

HUMAN RIGHTS FEATURES

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Heightened Intolerance

Swiss minaret ban should be a wake up call for Europe

The recent ban on minaret construction in Switzerland is a reflection of the religious intolerance and fear-inspired discrimination in that country. However, this intolerance and fear and the subsequent repressive measures that come in their wake are not restricted to Switzerland. Nor is such religious intolerance limited to discrimination against Muslim communities.

Rather, racism, religious intolerance, and infringement of minority rights typified by the Swiss ban have a long history in Europe. Although many today view Western Europe in particular as a bastion of human rights, with the terrible legacy of the Holocaust and other historical forms of religious persecution seen as remnants of the past, the ongoing intolerance toward minority religious groups is a cause of deep concern and requires ongoing and increased scrutiny.

Swiss ban on minaret construction

On 29 November 2009, the Swiss populace voted in a referendum to ban all minaret construction in Switzerland.¹ At the time of the vote, only four minarets existed in Switzerland and the construction of only two more was planned.² Given that minarets are simply spires connected or adjacent to mosques,³ their limited number and innocuous nature makes the ban even more disturbing. Indeed, though sometimes used as a site for a call to prayer, no minarets are even used for that purpose in Switzerland.⁴ Moreover, only 150 mosques exist throughout Switzerland,⁵ Muslims only constitute roughly 400,000 people out of a Swiss population of around 7.5 million people,⁶ and the vast majority of Swiss Muslims have relatively liberal dress

¹ See, e.g., Asma T. Uddin, "Swiss choose fear over freedom," *Washington Post*, 4 December 2009, available at: http://newsweek.washingtonpost.com/onfaith/panelists/asma_uddin/2009/12/swiss_choose_fear_over_freedom.html?hpid=talkbox1%3Ehttp://newsweek.washingtonpost.com/onfaith/panelists/asma_uddin/2009/12/swiss_choose_fear_over_freedom.html?hpid=talkbox1.

² Nick Cumming-Bruce & Steven Erlanger, "Swiss Ban Building of Minarets on Mosques," *The New York Times*, 29 November 2009, available at: http://www.nytimes.com/2009/11/30/world/europe/30swiss.html?_r=1&scp=3&sq=minarets&st=cse.

³ See, e.g., "Swiss vote to ban minaret construction," *CNN World*, 29 November 2009, available at: <http://www.cnn.com/2009/WORLD/europe/11/29/switzerland.minaret.referendum/index.html>.

⁴ See "Swiss Ban Building of Minarets on Mosques", *The New York Times*, op. cit.

⁵ Ibid.

⁶ Ibid.

codes and practices given that almost 90% of Muslims come from or have their roots in Kosovo and Turkey.⁷

Yet, an intensive campaign, led by the nationalist Swiss People's Party (SVP), which is the largest party in the Swiss parliament,⁸ attempted to play on people's fears of Islamic fundamentalism, claiming that the minarets were political symbols tied to a supposed increased Islamisation and Islamic power in Swiss society.⁹ These proponents of the ban used malicious campaign tactics, including infamous posters depicting a woman in a full head-to-toe burqa standing beside black minarets drawn to look like missiles.¹⁰

The campaign apparently proved "successful" in unearthing the fears of the majority of the Swiss population. In the end, 58% of the population and 22 out of 26 cantons approved the minaret ban.¹¹ Particularly given the limited influence and visibility of Islam and the Muslim community in Switzerland, the vote highlights a troublesome and apparently deep seated fear of Islamic fundamentalism that was seemingly easily manipulated for political ends. As a prominent Swiss author put the matter, "we Swiss sacrificed our good standing as a multicultural and open-minded society to ban the construction of minarets that no one intends to build in order to defend ourselves against an Islam that has never existed in Switzerland."¹²

Violation of human rights law and norms

The ban on minarets violates the obligations of Switzerland to promote religious freedom and prohibit religious discrimination under the European Convention on Human Rights (ECHR) and the International Convention on Civil and Political Rights (ICCPR).

With respect to religious freedom, Article 18 of the ICCPR and Article 9 of the ECHR guarantee freedom of religion, including the right to determine the content of one's religion and to "manifest" one's religion.¹³ As Human Rights Watch has stated with respect to the latter, "the right to manifest one's religion in public, through worship, teaching, practice, and observance, is an integral part of the right to religious freedom, guaranteed by international human rights treaties."¹⁴

⁷ Ibid.

⁸ See "Swiss voters back ban on minarets," BBC News, 29 November 2009, available at: <http://news.bbc.co.uk/2/hi/8385069.stm>.

⁹ Ibid.

¹⁰ "Swiss Ban Building of Minarets on Mosques", *The New York Times*, op. cit.

¹¹ Ibid.

