

**Submission to the UN Special Rapporteur on freedom of religion or belief
Report on Anti-Muslim Hatred and Discrimination in support of the upcoming report on anti-
Muslim hatred and discrimination in preparation for the 46th Session of Human Rights
Council.**

*'Legitimisation of Islamophobia in Europe and the subsequent infringement of freedom of
religion or belief: a comparative analysis of the UK and France'*

November 2020

Summary

The lack of a working and legally binding definition of Islamophobia and anti-Muslim hatred is generating several infringements on the right of Muslims in the UK and France. This submission presents how growing anti-Muslim sentiment in the public arena is magnified by discriminatory public rhetoric of political leaders, that serves to legitimise anti-Muslim narratives of the public. This is also echoed in current and new legislation that also infringes on the freedom of religion or belief, freedom of expression and association, and displays some concerning trends that infringe on the rights of the child (UNCRC) and the International Covenant on Civil and Political Rights (ICCPR). Recommendations are offered that allow for changes to policy and legislation, that could divert the trajectory away from impinging freedom of belief of Muslims, to one that promotes access to individual rights and fosters greater community cohesion in Europe.

1. Defining Islamophobia and anti-Muslim hatred.

As noted in the ever-growing scholarship on Islamophobia, it is not a phenomenon that has 'suddenly come into being after the events of 9/11. Like anti-Semitism and xenophobia, it has long and deep historical roots.'¹

¹ John L. Esposito and Ibrahim Kalin (2010) Islamophobia: The Challenge of Pluralism in the 21st Century, Oxford University Press USA - OSO (Introduction xxii)

1.1 Intersections with other forms of discrimination and historical contexts

The intersection between anti-Muslim hatred racism, and xenophobia is clear and well-established for those engaged in research on the topic. Islamophobia may be a term more recently used, but its roots are 'drawn from a historical anti-Muslimism and anti-Islamism'². These ideas are incorporated with more modern attitudes towards minorities.

The 'Clash of Civilizations' theory³ has been indirectly proliferated and extended into contemporary societal issues by populist leaders and media bodies, who have formed and informed public opinion leading to anti-Muslim sentiment. It is a model that echoes religious and cultural discord in modern societies, however it creates significant societal divisions and inaccurately construes Islam and Muslims as incompatible with European society. Such notions are not only dangerous, but also demonstrate strong vestiges of European colonialism, that should themselves be incompatible with modern democratic societies that adhere to the principles upheld by international law.

1.2 Consensus on a working or legal definition: UK context

In the UK, calls from civil society organisations (CSOs) for a definition of Islamophobia have been growing in recent years. MEND (Muslim Engagement & Development) was one effort that aimed to do exactly that. A quote from "Islamophobia: The right word for a Real Problem in 2016." summarises a key aim of achieving consensus:

'An important part of the movements to fight anti-Semitism, racism, and homophobia ...was the development of terminologies to identify these biases''

It concludes the appropriate definition of terms was crucial for evaluating the, "serious prejudice and discrimination these groups faced.'⁴

² Raymond Taras (2013) 'Islamophobia never stands still': race, religion, and culture, *Ethnic and Racial Studies*, 36:3, 417-433, P419 <https://doi.org/10.1080/01419870.2013.734388>

³ Samuel P. Huntington (2007) *The Clash of Civilizations and the Remaking of World Order*. New York: Simon and Schuster,

⁴ Islamophobia: The Right Word for a Real Problem," The Bridge Initiative | A Research Project on Islamophobia, September 08, 2016, accessed June 19, 2018, <http://bridge.georgetown.edu/islamophobia-the-right-word-for-a-real-problem/>

1.3 Adoption of consensus

Thus, the adoption of a consensus definition of Islamophobia is critical in the elimination of discrimination. Gottschalk and Greenberg⁵ suggest that this has meant that the prejudices against Muslims, in the UK and for the most part in wider European society⁶, remain unchallenged.

