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**Statement for USCIRF hearing
“Anti-Muslim Policies and Bias in Europe ”
9 February 2022
Washington, DC USA**

Ambassador Rashad Hussain,
Madam Chair Nadine Maenza,
Mister Vice-Chair Nury Turkel,
Honorable members of this Commission,

I would like to express my gratitude for giving me the opportunity to testify before your commission today. I will present before you my findings regarding the legal treatment of Islam in France and the impact of legislation and policies on French Muslims and on civil liberties.

1. History/Background of French Laïcité

France constitutionally recognizes and guarantees the freedom of opinion and religion in Article 10 of the Declaration of Human and Civic Rights of 1789, which states that

“No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.”

Freedom of religion in France must coexist with the principle of neutrality and of *laïcité*, resulting from the *Law on Separation of the*

Churches and State of 9 December 1905 (hereafter *Law of 1905*) and proclaimed in article 1 of the Constitution of 4 October 1958. *Laïcité* implies that the state should not interfere with religious matters and vice and versa. As a consequence, religious neutrality is imposed upon any person working for the state (i.e civil servants).

However, in the last thirty years *laïcité* has become a rallying force for the political and intellectual elite who wish to turn it into an instrument to erase Muslim visibility and enforce the respect of so-called republican values. *Laïcité*, once a cornerstone of French republican universalism and a foundational liberal principle enshrined by the authors of the *Law of 1905*, has since been deeply distorted and instrumentalized. Political forces seeking to manipulate the voting public have wielded *laïcité* as a political identity tool that justifies discriminatory policies, particularly against the visibility of Islam and Muslims in the public square.

This shift was accelerated in the 1990s in response to terrorist attacks on French soil that were fomented in the name of Islam, as politicians sought to expand the security state to matters of religious practice, the regulation of which was accelerated in the 2000s. The idea of erasing difference in order to protect so-called republican values grew in the public square, and gained support from French citizens increasingly uncomfortable with public identities that differed from what they were accustomed to. In order to achieve such a goal, the Government clamped down on the expression of religious identity through the weakening of civil liberties.

As a consequence of the socio-political turbulence of the past several decades, *laïcité* has become an excuse to limit the expression of religion, as evidenced by recent legislation such as the [Law Consolidating the Respect Republican Values](#) (24 August 2021) also known as the *Anti-Separatism Law*, which not only extended religious neutrality beyond civil service, but also weakened freedom of association by imposing state controls on religious gatherings, going so far as to curtail

religion-based homeschooling. This alarming morphing of the definition of *laïcité* reflects a governmental intent to supervise Islam and create a sanitized public social space aimed to confine expressions of religion to the private sphere, which itself is not immune to further state restrictions.

The changing interpretation of *laïcité* – which was first intended to guarantee a strict state neutrality and religious freedom – has led to a toughening of the legislative narrative on the visibility of religious signs. Most political parties have joined forces to essentially make Muslims (especially Muslim women) disappear from public spaces using the tenuous grounds of “public order disturbances” and “violation of *laïcité*”. This transformation and weaponization of *laïcité* from a liberal to an illiberal legal tool to restrict religious freedom, has not only allowed the elite public discourse to constantly question Muslim loyalty to France and debate whether or not Muslims can be good French citizens.

2. Conflicting ideas of what it means to be French

The crucial role of France’s colonial past, more specifically in the aftermath of the war of independence in Algeria, has altered the French perspective on assimilation, more specifically vis à vis Muslim populations. Islam and immigration cannot be disconnected from the heritage of colonialism and the still open-wounds of Algeria’s war of independence, which unconsciously manifests itself in today’s French society and politics. The history of the war in Algeria has still not been fully resolved, and thus the trauma is still not healed.

