and cultural norms requiring similar behavior and expectations from all members of society, which results in the “othering” of specific individuals and communities who do not conform.
- **Formal equality/ equality per se:** The lack of recognition that general laws of neutral applicability may have a disparate impact on specific communities because people are not always similarly situated.
- **Denial or suppression of identity:** When the State views the identity of specific communities with suspicion or fear and uses majoritarian power or legal means to mandate conformity.

(II) Executive Summary/ General Statement on French Law No. 2004-22 of Mar. 15, 2004

(2) Law No. 2004-22 of Mar. 15, 2004, although couched in language that applies broadly to all religious denominations, has a disproportionate impact on minorities and has deleteriously affected members of the Muslim, Sikh, and Jewish communities. Children of these minority communities have been deterred from freely practicing their faith and have been forced to make the untenable choice between practicing their faith or obtaining a proper education.

(3) Cases filed at the UN Human Rights Committee, French Courts, and European Court of Human Rights (ECtHR) make it apparent that specific minority communities have been affected by Law No. 2004-22.¹ Thus, the danger of preserving Law No. 2004-22 is

¹ *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 cases listed have gone through the French domestic courts,

the continued marginalization of vulnerable communities and the further psychological and societal instability created within these communities because of a loss of religious identity.

(4) Any country seeking to restrict religious manifestation must show that the law is necessary to protect public safety, public order, health, or morals, or the fundamental rights and freedoms of others.² This international human rights principle intentionally sets a high bar for the State to meet, and additionally, the State must show that the law is legitimate, proportional, and non-discriminatory. During the 2008 UPR cycle, eight States specifically Recommended that France address issues of minority rights and religious freedoms, including the repeal of Law No. 2004-22.³

(5) When laws have a disparate or disproportionate impact on minority communities, although couched in language that is of general and neutral application, they cease to uphold principles of secularism, pluralism, and democracy because in practice these laws are discriminatory, even if the result is indirect.

(III) Minority Rights/ Religious Freedom: Law No. 2004-22 of Mar. 15, 2004

(6) **France's Response to Repealing Law No. 2004-22 in 2008 and Mid-Term Report:** France's response to States that Recommended the repeal⁴ of Law No. 2004-22 was noncommittal during the first UPR cycle and as of the mid-term review nothing has been done to address the concerns of other Member States and NGOs.

(7) **Constitutional Framework:** According to the 1958 Constitution, France is organized as an "indivisible, secular, democratic and social Republic."⁵ Moreover, Article 1 states that the nation shall protect, "the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."⁶ Even France's National Report in 2008 details how its institutional framework "protect[s] human rights within a pluralistic democracy . . ."⁷

(8) Yet, France enacted Law No. 2004-22 of Mar. 15, 2004,⁸ a law that contravenes its Constitutional ideals of pluralism and respecting all beliefs. Nevertheless, France's domestic courts and the European Court of Human Rights (ECtHR) have protected

appealed to the European Court of Human Rights, and some have been separately filed before the UN Human Rights Committee.

² International Covenant on Civil and Political Rights (ICCPR), UN Doc. A/6316 (1966), at Art. 18.

³ UNIVERSAL PERIODIC REVIEW (UPR), Database of UPR Recommendations: France (2008), http://www.upr-info.org/IMG/pdf/Recommendations_France_2008.pdf.

⁴ *Id.*

⁵ CONST. OF FRANCE, Art. 1.

⁶ *Id.*

⁷ National Report Submitted in Accordance with Paragraph 15(A) of the Annex to the Human Rights Council Resolution 5/1: France, Second Session, 5-16 May 2008, A/HRC/WG.6/2/ENG/1, at 2 (hereinafter "National Report").

⁸ "In public [primary and secondary schools], the wearing of symbols or clothing through which the pupils ostensibly manifest a religious appearance is prohibited." C. CIV. 2004-228.

France's right to impose a ban on religious manifestation in public schools based on the principal of *laïcité*⁹ and a heightened deference to the State (margin of appreciation doctrine¹⁰) respectively.

(9) *Laïcité*: In its 2008 National UPR Report, France discusses how *laïcité* “does not mean indifference or abstention, as freedom of conscience is recognized and must be ensured by the Republic.”¹¹ However, in its attempt to reaffirm separation of Church and State, France has inextricably enmeshed itself in regulating religious practice. Further in its Report, France discusses using dialogue and a pedagogical approach to inculcate secular values within its students, yet, such an approach has only yielded unequal treatment, pressure, exclusion, and proselytizing against minority students. The ECtHR case of Jasvir Singh and a Report looking at the psychological impact of Law No. 2004-22 on Sikh students in Bobigny, France, discussed below, elucidates this point further.