The initial report and those by other CSOs led to a call for the UK government to adopt a working definition. In 2018, the All-Party Parliamentary Group (APPG) on British Muslims published an inquiry on a working definition of Islamophobia entitled 'Islamophobia Defined'. The APPG had adopted the term *Islamophobia* over *anti-Muslim hatred* as the term because,

'It has established itself in the political and policy lexicon, had gained traction over time and was the predominant choice among Muslims to name and describe the hatred and hostility targeted at them on the basis of their Muslimness.'⁷

It was also the term of choice among British Muslims to describe their experience.

1.4 From a *working* to *legally binding* definition

The aim of the call for evidence discussed in this report was initially to call for a "working definition" which developed into a call for a "legally binding" definition. This report defined that as:

'Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness.'⁸

Political parties have been receptive to the definition with the Labour Party adopting the definition in 2019, the Liberal Democrats and the Scottish Conservatives then followed suit. However, there is no UK government agency that has adopted the definition to date. The UK

⁵ Peter Gottschalk and Gabriel Greenberg, *Islamophobia Making Muslims the Enemy* (Lanham: Rowman & Littlefield Publishers, 2008), p11.

⁶ France will later be examined in this submission as another state.

⁷ 'Islamophobia defined: The inquiry into a working definition of Islamophobia' 2018, APPG on British Muslims, p10

⁸ APPG, *Islamophobia Defined*, p11.

government has expressed concerns that the definition is not in line with the Equality Act 2010⁹, which defines race as, ‘comprising colour, nationality and national or ethnic origins, none of which would necessarily encompass a Muslim or Islamic practice. There are potential consequences for freedom of speech.’¹⁰ However, this seems a little selective if it is not equally applied to other definitions that confirm the basis from which prejudices and discrimination are assessed.

1.5 Islamophobia in the UK Conservative party

The UK government itself has faced an ongoing crisis of Islamophobia amongst the ruling party, with 14 members of the UK Conservative party being suspended for accusations of Islamophobia in 2019.¹¹ In response, CSOs, academics and policymakers have long advocated that adoption of a legal definition by the government would be the first step to acknowledgement of anti-Muslim discrimination in the UK.

1.6 L’ Islamophobie in France

In France, the term is even further from consideration or adoption as a legal or working definition. There has been considerable and divisive public and policy debate over the use of the term *Islamophobie*. Perhaps most divisory has been the question of the ‘right’ to be Islamophobic¹².

2. Discrimination in law and practice

There are several legal provisions and policies within that have led to increased discrimination towards Muslims; some are considerably more widespread and potentially detrimental to rights than others.

⁹ UK Equality Act, 2010 <https://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁰ House of Commons debate, *Definition of Islamophobia*, Volume 660: Debated on Thursday 16 May 2019 <https://hansard.parliament.uk/Commons/2019-05-16/debates/CF834846-65CA-46CD-B955-CDEF42BAFB26/DefinitionOfIslamophobia>

¹¹ Hope Not Hate, *The Deep Roots of Islamophobia in the Conservative party*, 30 September 2020 <https://www.hopenothate.org.uk/2020/09/30/the-deep-roots-of-islamophobia-in-the-conservative-party/>

¹² [Henri Peña-Ruiz, “le droit à l’islamophobie, tout en le distinguant du « racisme antimusulman”](#) Statement originally made by Ruiz in summer of 2019.

2.1 French legislation and infringement on the right to religious practice

France is an example of such a state that, in strictly implementing its policy of secularity (*laïcité*), has, on a number of occasions, been questioned on the universality of its freedom of religion or belief, due to policies that seem to specifically discriminate against Muslims. Such policies demonstrate an anti-Muslim sentiment that currently threatens religious freedoms in France.

France is home to the largest population of Muslims in Europe, but the expansion of French secularism laws in the last 15 years has made living as a practicing Muslim in France increasingly challenging. Religious divisions have historically been rife in French society, but the law requiring separation of church and state officially came into existence in 1905¹³, and public schools were considered the grounds on which secularity had to be strictly adhered.

