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Islamic Human Rights Commission

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The Islamic Human Rights Commission is an NGO in special consultative status with the United Nations Economic and social Council.

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Executive Summary

In this submission, the Islamic Human Rights Commission provides information under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review. Under section B, the Islamic Human rights Commission gives background information about freedom of Religion in Belgium and the Head Scarf. Under section C, IHRC highlights the protection and promotion of human rights in Belgium. In section D, IHRC makes a number of recommendations for the government to address.

B. Background

In Belgium there are three main areas in which religious clothing is seen as causing problems; pupils wearing the headscarf in school, civil servants wearing the Headscarf, and the wearing of the Face Veil and Burka in public spaces. The headscarf has become an issue especially within the educational sector, which has been documented since the middle of the 1970s. The debate intensified towards the end of 1989, following on from similar debates in France¹. There is, however, no national legislation regulating the wearing of religious symbols in Belgium. Bans have been introduced into regulations and bylaws by schools and local authorities. The majority of Belgian schools now prohibit pupils and teachers from wearing the headscarf². Belgium has a small Muslim population, around 375,000, which makes up 4% of the country's total population³. Belgium is a federal state with segregated political power into three levels: the federal government; three communities; and three regions⁴.

In Belgium, everything related to education is under the jurisdiction of the Communities⁵. Since the 1990s schools introduced headscarf bans through existing bylaws that allow schools to regulate school uniforms⁶. Furthermore, Senator Anne-Marie Lizin said that the ban was needed to oppose Islamic sexism, as 'the veil amounts to the oppression of the individual in the name of religion'. However, the senators were unable to acquire the necessary support and the draft was not taken any further⁷. In 2005 the Antwerp Court of Appeal ruled that the Belgian anti-

¹ Page 54, W. Shadid P. S. Van Koningsveld, Muslim Dress In Europe: Debates On The Headscarf, Journal of Islamic Studies 16:1 (2005) pp 35–61

² Eva Brems, Antidiscriminatie wet faalt tegen hoofddoekverbod op school, De Juristenkrant, 14 september 2005, 3.

³ Page 210, Dominic McGoldrick, Human Rights and Religion: The Islamic Headscarf Debate in Europe, Hart Publishing (2006)

⁴ Wikipedia, Belgium, [Online] http://en.wikipedia.org/wiki/Belgium#_ref-rolandwillemyns_0 [Accessed 12 January 2008]

⁵ Page 77, CEDAW Combined fifth and sixth periodic reports of States parties Belgium, CEDAW/C/BEL/6 2007

⁶ Page 55, W. Shadid P. S. Van Koningsveld, Muslim Dress In Europe: Debates On The Headscarf, Journal of Islamic Studies 16:1 (2005) pp 35–61

⁷ The Times (2004), Belgium next in line as Europe's veil ban spreads. [Online] <http://www.timesonline.co.uk/tol/news/world/article997977.ece> [Accessed 26 November 2007]

discrimination law did not prohibit school from banning headscarves. The appellants challenged a general prohibition on head coverings in a school in Hasselt. The Court held that public schools can limit freedom of religion in cases where such a measure is considered necessary to ensure the proper organization of school work and/or to guarantee the safety or the rights of other students⁸.

In 2003 five public hospitals in Brussels banned their staff from wearing the headscarf⁹. In 2006 two hijab-wearing teachers were sacked for not complying with "religious neutrality" rules¹⁰. Local councils of Antwerp and Lokeren and Ghent have introduced new staff regulations prohibiting visible religious symbols. Where, the front desk workers are not allowed to show external religious characteristics, like Muslim headscarves¹¹. In 2007 The Federal Council of Education introduced a general headscarf ban for teachers, with the exception of religious education teachers who teach Islam. The authorities of the Brussels Capital Region want to pass a new staff regulation that will not allow external religious characteristics, even in back-office functions¹².

C. Protection and promotion of Human Rights on the ground

Applicable National and International Law

National Law

Freedom of religion is provided for in (A.) 19 of the Belgian constitution. The prohibition of discrimination on the grounds of religion is provided for in A.s 10 and 11 of the Constitution. The anti discrimination law of 25 February 2003 prohibits discrimination on grounds of religion¹³. In Belgium international treaties signed by Belgium, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), take precedence over all national legislation and can be directly enforced by judges in Belgian

⁸ Page 407, Eva Brems, Het recht van leerlingen om een hoofddoek te dragen op school: recente ontwikkelingen, CDPK 2006, 406-414.