(10) **European Court of Human Rights (ECtHR) Admissibility Case**: In 2009, the ECtHR denied admissibility in the case of Jasvir Singh, a Sikh boy who challenged Law No. 2004-22.¹² In its opinion, the judges discuss the specific provision of the law with respect to the pedagogical approach a school must take when confronted with a student who manifests his/ her religious identity.

(11) Procedurally, once a child is found to have violated the school dress code, he/ she is told to attend a disciplinary proceeding. It is unclear if parents are part of this initial procedure, but the Court describes Singh's disciplinary procedure as “several meetings . . . held between the headmaster and petitioner.”¹³

The Court lays out the relevant parts of this section, which require:

- (1) that a dialogue is immediately held once a student violates the Ban; and
- (2) that “an effort is made to convince the student[] of the importance of respecting the principles of secularism,” and
- (3) that “respect of the law is not a renunciation of their conviction”; and
- (4) that the student and administrator must “reflect together on the future of the student to alert him or her as to the consequence of his or her attitude and to help him or her in constructing a personal plan.”¹⁴

(12) Ironically, after the dialogue, there is a warning given to administrators not to “take sides in the interpretation of religious practices or commandments” because the principle of secularism cannot accept such incursion.¹⁵

⁹ Came into existence in 1905 as a means to create strict separation between Church and State.

¹⁰ *Singh v. France*, Decision on Admissibility App. No. 25463/08 (Eur. Ct. H.R. June 30, 2009) (English translation).

¹¹ National Report, at 7.

¹² *Singh v. France*, App. No. 25463/08.

¹³ *Id.* at 2. There is no evidence or mention that Jasvir's parents were present for any of these meetings.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5.

(13) In summary, a state agent (school administrator) who maintains an extremely influential position of authority tells a young child: that their religiously mandated dress is incompatible with French law, that removal of their religious dress does not affect one's religious conviction, and that the individuals deviant behavior will result in expulsion from public school.

(14) It is difficult to fathom how such an approach does not violate traditionally protected boundaries that protect the rights of parents to inculcate cultural and religious values to their children; instead, the State has taken over this responsibility. France, by its very own legal provisions, has entangled itself in religious interpretation by trying to convince children that adherence to the law does not amount renunciation of their convictions. And finally, school administrators are placed in an enforcement role and often use pressure, exclusion, and proselytization, to convince the child to discard their identity (see example *infra*). These legislative provisions undermine the secular values the State was seeking to promote with Law No. 2004-22.

(15) It is important to note, though we do not find convincing the arguments for why the Muslim hijab violates the rights and freedoms of others, the French government has given absolutely no tangible reasons or empirical evidence that would justify the superseding of religious rights of Sikh and Jewish students who manifest their faith with turbans or kippahs, respectively.

(16) Rather, there is direct evidence of the harm that the law has caused minority students.¹⁶ In a survey conducted in 2010, 42 Sikh students in the Bobigny region of Paris gave direct testimony of their experiences with Law No. 2004-22.¹⁷ In this Report, over 50% of students who complied with the law (removal of their turban/ patkas), felt humiliated and singled out and over 33% of the students felt a complete loss of identity.¹⁸ Additionally, school administrators told a Sikh child that “he would get nowhere in life with his uncut hair.”¹⁹ The most revealing part of this study is that prior to 2004 law, “all 42 of the Sikh children were able to wear their turbans or patkas without incidence, whereas, after the passage of the law, 39 out of the 42 (over ninety percent) were forced to remove their article of faith (turban or patka) to receive an education.”²⁰

¹⁶ BECKETT FUND, *Universal Periodic Review France*, at fn. 4 (Feb. 8, 2008), http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/BFRL_FRA_UPR_S2_2008_BecketFundfor_ReligiousLiberty_uprsubmission.pdf (According to the U.S. Department of State's 2007 International Religious Freedom Report, approximately 168 Sikh boys were affected by the law.); ISLAMIC HUMAN RIGHTS COMMITTEE (IHRIC), *Universal Periodic Review France*, at 3 (Feb. 2008) (“numerous cases including that of the Levy sisters in 2003 in Paris, as well as the research of Gaspard and Khosrokhavar . . . indicate that the women affected have chosen the hijab freely and as an expression of their religious conviction”).

¹⁷ Hansdeep Singh and Ilana Ofgang, *Global Sikh Civil & Human Rights Report 2010: The State of the Global Sikh Nation*, at 55 (Jan. 2011), <http://www.unitedsikh.org/globalconference/resources/GlobalSikhCivil&HumanRightsReport2010.pdf>. It is important to keep in mind that there is a total population of ~ 5,000 Sikhs in France.