¹² Peter Stamm, "Switzerland's Invisible Minarets," *The New York Times*, 4 December 2009, available at: http://www.nytimes.com/2009/12/05/opinion/05stamm.html?_r=2.

¹³ International Covenant on Civil and Political Rights (ICCPR), U.N. Doc. A/6316, art. 18, 16 December 1966, available at: <http://www2.ohchr.org/english/law/ccpr.htm>; Convention for the Protection of Human Rights and Fundamental Freedoms (also called the 'European Convention on Human Rights [ECHR]'), Council of Europe, art. 9, 4 November 1950, available at: <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>.

¹⁴ See "Switzerland: Minaret Ban Violates Rights," Human Rights Watch, 4 December 2009, available at: <http://www.hrw.org/en/news/2009/12/04/switzerland-minaret-ban-violates-rights>.

The ban on minarets violates both the right to determine the content of one's religion and the right to manifest one's religion. Regarding the former, while many view minarets as a reminder of prayer and a religious symbol,¹⁵ the proponents of the ban, and the referendum itself, infringe on this determination of the content of Islamic religious belief by claiming that minarets do not have any religious significance.¹⁶ Similarly, minarets have been described as “an integral part of the design of the mosque ... symbols of the connection between heaven and earth ... and a reflection of mastery in architecture, simplicity, art, spirituality and beauty.”¹⁷ Thus, given that minarets serve as a public expression and symbol of Muslim religious practice, the ban also violates the right to manifest one's religion.¹⁸

Similarly with respect to discrimination, Article 2 of the ICCPR, Article 14 of the ECHR, and Protocol 12 to the ECHR protect against religious discrimination.¹⁹ While many believe that minarets are analogous to church bell towers²⁰, and even that minarets were appropriated from Christian bell towers²¹, the Swiss law only banned minarets. Singling out minarets as religious objects to ban, while leaving untouched church spires or other religious constructions, without any legitimate justification discriminates against Muslim communities in violation of these human rights treaties.²²

Indeed, the Swiss ban has been condemned by the UN High Commissioner for Human Rights²³, the UN Special Rapporteur on freedom of religion or belief²⁴, Human Rights Watch and Amnesty International.²⁵ Earlier, the UN Human Rights Committee had noted and expressed

¹⁵ See, e.g., Zaher Sahloul, “The politics of minarets – here and over there,” *Chicago Tribune*, 28 December 2009, available at: <http://www.chicagotribune.com/news/opinion/chi-oped1228minaretsdec28,0,3765718.story>.

¹⁶ See, e.g., “Switzerland: Banning the Construction of Minarets Would Violate International Human Rights Law,” Amnesty International, 21 Oct. 2009, available at: <http://www.amnesty.org/en/library/asset/EUR43/001/2009/en/9e15a196-4503-4ba2-80f3-50f1db93751a/eur430012009en.html>.

¹⁷ “The politics of minarets – here and over there”, *Chicago Tribune*, op. cit.

¹⁸ See, e.g., “Switzerland: Minaret Ban Violates Rights,” Human Rights Watch, op. cit.

¹⁹ ICCPR, art. 2; ECHR, art. 14; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, art. 14, available at: <http://www.hrw.org/en/news/2009/12/22/european-court-landmark-ruling-racial-and-religious-exclusion>.

²⁰ “The politics of minarets – here and over there”, *Chicago Tribune*, op. cit.

²¹ Tarek Kahlaoui, “Misunderstanding the minaret,” *Arab News*, 12 Dec. 2009, available at: <http://www.arabnews.com/?page=7§ion=0&article=129448&d=12&m=12&y=2009>.

²² See, e.g., “Switzerland: Banning the Construction of Minarets Would Violate International Human Rights Law,” Amnesty International, op. cit.

²³ “Swiss law banning minarets ‘clearly discriminatory’: UN human rights chief”, Office of the United Nations High Commissioner for Human Rights, 1 December 2009, at <http://www2.ohchr.org/english/press/newsFrameset-2.htm>.

²⁴ “Switzerland: UN expert on religious freedom regrets outcome of vote to ban construction of minarets”, Office of the High Commissioner for Human Rights, 30 November 2009, at <http://www2.ohchr.org/english/press/newsFrameset-2.htm>.