Regarding the status of Islam during colonization, with very few exceptions the French Muslims were not considered to be French citizens but rather subjects to whom a Muslim personal status was applied. A full assimilation is seen as essential conditions to qualify for French citizenship. This is indicative of a trend in France in the twentieth

and twenty-first century, in which any kind of visibility of religion within the public square was to be erased, and that the politics of belonging imply a total submission to a strict and narrow interpretation of *laïcité*, as a *sine qua non* condition to assimilation. Seen from metropolitan France, the failure of the assimilation of Algeria to the French empire has often been attributed to its Muslim character. This failure validated in the minds of many French citizens the image of a religion that naturally resists assimilation and may also be a threat to the very existence of the state.

In modern times, France currently has problematic policies related to integration and forced assimilation. As increasing numbers of French representatives both from the left and the right wing conclude that Muslims as a group cannot be integrated, calls are increasing to define and isolate “French Islam” and implement policies meant to erase Muslim visibility from public spaces.

With the arrival of a majority of Muslim immigrants mostly from North-Africa from the sixties, Islam was firmly established on French soil. But the demonization of Islam and anti-Arab racism did not facilitate an already difficult understanding between the two communities. The disparity between the widespread depiction of Arabs and the reality on the ground was vast; the image of the Arab being a thief or an extremist was broadly spread at the same time that working-class immigrants lived in the shadows for fear of being deported.

Therefore, a strong policy against the visibility of a much-feared Islam was triggered, starting with one of its most visible symbols: the Islamic headscarf (*hijāb*). The infamous *Headscarf Affair* of 1989 (three Muslim students were suspended from their school in the city of Creil for wearing a *hijāb*) triggered a wave of public battles that involved public displays of Islam.

3. The reality and impact of the weaponization of *laïcité* today

A) *The Law Prohibiting the Wearing of Conspicuous Religious Signs in Public Schools (15 March 2004).*

On one hand, proponents of the headscarf ban in schools say their opposition is rooted in the wearing of potentially conspicuous religious symbols of any kind at school, which is the ultimate symbol of the French republic and *laïcité*. Supporters of a strict interpretation of *laïcité* invoked the universality of republican principles to justify the ban. The argument that unites them is the need for all to comply with the laws of the republic, without exception.

After the adoption of the 2004 law, some schools modified their bylaws to include the submission to religious neutrality to accompanying parents, that is to say parents who accompany students on field outside the school. On [30 March 2021](#), the Senate approved an amendment imposing religious neutrality on accompanying parents, primarily targeting Muslim women wearing a headscarf as [stated by right-wing group *Les Républicains*](#). Even though the amendment was rejected by the National Assembly, tensions have arisen and have been creating a toxic atmosphere, ostracizing Muslim women even more.

We should keep in mind that the principle of *laïcité* is considered by many as the cornerstone of French national identity, as it is considered a protection of France's unique identity against the threat of dilution by minority groups, especially when those groups are religious. Hence immigrants from other cultures are expected to adapt and assimilate, and the headscarf is perceived as a threat to this assimilation and a threat to this unique identity.

Furthermore, the veil is not only considered by some as a sign of religious absolutism and the submission of women, but also as a Trojan horse for fundamentalism. Such a garment is seen as a threat against

French values, and another interesting parallel can be made with the adoption of the ban of the full-face covering in 2010 (the so-called *burqa ban*).

B) *The Law prohibiting the Concealment of the Face in the Public Space*
(11 October 2010)

The issue related to the wearing of the full-face covering was raised in a context of controversial debates on national identity and the ‘place of Islam in France’. Former President Sarkozy and his government, supported by politicians both from the right and the left wing and also by women’s rights groups, considered the burqā and niqāb as a symbol of an archaic vision of the role of women and a sign of their oppression, and as a threat of the spread of so-called “*political Islam*” (nowhere to be defined), which is widely seen as incompatible with France’s official Republican values of liberty and gender equality.

Even though the phenomenon is marginal in France and the potential threat to public order is negligible, the *Bill Prohibiting the Concealment of the Face in Public* was adopted by an overwhelming majority. After being upheld and [deemed constitutional](#) by the Constitutional Council, the law was challenged before the European Court of Human Rights (ECtHR). In the *S.A.S v. France* decision of July 2014, the ECtHR upheld the ban, which opened the door to other European countries to follow France’s example (the latest example being the [Swiss referendum](#) on banning full-face coverings). The adoption of the *Law of 2010* elevated discussion regarding the social and public visibility of religion, particularly the public visibility of Islam.