¹⁸ *Id.*

¹⁹ *Id.* Maintaining uncut hair is a fundamental tenet of the Sikh faith and its preservation is considered one of the five articles of faith (inextricably linked with the turban).

²⁰ *Id.*

(17) Treaty Bodies and International/ Regional Courts Applying International Law Principles: The UN Special Rapporteur recognized the disparate impact of Law No. 2004-22 on “certain religious minorities”²¹ and the law’s ability to provoke “religious intolerance” in other public spheres (e.g. universities and workplace).²² These assertions are supported by the CERD Committee’s expression of concern regarding the increase of xenophobic acts in France.²³ These comments contradict France’s assertions that the law has “not resulted in an increase in Islamophobia or stigmatization . . .”²⁴ Moreover, the Committees on the Rights of the Child and CEDAW have expressed concern for the ban on religious symbols in schools and its impact on the best interests of the child; in the context of their right to education. In its 2009 Report, the Committee on the Rights of the Child stated:

Committee endorses the concluding observations of CEDAW, 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 (CEDAW/C/FRA/CO/6, para. 20), as well as those adopted by the Human Rights Committee noting that respect for a public culture of *laïcité* would not seem to require forbidding wearing such common religious symbols (CCPR/C/FRA/CO/4, para. 23).²⁵

The concern here is over the further marginalization and exclusion of women from public schools, and by extension, society in general.

(18) Additionally, the Charter of Fundamental Rights of the European Union (“Charter”), which binds members of the European Union (EU), finds its principles embedded in the “international obligations common to the Member States.”²⁶ It is important to note that the Charter grants broad protections on religious freedom (consistent with international law), and unlike the ECtHR the European Court of Justice (ECJ), which would apply the Charter principles in a religious freedom case, is not bound to grant States the same margin of appreciation that has been adopted by the ECtHR. It is likely that any challenge to Law No. 2004-22 through the ECJ would find France in violation of the Charter.

(19) Finally, it is important to recognize the many intersecting international human rights norms that are at issue: religious freedom, eradication of racial discrimination, minority rights, women’s rights, children’s rights, parental rights, privacy, dignity, and the right to education. Neither France nor the ECtHR has engaged in a meaningful discussion on all these related rights, rather, the discussion only examines how manifesting one’s faith creates an environment of pressure, coercion, and undermining of secular ideals.

²¹ Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: France, Second Session, 5-16 May 2008, A/HRC/WG.6/2/FRA/2, at 8.

²² *Id.*

²³ *Id.* at 5.

²⁴ National Report, at 7.

²⁵ Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4, June 11, 2009.

²⁶ Charter of Fundamental Rights of the European Union, (2000/C 364/01), Preamble.

(IV) Recommendations

(20) The recommendations hereinafter recognize that the impetus for French laws that ban religious manifestation spawn from a desire to protect women, a fear of extremism, and a lack of societal integration by minority and immigrant communities.

- **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 the laws that disproportionately impact minority communities.

Women, especially young women, can be empowered without paternalistic laws that seek to control their ability to choose their identity. Empowerment of women can be more directly instituted by: promoting higher education and employment in nontraditional fields; stronger protections against domestic violence and prosecutions in cases of violence against women; and the elevation of women to positions of power in corporate and political life.

- **Withdrawing its Reservations to Article 27 of the ICCPR.** For France to outright state that a provision of the ICCPR is not applicable, and thereby ignore the rights of minorities (including religious minorities), in effect, works against the object and purpose of the ICCPR. As a country that has ratified the ICCPR, France has a responsibility and obligation to uphold each Article of the ICCPR and cannot single out specific provisions that it will adhere to.
- **Withdrawing its reservations to Article 4 of ICERD.** France has dealt with increasing Islamophobia and Anti-Semitism, and thus, it is essential that the voices of those who incite racial, ethnic, or religious hatred do not further suppress marginalized communities.
- **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.

(V) Conclusion

(21) French history stands as a testament to the values of *liberté, égalité, fraternité*. The French Constitution and French adherence to international treaty bodies all support and respect religious freedoms. Yet, Law No. 2004-22 undermines the values that make France a democratic, pluralistic, and secular social Republic. Minority communities from three distinct faiths are dealing with the loss of identity among their youth and the rise of Islamophobia and Anti-Semitism. France should take the lead in turning the tide against discriminatory legislation that has unfortunately spread throughout Europe.²⁷

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²⁷ U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF), *Annual Report*, at 334 (2012).