

Komisyon sa mga Karapatan ng Pilipinas
Commission on Human Rights of the Philippines

**HUMAN RIGHTS ADVISORY
 CHR-A2013-002**

ON THE WEARING OF HEADSCARVES

INTRODUCTION

This advisory on the issue of the wearing of headscarves and veils in the form of "hijabs," "burkas," and "niqabs, in schools, universities, and other training or learning institutions, is issued under the authority of the Commission on Human Rights as national human rights institution to promote and protect human rights of all persons within Philippine jurisdiction as well as Filipinos here and abroad. In addition, this advisory is being issued by the CHR in its capacity as Gender Ombud under Republic Act No. 9710 or the Magna Carta of Women.

ISSUE AND DISCUSSION

The Philippines is a multi-cultural, multi-ethnic, and multi-faith society, which guarantees the freedom of religion and the right to freedom of expression as a State Policy in its Constitution. It is also a State Party to the core human rights treaties that touch on the question of religious practices, including clothing.

In the past year, there have been a number of incidents that demonstrate the varying points of view of institutions, both public and private, and individuals regarding the practice of wearing headscarves or *hijab* and of veils that cover the face as well as the top of the head, known as the *niqab*.

Because these incidents affect matters of education, the work place, security, and privacy, it is thus both relevant and timely for the Commission on Human Rights to comment on the human rights aspects of the question: *Can Women Muslims be prevented to wear hijabs and niqabs by the aforementioned institutions?*

BACKGROUND

The Commission on Human Rights received a letter from Honorable Edilwasif T. Baddiri, Commissioner-in-Charge of Legal Affairs of the National Commission on Muslim Filipinos which pertains to cases handled by what is referred to as Hijab Complaint Desk. The cases are alleged non-compliance with guidelines from various government agencies on the wearing of Hijab by Muslim Filipinos. The cases below are quoted from the document submitted to Commissioner Baddiri by Atty. Yaser H. Apion, Chief of the Legal Division and Hijab Complaint Desk of the NCMF Zambeanga Peninsula.

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Universidad de Zamboanga (UZ). After the demise of its Former President, Mr. Arturo Eustaquio, the university amended its policy regarding the wearing of the “niqab” or face veil. While the university previously allowed the wearing of niqab, subject to security and identification protocol, it now refuses to admit students wearing the veil. As a result, ten students were not able to enrol because of the current policy. After various dialogue with the UZ and the Commission on Higher Education (CHED) Region 9, the university agreed to allow the wearing of Niqab. CHED Region 9 failed to issue such Memorandum.

Brent Hospital and Colleges Inc. There is allegation that there is perception within Brent that the niqab or hijab or face veil is not consistent with proper hygiene and health care. For this reason, nursing students are not allowed to wear nijab.

Ciudad Medical Hospital. There is a policy based on initial investigation that medical workers, students, and trainees are not allowed to wear the nijab. Consultants and physicians are exempt from this policy.

National Bureau of Investigation. Two Muslim women filed complaints in the National Commission for Muslim Filipinos' Hijab Desk for having been forced to expose their ear during a photograph taking when they applied for NBI clearances, despite NBI's own Memorandum No. 28 Series of 2008 allowing Muslim women and nuns to keep their headscarves during photo shoot.

In August 2012, Pilar College in Zamboanga refused to allow women wearing the Muslim headscarf, or *hijab*, to enroll at their school

Civil Service Commission and the Department of Foreign Affairs both have no policy relevant to the issue of allowing Muslim women to keep their headscarves while taking examinations or having a photograph taken.

After consideration of the facts as presented by National Commission for Muslim Filipinos through Commissioner Baddiri, the issue to be addressed is this, *can Muslim women and girls be prevented to wear niqabs by the aforementioned institutions?*

DISCUSSION

The answer, from the human rights perspective, is that Muslim women and girls cannot be prevented by government or private institutions from wearing headscarves (hijabs) or face veils (niqabs) as it is part of their freedom of expression and freedom of religion which does not run counter to the national or private institutional needs of security and identification. A balance in practice can be found, indeed, must be found and implemented in order to protect the fundamental freedoms of culture and religion that enrich Philippine society and life.

First, Section 5, Article 3 of the 1987 Constitution states that “The free exercise of religious profession and worship, without discrimination or preference, shall forever be allowed...”

Second, the United Nations Covenant on Civil and Political Rights, of which the Philippines is a party, states that “Everyone shall have the right to freedom of...religion.....This right shall include freedom...to manifest his religion or belief in worship, observance practice...” The U.N. Human Rights committee interprets this to mean that “[t]he observance and practice of religion or belief may include not only ceremonial acts...but the wearing of distinctive clothing or headcoverings...” (United Nations, 145).