It is difficult to assess the impact of the law on the practice of the wearing of the niqāb in France. The law contains all the elements of indirect discrimination and it has undoubtedly negatively impacted women. Despite the supposed neutrality of its content and title, the objective was clearly to target a certain marginalized group of Muslim

women. The *Law of 2010* is certainly an unprecedented restriction of a manifestation of religious belief.

C) Attempts to locally ban the wearing of the burkini

On July 2016, the mayor of French Riviera city of Cannes introduced a municipal bylaw preventing “access to beaches and for swimming ... to anyone not wearing appropriate clothing, respectful of moral standards and *laïcité*” *de facto* targeting Muslim women wearing a burkini (a full-body covering swimwear with a hood) and a headscarf. Thirty-one municipalities immediately passed a similar bylaw. Politicians on both sides of the political spectrum and media pundits have started to amplify discussions surrounding the visibility of Muslims and the place of Islam in France. Then-Prime Minister Manuel Valls [described](#) the burkini as “an affirmation in the public space of a political Islamism”, while former president Nicolas Sarkozy denounced it as a “[provocation](#)” in support of radical Islam. Photos of a woman being [forced to undress](#) on a beach surrounded by armed policemen went viral and were widely criticized abroad. The administrative court of Nice initially upheld the burkini ban, which was straightaway challenged before the *Conseil d’État*. The latter deemed [such a ban illegal](#) considering that the alleged disturbance of public order was not proven.

The negative perception of women wearing burkinis has been disproportionately amplified by the media to the point that the humiliation of Muslim women became normalized and acceptable. While neo-liberal feminist advocates ground their claim on the necessity to free women, such prohibitions often results in their isolation and segregation.

D) Removing Muslim visibility in the workplace

This dispute originated in the dismissal on 19 December 2008 of a deputy director and employee of the nursery organization *Baby Loup* on the

grounds of “insubordination, threats and misconduct”. The employee was wearing a headscarf when she took office, but during her maternity leave that lasted several years, the nursery adopted a new bylaw requiring staff to remain neutral in the expression of their religious beliefs. However, legislation in force at the time stated that the internal regulations of companies could not contain provisions restricting individual and collective freedoms that did not significantly affect the tasks to be performed. On 19 March 2013, the Court of Cassation decided that “principle of laïcité established in Article 1 of the Constitution [was not] applicable to employees of the private sector”. As a result, the Court concludes that the dismissal was “discriminatory”. Then-Minister of Interior Manuel Valls [declared before the National Assembly](#) that he wished to “temporarily withdraw from his ministerial duties” in order to criticize the decision of the Court of Cassation which, according to him, “has called laïcité into question”. The hyper mediatization of this case has also been amplified by intellectuals from the left and the right, who have launched a petition claiming that this decision was a threat to the implementation of *laïcité* as a constitutional principle, thus putting at stake the idea of “living together” (*vivre-ensemble*).

In the midst of a heated debate around the issue, the judges of the Court of Cassation sent the case back to the Court of Appeal of Paris, which, uniquely in the history of French law, decided not to follow the judgment of the Court of Cassation, and sided with the employer. After that, the employee again appealed before the Court of Cassation, and the Court of Cassation in its decision of 25th June 2014, sided with the head of the nursery and rejected the appeal of the claimant. In the aftermath of the case, an amendment was added in the *Labor Law* of 8 August 2016, now inserted in the Labor Code, that mentions:

“The bylaws [of private companies] may contain provisions adding the principle of neutrality and restricting the expression of employees' convictions if these restrictions are justified by [...] the needs of the company and if they are proportionate to the aim pursued.”

On 14 March 2017, in a judgement entitled [Samira Achbita v. G4S Secure Solutions NV](#), the Court of Justice of the European Union (CJEU) endorsed this interpretation on the grounds that the obligation of “neutrality” is of a general nature, since applies to all, and consequently, it cannot be discriminatory. This is the same strategy that led to the adoption of the laws of 2004 and 2010, which came to the conclusion that if a law applies to all religious symbols, it *de facto* cannot be discriminatory.