⁹ Page 8, 2004 Annual Report on Human Rights in Belgium, Human Rights Without Frontiers Int. [Online] http://www.hrwf.net/belgium/ext/human_rights_in_belgium_2004.pdf [Accessed 5 October 2007]

¹⁰ The Guardian (2006), The veil controversy: White pupils less tolerant, survey shows, [Online] <http://education.guardian.co.uk/raceinschools/story/0,,1929207,00.html> [Accessed 2 November 2007]

¹¹ Ali El Bouchtaoui, (2007) Minderhedenforum (www.minderhedenforum.be)

¹² Minderhedenforum (2007) Persbericht: nieuwe regeling hoofddoek is pure discriminatie [Online] <http://www.minderhedenforum.be/zoek.htm?zoek=26/10/2007> [Accessed 12 December 2007]

¹³ Eva Brems, Antidiscriminatiewet faalt tegen hoofddoekverbod op school, De Juristenkrant, 14 september 2005, 3.

courts¹⁴.

International Law

The European Court of Human Rights (ECtHR) has consistently stated that this right is at the core of a democratic society, claiming that '[i]t is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism in dissociable from a democratic society, which has been won over the centuries, depends on it'¹⁵

The second part of A.9(1) protects the freedom to 'manifest' ones religion or belief 'in public or in private, alone or with others'. The manifestation may include 'worship, teaching, practice or observance'. In *Vereniging v Netherlands*²⁴, the European Commission of Human Rights stated 'A.9 primarily protects the sphere of personal beliefs and religious creeds...[i]n addition it protects acts which are intimately linked to these attitudes such as acts of worship or devotion which are aspects of the practice of the religion or belief in a recognised form'. Indeed, in *Mannousakis v Greece*²⁵, the Court held that the right of manifestation of belief excludes the discretion of states to determine 'whether religious beliefs or the means used to express them are legitimate'.

Under A.9(2) ECHR, '[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of rights and freedoms of others'. Indeed, the right enshrined in A.9 is so fundamental that the limitations in A.9(2) are even narrower than those relating to the freedom of expression, association and assembly contained in the ECHR. The European Court has consistently stated that there must be a narrow construction of these limitations together with a broad interpretation of the freedoms guaranteed. Any restrictions on freedoms must be 'construed strictly' and can be justified only by 'convincing and compelling reasons' ²⁶. Freedom of religion is also contained in the International Covenant on Civil and Political Rights in A. 18, and in A. 14 of the International Convention on the Rights of the Child.

Freedom from Discrimination

The ECHR prohibits discrimination. A.14 in conjunction with A.9 prohibits discrimination in the enjoyment of one's freedom of religion. A. 14 provides that the Convention rights 'shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. The European Court has stated that discrimination on the basis of certain grounds, such as race and sex, is particularly serious and has stated that 'very weighty reasons' would have to be advanced before such treatment could be regarded as compatible with the

¹⁴ Page 638, On the Permissible scope of legal limitations on the freedom of religion or belief in: Belgium, Rik Torfs, 19 Emory Int'l L. Rev. 637 (2005)

¹⁵ *Kokkinakis v Greece*, 25 May 1993, p.31.

Convention²⁷. Freedom from discrimination is also secured by A. 26 ICCPR, and the International Convention on the Elimination of All Forms of Racial Discrimination, Belgium has ratified both.

Right to Education

The right to education is recognised in many major human rights instruments, including the Convention on the Rights of the Child 1989 (A.28) and CEDAW, which provides for equal rights for men and women in the field of education (A.10) and employment (A.11)³⁰. UNICEF has recently reported that millions of children worldwide are still denied the basic right to education – with gender disparity ensuring that the majority of those children (65 million) are girls³¹, many of them being in the Arab states or sub-Saharan Africa. Perhaps it is then ironic that the ban on headscarves in public schools will deny girls access to schooling in countries of the so called 'developed' world. No child should have to choose between practicing the tenets of their faith and acquiring a basic education – yet for Muslim girls in certain European countries – this may be the stark choice that they face.

D. Recommendations

1. The Muslims in Belgium should be allowed to practice Islam according to their religious belief, without the government interference or approval.
2. IHRC urges the Belgian authorities to take on the importance of projects tackling discrimination against the Muslim community.
3. It is the Belgium government that has primary responsibility for enforcement of human rights standards, without showing double standards to any of its citizens.