Restrictions on the manifestation of the right to freedom of religion or belief have been imposed through the development of subsequent French legislation, such as:

- i) LOI n° 2004-228 ¹⁴regulating the principle of secularism, wearing of signs or clothing of religious affiliation

This law was at the time described by Human Rights Watch as, “an unwarranted infringement on the right to religious practice,”.¹⁵ A number of domestic cases were pursued following the passing of *Loi 2004-228*, with subsequent legal claims made by students who were forced to remove religious symbols in schools. Despite this law being intended for implementation of all religious symbols, the Muslim headscarf (hijab) became the rallying point of the legislation. It was argued that Muslims see the hijab as a religious obligation rather than a religious expression, as determined by *loi 2004-228*. The extent to which this legislation impacted Muslim women and girls was marked, and this was reflected in its colloquialism; “L’Affaire du voile” (the scarf affair).

¹³ [Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat](#)

¹⁴ [LOI n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics](#) / LAW n ° 2004-228 of March 15, 2004 regulating, in application of the principle of secularism, the wearing of signs or clothing showing a religious affiliation in public schools, colleges and high schools.

¹⁵ [France: Headscarf Ban Violates Religious Freedom, 27 February 2004. Human Rights Watch \(archive\)](#)

The debate was initially stirred in 1989, when three schoolgirls were suspended for refusing to remove their hijabs and was concretised in the subsequent legislation of 2004¹⁶ and 2011¹⁷.

ii) LOI n° 2010-1192: Act prohibiting concealment of the face in public space¹⁸

In terms of religious freedoms this law only affects Muslim women that wear the face veil (*niqab*), bringing the debate around religious identification squarely back to Muslim women. The face veil or niqab is now banned from any public activity. The marginalisation that this has caused for French women has been disproportionate.

2.1.2. Isolation of Muslim women who wear the face veil and infringement on gender equality

Despite being upheld by the European Court of Human Rights (ECtHR)¹⁹ it calls into question Article 18 (10) of the International Covenant on Civil and Political Rights (ICCPR)²⁰ and was challenged by the United Nations Human Rights Committee in 2018. The Committee found France in violation of the freedom of two women to practice their religion.

French politicians in favour of the ban said they were acting to protect the “gender equality” and “dignity” of women²¹. Contrary to the supposed aims of the ban, it has only intensified an increase in physical violence on women in veils and increased their marginalisation and isolation.

¹⁶ [LOI n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics](#) / LAW n° 2004-228 of March 15, 2004 regulating, in application of the principle of secularism, the wearing of signs or clothing showing a religious affiliation in public schools, colleges and high schools.

¹⁷ [LOI n° 2010-1192: Loi interdisant la dissimulation du visage dans l'espace public](#), "Law of 2010-1192: Act prohibiting concealment of the face in public space"

¹⁸ [LOI n° 2010-1192: Loi interdisant la dissimulation du visage dans l'espace public](#), "Law of 2010-1192: Act prohibiting concealment of the face in public space"

¹⁹ [European Court of human rights, Press release 01.07.2014 French ban on the wearing in public of clothing designed to conceal one's face does not breach the Convention](#)

²⁰ Art. 18 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²¹ [Iman Armani, France's burkini ban exposes the hypocrisy of its secularist state, The Guardian, 24 August 2016](#)

2.1.3. Selective enforcement of face covering law amidst COVID-19

In addition, French judiciary should have sought to reconsider this law in accordance with coronavirus legislation and guidelines. France still upholds law 2010 -1192, but has simultaneously made face coverings mandatory.²² This kind of hypocrisy in legislation is an act of bad faith and will only lead to increased feelings of discrimination from the Muslim communities, as well as reinforcing legitimisation of anti-Muslim sentiment.

iii) 1905 *laïcité* law²³ and need for revision vis-a-vis the 1981 Declaration of the General Assembly on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief²⁴ (Res. 36/55 of 25 November 1981)

Under this current law, strict separation of church and state means that there is a lack of central religious authority for Islam in France. France currently tends to 'import Imams' and religious leaders from the country of origin of its minority communities.