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Third, many government agencies have issued regulations that address the wearing of the hijab and burka. One example is Department of Education Order No. 53, entitled, "Strengthening the Protection of Religious Rights of Students," which specifically addresses the right of women Muslim students to wear the veil.

Fourth, is the Magna Carta for Women (Republic Act No. 9710). The law specifically mandates agencies such as the Department of Education and the Commission on Higher Education to "[e]nsure sensitivity of regular schools to particular Moro and indigenous practices such as...choice of clothing, including wearing of the hijab...."

The wearing of headscarves and face veils by Muslim women is an exercise of their faith, which is Islam, and the same is found in two verses of their Holy Book Q'uran, viz.:

1. "And say to the faithful women to lower their gazes, and to guard their private parts, and not to display their beauty except what is apparent of it, and to extend their headcoverings (khimars) ..." ¹
2. "O Prophet! Say to your wives and your daughters and the women of the faithful to draw their outer garments (jilbabs) close around them..." ²

In a number of cases decided by the Supreme Court, the latter has established the extent to which the freedom of religious exercise may be practiced, and the criteria by which it may be limited. The following, while they do not discuss the wearing of headscarves and face veils, nevertheless, point to the same issue of making manifest or making public one's religion or faith.

In *Victoriano vs. Elizalde Rope Workers Union*, the Supreme Court held that "it is only where it is unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger".³

Similarly in *Iglesia ni Cristo v. Court of Appeals and Board of Review Motion Pictures and Television*, the Supreme Court, in ruling over the issue of whether or not respondent Court of Appeals erred in affirming the "X" rating given to the series of programmes of the Iglesia Ni Cristo, it held that "[t]here is no showing whatsoever of the type of harm the tapes will bring about especially the gravity and imminence of the threatened harm."⁴

In *German v. Barangan*, the 'clear and present danger rule' was amply discussed in the Justices' Separate Opinions. In particular, Justice Ameurfina Melencio Herrera, quoting Chief Justice Enrique Fernando's treatise on the Bill of Rights, opined that "For freedom of religious expression, the Constitution assures generous immunity, unless it can be shown that there is a clear and present danger of a substantive evil which the State has the right to prevent."⁵

From the reading of the cases brought for examination of the NCMF and by the acknowledgment of the manner of dressing of Muslim women, the Commission concludes that guided by the clear and present danger test in the aforementioned

1 See, Surah an-Nur verse 31, at <<http://www.muhammad.com/dresslikethat.htm>>, visited on 03 September 2012.

2 Ibid.

3 See *Benjamin Victoriano v. Elizalde Workers' Union*, G.R. No. L-25246 September 12, 1974.

4 G.R. No. 119673. July 26, 1996

5 See *German v. Barangan*, G.R. No. L-68828 March 27, 1985.

cases, face veils and headscarves in the ordinary manner and daily circumstance by which they are worn, offend no public order or threaten public safety or security that will justify any instrumentality of the state or government agencies and private institutions for education, health care or employment for that matter, to impose restraint on such religious practice.

Second, the right to manifest one's religious beliefs is found in the provisions of the Civil Rights Convention ratified by the Philippines, viz.:

1. *United Nations Covenant on Civil and Political Rights*

“Everyone shall have the right to freedom of ...religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or in private, to manifest his religion or belief in worship, observance, practice...”⁶

“Freedom to manifest one's religion or beliefs maybe subject only to such limitations as are prescribed by law and necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.”⁷

The Human Rights Committee, in interpreting freedom to manifest religion, in General Comment No. 22, opined that “[t]he observance and practice of religion or belief may include not only ceremonial acts but also customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings...”

Applying the plain and textual meaning of the first quoted paragraph on the components of freedom of religion together with the standards that would warrant restraint on such freedom, and the succinct reference to the wearing of clothing and 'headcoverings', nijab and burka, doubtless, are customs pertaining to a religion that may not be breached or limited save by a law or when their observance impinge the rights of others.

As has been previously found in the application of the clear and present danger rule above, there appears to be no valid reason for the restrictions imposed on the women whose cases are subject to our examination.

Third, and finally, there are existing regulations issued by government agencies⁸ that address the wearing of hijab and burka, and for which government agencies hold statutory delegated police power⁹ to promote the general welfare of the public.

In particular, the Department of Education, by virtue of Republic Act No. 9155, has the authority to formulate national educational policies.¹⁰ This was exercised in the issuance by then Secretary Raul Roco of Department Order No. 53.