²⁵ “Switzerland: Minaret Ban Violates Rights,” *Human Rights Watch*, op. cit.; Claudio Cordone, “Comment: The Call from the Swiss Minaret,” Amnesty International, 2 December 2009, available at: <http://www.amnesty.org/en/news-and-updates/news/the-call-from-the-swiss-minaret-20091202>; “Switzerland Minaret Ban Would Breach Freedom of Religion Obligations,” Amnesty International, 25 November 2009, available at: <http://www.amnesty.org/en/for-media/press-releases/switzerland-minaret-ban-would-breach-freedom-religion-obligations-200911>.

concern about the inflammatory advertising campaign that had accompanied the referendum initiative.²⁶

As Amnesty International's deputy programme director for Europe and Central Asia, David Diaz-Jorgeix, described: "that Switzerland, a country with a long tradition of religious tolerance and the provision of refuge to the persecuted, should have accepted such a grotesquely discriminatory proposal is shocking."²⁷ Even Switzerland's Federal Council, a majority of Swiss Parliament,²⁸ and all major parties other than the SVP opposed the minaret ban²⁹, while the government ultimately accepted the referendum's result as binding.³⁰

Ongoing religious intolerance in Europe

Muslims continue to face significant hostility and discrimination across Europe. According to the 2009 European Union Minorities and Discrimination Survey, one in three European Muslim respondents claim to have faced discrimination in the past year, one in four had been stopped by the police (often times on more than one occasion) in the last year, and one in 10 had faced racially motivated assault, threat, or serious harassment in the last year.³¹ Indeed, reports of desecration of mosques and burial sites in various European countries are not an uncommon occurrence. As but one recent example, vandals desecrated a mosque in Castres, France with a swastika, pigs' feet, and slogans such as Hitler's "Sieg Heil", "France to the French", and "White Power."³² Religious discrimination also takes on an ethnic dimension when, for example, people of Arab origin are conflated with Muslims, as is often done in Europe.³³

Intolerance and discrimination across Europe are not restricted to Muslims. It is also faced by the Roma, Jewish, and other minority communities. The Council of Europe's Commissioner for Human Rights, for instance, has recently observed that "racism, xenophobia, [I]slamophobia, anti-Gypsism, anti-Semitism, homophobia and other phobias" remain ongoing in Europe, with minorities facing "hate speech, violence, and systematic discrimination,"³⁴ as well as racial and

²⁶ Concluding Observations of the United Nations Human Rights Committee (following its consideration of the third periodic report submitted by Switzerland under the International Covenant on Civil and Political Rights - CCPR/C/CHE/3), 97th session, 3 November 2009, Document no. CCPR/C/CHE/CO/3.

²⁷ "Swiss Ban Building of Minarets on Mosques", *The New York Times*, op. cit.

²⁸ See, e.g., "Swiss vote to ban minaret construction," *CNN International*, op. cit.

²⁹ "Proposed Minaret Ban Divides Switzerland," *Forbes*, 3 December 2009, available at: <http://www.forbes.com/2009/12/02/switzerland-minarets-muslim-business-oxford-analytica.html>.

³⁰ "Swiss voters back ban on Minarets," BBC News, op. cit.

³¹ "Data in Focus Report: Muslims," *European Union Minorities and Discrimination Survey (EU-MIDIS) 2009*, European Union Agency for Fundamental Rights (FRA), available at: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf.

³² See, e.g., "Swastika, pig feet desecrate French mosque," *New Zealand Herald*, 14 December 2009, available at http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10615406.

³³ Mr. Githu Muigai, "Intolerance and discrimination against Arabs and Muslims," Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 14 October 2009, available at: <http://www2.ohchr.org/english/issues/racism/rapporteur/docs/SpeechBrussels141009.pdf>.

³⁴ Thomas Hammarberg, "Multiculturalism is an important dimension of our national identities," Commissioner for Human Rights, Council of Europe, 30 November 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/091130_en.asp.

ethnic profiling for searches by police forces.³⁵ The Commissioner has particularly noted increased marginalisation and violent attacks directed at Roma populations,³⁶ as well as discrimination against Roma in such areas as evictions, police brutality, and hate speech.³⁷ Indeed, the same European Union Survey noted above indicated that an astonishing 47% of Roma respondents had faced discrimination in the past year, along with 41% of Sub-Saharan African respondents and 33% of North African respondents.³⁸

As a few country-wise examples, the Council of Europe Commissioner for Human Rights has specifically noted discrimination against members of the Roma population in Finland related to private housing market access, employment, public premises access, education, and detention;³⁹ discrimination against Jewish, Armenian, and Greek Orthodox minority populations in Turkey with respect to accessing bank accounts, owning property, accepting gifts of land or buildings, or otherwise having legal personality;⁴⁰ and discrimination against Roma/Gypsy populations in Bulgaria with respect to access to basic services, living conditions, employment, and religious freedom.⁴¹ Similarly, the Anti-Defamation League continues to report numerous anti-Semitic incidents across the countries of Europe, including assaults, vandalism, death threats, makeshift bombings, and the burning and desecration of synagogues, Holocaust memorials, and other Jewish buildings.⁴²

Cycle of repression and radicalisation

Those advocating actions such as the ban on minarets justify these measures as being necessary to stem an imagined tide of Islamic radicalisation and infiltration into European society. In fact such efforts only create the potential for further repression against religious minorities, increased feelings of marginalisation amongst those repressed communities, and in turn, increased support for extremist practices by fringe groups.