These increasingly heated debates around the application of *laïcité* in France, in particular vis-à-vis Muslims, are signs of a deep national crisis. Thus, during the *Baby Loup* affair, the Parliament has submitted bill proposals in record numbers aimed at either legalizing the absolute prohibitions of all forms of expression of religious beliefs in the workplace, or limiting such prohibitions to targeted sectors like childcare.

E) The Law Strengthening Republican Principles (hereafter known as the anti-separatism law)

In the modern era, French governments from across the political spectrum have tried and failed to organize Islam in France. Despite their best efforts, these goals have been obstructed by multiple factors, including the legacy of French colonialism, the unique interpretation of the separation of church and state in France, various internal divisions within French Muslim communities, and the ongoing influence of various external factors including foreign governments. The French state, as protector of both religious freedom and *laïcité*, is attempting to navigate the country’s balkanized Muslim community. Throughout French history, the management of religion has been closely linked to the assertion of state power, and the government developed a bad habit of relying on external parties to regulate Islam within France’s borders.

Thus, for instance, in 2018 President Emmanuel Macron began a consultative process toward this end, stressing the need to set up an

interlocutor for French Muslims (similar to those of other religious groups), create a framework for financing places of worship and collecting donations, and a system to vet and train imams working in France. Macron's initiative sought to amend the *Law of 1905* with the goals of intrusively reforming religious organizations and ending foreign funding pouring into Muslim communities, which [Macron felt](#) prevented “*French Islam from entering into modernity.*” In 2020, in response to recent violent terrorist attacks and especially the horrific murder of [French teacher Samuel Paty](#), President Emmanuel Macron in his [speech](#) in *Les Mureaux* on October 2020 announced his project to propose a law to fight religious “separatism” aimed at “freeing Islam in France from foreign influences”.

One of the main issues regarding the notion of ‘separatism’ is that it is nowhere to be defined within the legislative corpus, leading to a broad interpretation of what separatism could be. The vagueness and fuzziness of this term opens doors to potential abuses.

The several waves of terrorist attacks perpetrated by individuals and groups related to Islamic radical terrorist organizations, led President Emmanuel Macron's administration to submit the bill aimed at fighting separatism in December 2020 to the Parliament. The Bill which eventually was adopted on 24 August 2021 aimed to reiterate the non-negotiable principles at the foundation of the Republic (such as liberty, equality, fraternity, human dignity, *laïcité*, but also public order). However, this Bill was grounded on the affirmation according to which France was deeply sick and has been affected with “separatism,” and more specifically “[Islamist separatism](#)”. The proposed bill aimed to give legal tools to public authorities to fight it. However, the consequence of such an approach and the absence of a legal and clear definition of what separatism means led to the targeting of a number of basic and harmless Muslim practices deemed to threaten republican values and to be signs of radicalization.

As a consequence, the Parliament eventually adopted repressive legislation which created new offenses and widened many existing ones. It identified and targeted a number of regular Muslim practices and behaviors [deemed or perceived as threatening](#). For instance, some politicians considered the wearing of a hijāb as a sign of separatism. In the Fall of 2020, Interior minister Gérald Darmanin declared being bothered by the existence of [Halal and Kosher aisles in supermarkets](#) that might be seen as a sign of separatism. Thus, the *Anti-separatism Law* raises serious concerns for [human rights organizations and institutions](#).

The *Anti-Separatism Law* is based on the premise of the requirement of a full adhesion (rather than mere respect of) to republican values. Hence Mr Gérald Darmanin [declared](#) about organizations that refuse to sign the Charter of principles of French Islam: “*We can no longer talk to people who refuse to write down that the law of the Republic is superior to the law of God*”, a dangerous statement putting at stake the essence of *laïcité* and separation of Church and State.