This creates a number of consequences, most significantly that the French state is in danger of 'delegating its Islam' to other states.²⁵ The UK for example has the Muslim Council of Britain (MCB) which allows for a British governing body that directs Islamic issues, and is accepted and legitimated into a variety of Muslim communities not restricted by ethnicity or country of origin. France has a similar body, the French Council of the Muslim Faith (CFCM) but should be working more steadfastly towards incorporating this body into governing Islamic affairs.

The 1905 law has been amended 17 times since 1905 and is still under review. However, in order for France's domestic legislation to be in line with international standards, including the 1981 Declaration,²⁶ the law must be urgently reviewed with a view to enabling the development of

²² [Jason Silverstein, France will still ban Islamic face coverings even after making masks mandatory, CBS News, 12 May 2020](#)

²³ [Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat](#)

²⁴ 1981 Declaration of the General Assembly on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief# (Res. 36/55 of 25 November 1981) Art. 6 (g): The right to freedom of thought, conscience, religion or belief includes the freedom, "To train, appoint, elect or designate by succession appropriate leaders [...]"

²⁵ [Kamel Daoud, France Has Millions of Muslims. Why Does It Import Imams? New York Times, 28 January 2019](#)

²⁶ 1981 Declaration of the General Assembly on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Res. 36/55 of 25 November 1981. Article 18 (10) of the International Covenant on Civil and Political Rights (ICCPR) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>

Muslim communities Islam that that feel able to access their full rights in the practice of their religion.

2.2 Restriction on economic, social, and political rights caused by limits to participation and representation in public life

In addition to the restrictions discussed above on the ability of some Muslim women to participate in public life, there are additional and significantly concerning infringements, that will create restrictions on human rights defense.

Most recently, the French Minister of Interior announced in November 2020 that the French government will dissolve the Collective Against Islamophobia in France (CCIF), an organisation advocating against Islamophobia in France. Amnesty International expressed grave concerns over the dissolving of this organisation stating,

“The dissolution of an organization is an extreme measure that can be justified only in very limited circumstances, such as if it poses a clear and imminent danger to national security or public order. The French authorities have failed to provide to date any evidence that could justify the dissolution of CCIF.”²⁷

The draft legislation (*avant-projet de loi*)²⁸ due for discussion in France on 9 December 2020 creates concerns over the infringement of the individual right to freedom of association, the right of a child to education²⁹, and in addition imposes limits on the ability of Muslims in France to assert their full political rights.³⁰

²⁷ [France: shutting down anti-racist organisation risks freedoms, Amnesty, 20 November 2020](#)

²⁸ L'avant-projet de loi “confortant les principes républicains”, Conseil d’Etat, France 9th December 2020»<https://www.dalloz-actualite.fr/flash/projet-de-loi-separatisme-texte-de-l-avant-projet-de-loi#.X8QPCZP7QdU>

²⁹ Article 28, UN Convention on Rights of the Child, 1990 Res 22/25.

³⁰ [Mayank Aggarwal, Macron tells France’s Muslims to adopt ‘republican values’ Friday 20 November 2020, the Independent](#)

3. Social attitude, hate speech, attacks, and violence against Muslims

Attitudes towards Muslims in Europe are increasingly negative and are brought about by various factors including those discussed in the preceding articles.