With respect to repression, the campaign for the referendum in Switzerland itself led to increased attacks on Muslims and Islamic structures. As the President of Zurich's Association of Muslim

³⁵ Thomas Hammarberg, "Stop and searches on ethnic or religious grounds are not effective," Commissioner for Human Rights, Council of Europe, 20 July 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/090720_en.asp.

³⁶ Thomas Hammarberg, "Multiculturalism is an important dimension of our national identities", op. cit.

³⁷ Thomas Hammarberg, "Anti-Gypsyism continues to be a major human rights problem in Europe," Commissioner for Human Rights, Council of Europe, 27 April 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/090427_en.asp.

³⁸ "Main Results Report," *European Union Minorities and Discrimination Survey (EU-MIDIS) 2009*, European Union Agency for Fundamental Rights (FRA), available at: http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en_.pdf.

³⁹ Report by Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, on his visit to Finland, 19 September 2001, available at <https://wcd.coe.int/ViewDoc.jsp?id=980711&>.

⁴⁰ Report by Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, on his visit to Turkey, 12 December 2001, available at <https://wcd.coe.int/ViewDoc.jsp?id=980727&Site=COE>.

⁴¹ Report by Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, on his visit to Bulgaria, 10 April 2002, available at <https://wcd.coe.int/ViewDoc.jsp?id=980807&Site=COE>.

⁴² "Global Anti-Semitism: Selected Incidents Around the World in 2009," Anti-Defamation League, available at: http://www.adl.org/Anti_semitism/anti-semitism_global_incidents_2009.asp.

Organisations Tamir Hadjipolu lamented, “Islamaphobia has increased intensively,” with the minarets campaign bringing about attacks on mosques previously unseen in Switzerland.⁴³

Moreover, the “success” of repressive campaigns like the Swiss ban has encouraged further repression. As Human Rights Watch has noted, “the vote has already galvanized far-right parties across Europe. The Danish People's Party, Vlaams Belang in Belgium, Italian Northern League, and the Dutch Party for Freedom immediately praised the vote and pledged to pursue similar initiatives in their own countries.”⁴⁴ Similarly in France, it was not only the right wing National Front that praised the Swiss minaret ban and called for a similar ban in France, but also French President Nicolas Sarkozy who sympathised with the ban and the underlying feelings supposedly expressed by those who voted for it. The head of Sarkozy’s political coalition questioned the need for French Muslims to have minarets on their mosques.⁴⁵ These comments came amidst a government initiated debate on national identity in the country that is said to have increased anti-Muslim sentiments and incidents in that country.⁴⁶

Initiatives like the Swiss referendum only further alienate and isolate, rather than integrate, minority religious communities. As the head of the Coordination of Islamic Organizations in Switzerland Farhad Afshar noted, “Most painful for us is not the minaret ban, but the symbol sent by this vote ... Muslims do not feel accepted as a religious community.”⁴⁷

In turn, this increased repression and marginalisation is likely to lead to more, rather than less, support for more radical and extremist forms of religious practices and resistance to dominant cultural norms. As an attorney working with The Becket Fund for Religious Liberty responded to the Swiss ban: “when faith and the faithful are denied full participation in civic life, they don't fade from it: instead, they seek alternative means to influence it. At its best, this takes the form of faith-inspired peaceful protest. At its worst, it takes the form of faith-inspired terror.”⁴⁸

The Swiss ban represents the most recent marker in a long history of religious intolerance which Europe believed it had overcome. As a self-proclaimed upholder of pluralistic tolerance and co-existence, Europe must now ask itself whether it is still committed to those values.

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⁴³ “Swiss voters back ban on Minarets,” BBC News, op. cit.

⁴⁴ “Switzerland: Minaret Ban Violates Rights,” *Human Rights Watch*, op. cit.

⁴⁵ Edward Cody, “Sarkozy delivers a mixed message to France’s Muslim immigrants,” *Washington Post*, 9 December 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/08/AR2009120802018.html>.

⁴⁶ See, e.g., Edward Cody, “Tensions grow for Muslims as French debate national identity,” *Washington Post*, 19 December 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/18/AR2009121804138.html>.

⁴⁷ “Swiss Ban Building of Minarets on Mosques,” *The New York Times*, op. cit.

⁴⁸ Asma T. Uddin, “Swiss Choose Fear Over Freedom,” *Washington Post*, 4 December 2009, available at: http://newsweek.washingtonpost.com/onfaith/panelists/asma_uddin/2009/12/swiss_choose_fear_over_freedom.html?hpid=talkbox1%3Ehttp://newsweek.washingtonpost.com/onfaith/panelists/asma_uddin/2009/12/swiss_choose_fear_over_freedom.html?hpid=talkbox1.