The Commission on Higher Education, under Republic Act No. 7722, has the authority to enable Muslim women to wear face veils or headscarves to school, as it has done in CHED Memorandum Order of August 26 2008 which directs

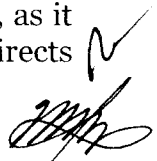
6 See para.1, Article 18, UNCCPR, ratified October 23, 1986.

7 Id., para.3

8 E.g. Department of Education Order No. 53 'Strengthening the Protection of Religious Rights of Students'. (October 29 2001).

9 Police power while primarily lodged with the legislative department, may be delegated by law. See *Gancayco v. City Government of Quezon City*, G.R. No. 177807 .

10 See Section 7, Republic Act No. 9155, available at <<http://www.chanrobles.com/republicactno9155.html>>. visited on September 03 2012.



institutions of higher education to extend respect and consideration on the wearing of hijabs.

In response to the incident of Pilar College, which claimed "Academic freedom" as its basis for banning the wearing of the headscarf, the National Council on Filipino Muslims (NCFM), said that while the school was right to claim it could exercise academic freedom, their policies 'should not run counter to existing laws and state policies.'

Considering therefore that these regulations and advisories are in place, it is ministerial for institutions within the jurisdiction of government agencies, to implement the respective policies.

RECOMMENDATIONS DE LEGE LATA

In addition to the aforementioned case law and government regulations that should settle the recurring issue of whether Muslim women may be allowed, as they should be allowed, to wear veils and headscarves, there is a law that sets out the clear standards on the subject. This is Republic Act No. 9710 or the Magna Carta of Women.

The Magna Carta of Women is the gender equality law of the country, and its principal objective is to eliminate discrimination against women, the legally binding commitment of the government by its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.¹¹ This means that it stipulates for rights that may be exercised by all women equally with their male counterpart, without being made subject to limitations or restrictions on account of their gender. It also means that these rights are found in laws and fleshed out in policies and guidelines by government agencies with statutory mandates.

The wearing of the headscarves and veils, the hijabs and burka, is one of the issues intended to be settled by the Magna Carta of Women.

In Section 28 on Recognition and Preservation of Cultural Identity and Integrity, it is stipulated that "the state shall adopt measures in consultation with the sectors concerned to protect their...manifestations of their culture and ways of life..."

In its Implementing Rules and Regulations, the law specifically mandated agencies such as the Department of Education, Commission on Higher Education, National Commission on Indigenous Peoples, National Commission on Muslim Filipinos, Bureau on Cultural Heritage -ARMM, and the Gender Ombud (Commission on Human Rights), to "[e]nsure sensitivity of regular schools to particular Moro and indigenous practices, such as fasting in the month of Ramadan, choice of clothing, including the wearing of hijab and availability of halal."¹²

Applying these two provisions of the Magna Carta, it is clear, unambiguous and unequivocal, that Muslim women have the right to wear hijabs and that the named national agencies have the corresponding mandate to ensure that such exercise of religious belief is not breached by any state actor or private individual except when warranted by the standards set out by law.

Therefore, as Gender Ombud, the Commission on Human Rights, calls the attention of the following and issues the following directives:

11 Ratified on August 05 1981.

12 See Section 35(D)(3).



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1. For the Presidential Human Rights Committee under the Office of the President to craft a proposed appropriate issuance that would underscore the policy of the government to respect the wearing of headscarves or nijabs by Muslim women;
2. For the Civil Service Commission to craft the appropriate issuance for compliance by all government agencies, to allow Muslim women to wear nijabs at work and to ensure that where there are security and identification concerns, that such processes are gender sensitive;
3. For the Commission on Higher Education to reiterate or reissue with directive for strict compliance by all institutions of higher learning, technical or vocational schools and similar training centers, to allow the wearing of hijabs;
4. For the Department of Labor and Employment to formulate policy guideline for implementation and compliance by private companies, on the mode of dressing and wearing of hijabs by female employees who are Muslim; and
5. For the Universidad de Zamboanga, the Brent Hospital and College, Ciudad Medical Hospital, to communicate with the Commission on Human Rights on developments made following the issuance of this advisory for the improvement of university or company policy regarding the Muslim students who wish to attend classes or go to work wearing hijabs.

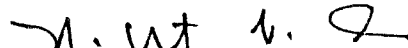
Issued this 8th day of August 2013, Quezon City, Philippines.



LORETTA ANN P. ROSALES
Chairperson



CECILIA RACHEL V. QUISUMBING
Commissioner



MA. VICTORIA V. CARDONA
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