

Project Development Form: Gender norms, religious intolerance and migrant women

Project Partner: **Office of the High Commissioner for Human Rights (OHCHR)**

Project Overview

Background context

Migrants are particularly vulnerable to discrimination because they do not have the same ethnic origin or religion as the majority of the population in any given country of destination. Migrant women are often exposed to gender-based multiple and intersecting forms of discrimination based on their ethnicity, religion and migration status. With increased mobility and migration flows, and in the context of rising populism and nationalism, manifestations of xenophobia are innumerable and continue to develop alarmingly. The forms and causes of discrimination against persons perceived as aliens, as well as statements made against them, vary considerably and are often determined by context and location. However, a number of general trends can be observed. Of these, the most notable is the emergence of a popular and political discourse designating certain groups or sub-groups (nationals or immigrants) as a threat to the security of the State.

In response to recent terrorist attacks in Europe, an increasing populist narrative blaming Islam and its values as supporting violence and terrorism has been observed in several countries. In this context, women wearing religious symbols, such as headscarves or attires have been reportedly subjected to verbal abuse and harassment in public and in the workplace and schools. Also, in the public discourse, the wearing of religious symbols or attires –mainly by women-has been increasingly pointed at as a manifestation of oppression and gender inequality and associated with specific cultures/countries/religions. Popular support – including by some feminist organizations- for bans on the wearing of specific religious or cultural attires has also been registered.

An increasing number of cases have been brought before courts in European countries, as well as at the European Court of Human Rights, concerning the wearing of religious symbols/attire in public places (schools, workplace, beach)–mainly visible on women. Decisions by the courts have appeared to uphold the right to ban the wearing of religious attires (Belgium) while in other cases they haven't (France in the case of Burkini). There is not enough research on the motivations used

by courts in taking these decisions, which have in some cases raised concerns regarding freedom of religion and expression, as well as conceptions/understandings of equality deeply informed by cultural values. There is also little analysis of how these decisions have balanced considerations related to gender equality, religious freedoms non-discrimination and other rights.

Other court decisions on cases that seem to have a bearing on gender-equality in a context of migration- and increasing xenophobia- are those related to requests to exonerate children from mixed activities in school. In these cases, it would be interesting to analyse the arguments used and how different rights (best interest of the child, freedom of religion and lawful exception to it) have been take into account.

Finally, there is also not enough research on the impact of this legislation and court decisions not only on religious freedoms but on the exercise of other rights by migrant women and girls and women and girls from ethnic and minority communities, including freedom from violence, access to educational and professional opportunities.

The role of the OHCHR Gender Unit, and purpose of the project

The Office of the High Commissioner for Human Rights (OHCHR), as the UN entity with main responsibility to promote and protect human rights, provides advice and guidance to Member States to ensure that their laws, policies and practices are respectful of human rights obligations.

Research in the above-mentioned areas would assist the OHCHR in devising guidance on legislation that is respectful of all human rights, does not disproportionately affect women and the exercise of their rights, is informed by an understanding of different cultural contexts, does not perpetuate stereotypes and does not stigmatize specific communities.

Focusing on the European region, the project will include desk research and analysis of judgments, decisions and general comments of human rights mechanisms (see project bibliography), as well as interviews with activists and civil society organizations to better understand arguments in favour of and against dress codes bans from a women's rights perspective, as well as the impact that these have on the enjoyment of human rights by affected women. The purpose is to help further analyse the following key “dilemmas” from a human rights perspectives:

-Firstly, some narratives associate the wearing of religious symbols with women's oppression and – in the name of gender equality - propose banning them. The paradox is evident: starting from the assumption that women suffer an imposition (what to wear) we respond with another imposition (what not to wear). What are the legal arguments used in relevant judgements? How are different human rights and freedoms balanced? When the arguments used are about the secularism of the State- do restrictions exist also for other religious symbols?