3.1 Public opinion on Muslims in Europe

A 2019 report by Bertelsmann Stiftung concluded that, 'Religious tolerance is widespread - but it does not extend to Islam.'³¹ In Germany, 'only one third of the population regards Islam as enriching.' In addition, about half of those consider Islam a threat. Attitudes in the rest of Europe are echoed at a similar rate. A rise in incidents of prejudice and hate aimed at Muslims are reflected in these views. In a 2018 report by the UK's Equality and Human Rights Commission, 70 percent of Muslims said they had specifically experienced religion-based prejudice³²

3.2 Rise of global populism and harmful stereotyping that legitimises and mainstreams anti-Muslim sentiment

Development of what has essentially become a mainstreamed and legitimised narrative and sentiment towards Muslims has disproportionately increased in direct parallel with the rise of global populism. The openly anti-Muslim rhetoric and policies of many politicians has seen an increase in anti-Muslim hate and sentiment. Research by the Southern Poverty Law Center (SPLC)³³ directly attributed a threefold increase in the number of hate groups that specifically target Muslims in the US to the election of President Trump.³⁴

3.3 Harmful stereotyping of Muslim communities in the context of COVID-19 pandemic

A report by the Muslim Council of Britain³⁵ found that there was a 'disappointing trend' in negative portrayals of Muslims in the wake of the COVID 19 pandemic. The report emphasised

³¹ Dr Yasemin El-Menouar, [Religious tolerance is widespread - but it does not extend to Islam](#), BertelmannStiftung, 19 July 2019.

³² Abrams, D., Swift, H., and D. Houston. 2018. Developing a national barometer of prejudice and discrimination in Britain. Equality and Human Rights Commission. p. 10.

³³ [The Trump Effect, The Southern Poverty Law Center, 15 February 2017](#)

³⁴ [Hate groups reach record high, Southern Poverty Law Center, 19 February 2019](#)

³⁵ [Together in Tribulation: British Muslims and the COVID-19 Pandemic, Muslim Council of Britain, November 2020](#)

that this trend, 'not only further perpetuates the negative portrayal of Muslims in the media more generally, but feeds into the far-right trend of blaming Muslims explicitly for the spread of the pandemic, which fuels hate crime, prejudice and discrimination and exacerbates community tensions.'³⁶

4. Recommendations

For Islamophobia and anti-Muslim hatred to be better identified, prevented, and tackled the *International Observatory of Human Rights (IOHR)* considers the following recommendations as paths to effective remedies.

1. The lack of a working or legal definition of Islamophobia or anti-Muslim hate creates a form of legitimacy for more serious infringements and suppression of freedom of religion.
2. It is therefore essential to secure definitions of Islamophobia and anti-Muslim hate for the purposes of appropriate recourse for hate crimes, within domestic and international jurisdiction.
3. We therefore encourage the Special Rapporteur and all relevant UN treaty bodies to ensure rights guaranteed by Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief are upheld by its signatories.
4. States should also uphold their commitment to the UN Rabat Plan of Action, emphasising the collective responsibility of public officials, religious and community leaders, the media, and individuals, to achieve rights protections for Muslims in a minority context.
5. Similarly, clearer definitions of terrorism language within national and international security laws, in preventing and countering violent extremism (PVE/CVE) and their subsequent control measures, notably those of significant concern such as citizenship

³⁶ Ibid, p26.

deprivation³⁷, must be prepared for review to remedy the discriminatory narrative around terrorism.

6. France's upcoming bill to be discussed on 9th December 2020, *L'avant-projet de loi «confortant les principes républicains»* and the concerns it creates for infringements of child rights, freedom of association and assembly, must be reviewed through the lens of international law.
7. In addition, we recommend the inclusion of anti-Muslim hatred as part of the remit of investigations into discrimination in all relevant treaty bodies, so that anti-Muslim hate becomes a part of their agenda, along with other forms of racism such as antisemitism and anti-black racism.
8. Finally, states must consider and actively seek to review the role of political will in public opinion and media narratives.

(2471 words)

³⁷ See most notable case of deprivation: [R \(on the application of Begum\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\), 23 November, UK Supreme Court](#). In addition there has been a wealth of scholarship that has examined the prevalence of discrimination in counter-terrorism measures (See Nisha Kapoor *Deport, Deprive and Extradite: 21st century state extremism*, London: Verso, 2017, Arun Kundnani: *The Muslims are Coming! Islamophobia, Extremism, and the Domestic War on Terror*, New York: Verso, 2014)