Finally, the *Anti-separatism Law* also considerably weakens the constitutional principle of [freedom of association](#) (the *Waldeck-Rousseau Law on Associations* of 1 July 1901). Indeed, this law subjects organizations applying for public financial support to the signing and respect of a “*contract of republican commitment*” by which the organization pledges to respect liberty, equality, fraternity, human dignity and public order. The issues with such a provision are that extensive prerogatives are granted to public authorities to accept or withdraw their financial support to associations if they have reasons to believe that the activities or the goals of the organization might challenge or violate one of these values.

These provisions are causing deep concern to a wide range of associations and to human rights organizations. Associations are considered the heartbeat of French democracy and [many of them rely on](#)

different levels of public funding. Many of these organizations, however, fear their activities may be impacted and weakened by the law. For example, associations who provide help, counsel, and support to undocumented individuals on French soil; or organizations working on addressing police brutality. Public authorities can very well deem the object of their association as a threat to public order and could lose funding or other forms of support. Regardless of the tangible fears that are raised, the very notion of subjecting freedom of association to the signing of a republican contract indicates a legislative inclination to impose a one-sided vision of what French Republican values and its adhesion should be.

Finally, there is a deep stigmatization implication to the *Anti-separatism Bill* when officially introduced by Prime Minister Jean Castex in December 2020, which claimed to target “*radical Islam*” as “[the enemy](#).” Although the provisions of the law avoid direct references to Islam or Islamic signs or practices, many of them are clearly directed against them (*i.e* the extension of the principle of neutrality requirements in the expression of beliefs, in reference to the *Baby Loup affair*, or the attempts to prohibit the wearing of religion signs for parents accompanying pupils on field trips – in reality targeting the hijāb – or the attempt to extent the scope of the *Law of 2010* prohibiting the concealment of the face by [prohibiting the wearing by minors](#) of “*signs or dress by which they ostensibly manifest their religious affiliation*” as well as “*signs or dress that convey the meaning of women’s inferiority to men*”).

While there is no denying that France, as well as many other countries, faces serious national security challenges related to the threat of ISIS (among other forms of terrorist threats), public authorities have cultivated confusion and blurred lines between the regular practice of Islam by Muslims and radicalism/terrorism. As a result, we have legislation that leads to a *de facto* discrimination against French Muslims who find their basic rights and freedoms being curtailed in the name of security and an extremely restrictive illiberal vision of *laïcité*.

4. Possible models of reconciliation

There are differences of opinion between France and the United States regarding the integration, assimilation, and socialization of minority communities, particularly Muslims. In some areas we will never find common ground, while in others we may find ways not only of understanding each other but learning how to reach a goal both countries purport to share: a well adjusted, culturally integrated Muslim population.

Policymakers in France have been responding to this issue, in my opinion, with fear and politics rather than well-understood models of social science and community building. If we can create an opportunity for policy makers from both countries to come together and honestly discuss ways to move forward, I believe both sides could learn much from each other and Muslim communities may see an easing of the pressure on them to choose between two identities they seek to share.

As someone intimately familiar with the experience of growing up Muslim in France, I can attest to the fact that French Muslims want to be French, consider themselves to be French, and have no issue in combining their religious identity with their French one, even if their compatriots think this is an impossibility. French Muslims want nothing more than to be able to contribute to French society in ways that benefit their neighbors, but to do so in ways that do not force them to leave behind who they are. Without such accommodation, French Muslims will continue to feel like strangers in their own land, and history is replete with examples of what happens to populations who are consistently marginalized. I believe we still have time to act.

I don't want to suggest that Americans tell the French government how to run their country, but as a French citizen born and raised, I see things in America that I wish I could see in my native country. I refuse to believe

that the level of integration and happiness I see in Muslim Americans is not possible in France as well.

5. Recommendations

A joint commission that meets on a regular basis, invites experts with a wide spectrum of approaches and ideas, interviews with Muslim community leaders, and an honest attempt at introspection could start a chain of events that breaks the current logjam and moves us beyond today's polarization. We need to move this issue away from political campaigns and into reasonable policymaking. Were such a commission to be formed, I would be honored to be a part of it.