-Secondly, some argue that considering headscarf or other religious attire as a form of oppression and discrimination is the result of stereotypical assumptions and cultural bias. Many women argue that they willingly wear a headscarf as part of their cultural identity - no more or no less than as high heels or make-up can be part of other cultural identities. If we start dwelling on what is a symbol of oppression- when worn voluntarily and not imposed by law- we enter a slippery slope: where should a line be drawn? And why these discussions always concern women's bodies? Are there specific attires that can be considered as violating the dignity of women- even if worn voluntarily? And according to which legal principles could they be banned? (ex- the Burka is not the same as a Hijab- and now in an increasing number of countries the wearing or even producing of Burkas is prohibited by law- ex. in Morocco. See also the judgment by the European Court on Human Rights on the ban imposed in France).

-Thirdly, even if we accepted that certain attires are imposed on women and violate their dignity and rights, would banning them by law be the best option? Wouldn't it place women and girls in a situation where the family wouldn't let them out of the home without wearing them and the State wouldn't allow them in the private sphere wearing them? What would be the impact on their rights?

The project will identify relevant national laws and rulings, at national and regional level, and in discussion with OHCHR select a range of these laws and rulings to analyse how they affect in particular Muslim women, including migrants. Do these regulations lead to a further increase of existing discriminatory practices in the workplace and other public domains and marginalise groups of women in already precarious working conditions, expose them to public harassment, deprive them from educational and professional opportunities, impact upon their ability to be protected from violence and access health services? Are these decrees improving the security situation, or rather increasing tensions and polarization between

communities and fueling religious intolerance and stigmatization of Muslims, especially women?, Are these restrictions leading to deeper divisions in our society, with more Muslim migrant women deciding to stay in spaces where they feel safe, and integrating less?

Project Output:

- The main outcome will be an internal report for the OHCHR on Gender Norms, Dress Codes, Women's Rights and Religious Intolerance. The report will be a valuable resource for the organisation in developing guidance and undertaking advocacy positions.

Project Outline:

- Phase 1: (November-December 2017)
 - Background desk research, developing an extended bibliography and 5 page literature review
 - Development of a 4 page research methodology for research to be undertaken in term 2
 - Together with staff at the OHCHR, through email and skype contact, to develop understanding of the project amongst the team, and develop a draft one page outline for the final report
 - By the end of term, to submit to the OHCHR for review a 10 page document comprising literature review (5 pages), research methodology (4 pages) and final report outline (1 page)
 - Develop a draft ethnical consent form (if required)

Phase 2: (January 2018-June 2018)

- OHCHR to send back comments on the term 1 output by the start of term 2
- Project implementation, including research, interviews and write up
- A draft report will be sent to the OHCHR at the end of term in March for review, and the OHCHR will provide comments for the start of term in April
- April-June: revision and finalisation of report

Project Bibliography: ('essential reading')

- Committee on the Elimination of Discrimination against Women (CEDAW)

- Committee on the Elimination of Discrimination against Women, general recommendations No. 24, 30, 32, 34
- CEDAW General Recommendation No. 26 -- forty-second session, 2008, Women Migrant Workers
- CEDAW General Recommendation No. 35 – on gender-based violence
- Human Rights Committee (CCPR) and General Comments No. 22: Article 18 (Freedom of thought, conscience or religion); General comment No. 28: Article 3 (The equality of rights between men and women)
- Reports Special Rapporteur on freedom of religion or belief
- Reports Special Rapporteur on the human rights of migrants
- Reports Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Reports Special Rapporteur on violence against women, its causes and consequences
- Universal Periodic review (UPR) recommendations
- OHCHR Press briefing notes on France 30 August 2016¹
- Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/32/50)
- Union interparlementaire, OIT et HCDH, Migration, droits de l'homme et gouvernance – Guide pratique à l'usage des parlementaires no 24 (2015)
- A/HRC/35/10 Impact of multiple and intersecting forms of discrimination and violence in the co text of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls;
- Committee on the Elimination of Racial Discrimination, general recommendation 25
- Durban Declaration and Programme of Action
- New York Declaration for Refugees and Migrants

Jurisprudence

ECHR (CASE OF S.A.S. v. FRANCE (*Application no. 43835/11*); *Case C-157/15, G4S Secure Solutions*, [Factsheet – Religious symbols and clothing](#))

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20430&LangID=E>