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Piercing the Veil of State Laicity in “La Belle Province”: How Quebec’s Religious Symbols Ban Violates Article 18 of the International Covenant on Civil and Political Rights

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PIERCING THE VEIL OF STATE LAICITY IN “LA BELLE PROVINCE”: HOW QUÉBEC’S RELIGIOUS SYMBOLS BAN VIOLATES ARTICLE 18 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

DANIEL PATRICK ATCHUE*

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I. INTRODUCTION

On June 16, 2019, the National Assembly of Québec – the province's¹ legislative body – passed “An Act Respecting the Laicity of the State,” otherwise known as Bill 21.² The law, which passed by an overwhelming margin,³ bars certain public-sector employees, such as teachers, prosecutors, and police officers, from wearing religious symbols in the exercise of their job functions.⁴ François Legault, Québec's premier,⁵ claims that the law is necessary to ensure the separation between religion and state.⁶ Proponents of Bill 21 further

1. See John George Bourinot, CANADA UNDER BRITISH RULE, 1760–1900 216–17 (1900) (describing how Québec became a province of Canada in 1867 when Canada became a federal state).

2. An Act Respecting the Laicity of the State, S.Q. 2019, c 12 (Can.) [hereinafter Bill 21].

3. See Dan Bilefsky, *Quebec Bans Religious Symbols in Some Public Sector Jobs*, N.Y. TIMES (June 17, 2019), <https://www.nytimes.com/2019/06/17/world/canada/quebec-religious-symbols-secularism-bill.html> [hereinafter *Quebec Bans Religious Symbols*] (reporting that Bill 21 passed 73-35).

4. Bill 21, *supra* note 2, § 6, Schedule II.

5. See Norman J. Ruff, *Premier*, THE CANADIAN ENCYCLOPEDIA, <https://www.thecanadianencyclopedia.ca/en/article/premier> (last updated Sept. 30, 2014) (defining “premier” as the chief minister of a provincial government).

6. See *Quebec Bans Religious Symbols*, *supra* note 3 (reporting that Québec is “an abidingly secular province” and that, according to Legault, the law enjoys

argue that the law protects Québec's liberal values, including respect for women, and reinforces the State's religious neutrality.⁷ Critics counter that Bill 21 "runs roughshod over the freedom of religion,"⁸ is discriminatory against religious minorities,⁹ and effectively amounts to thinly veiled Islamophobia cloaked in the benign veneer of secularism.¹⁰

Several groups have mounted legal challenges to Bill 21, arguing that the law violates Canada's constitution.¹¹ In December 2020, the Québec Superior Court concluded a trial over the constitutionality of the religious symbols ban.¹² On April 20, 2021, Justice Marc-André

support from a majority of Québécois).

7. See *id.* (quoting a supporter of the bill who emigrated from Tunisia and believes in the importance of ensuring that those representing the state in positions of authority appear to be neutral).

8. See *id.* (quoting critics who say that the legislation "runs roughshod over the freedom of religion and expression at the heart of Canada's model of multiculturalism").

9. See, e.g., Tom Mulcair, Opinion, *The National Unity Question That Most of Canada is Ignoring*, MACLEAN'S (Dec. 29, 2020), <https://www.macleans.ca/opinion/the-national-unity-question-that-most-of-canada-is-ignoring> (asserting that Bill 21 openly discriminates against religious minorities in general and Muslim women in particular); Michael Coren, Opinion, *Quebec's Proposed Secularism Law is Repugnant. Here Are Six Reasons Why*, MACLEAN'S (Mar. 29, 2019), <https://www.macleans.ca/opinion/quebecs-proposed-secularism-law-is-repugnant-here-are-six-reasons-why> (arguing that the law will primarily affect orthodox Jews, Sikhs, and especially Muslims).

10. See e.g., Nora Loreto, Opinion, *A Quebec Bill to Ban Some from Wearing 'Religious Symbols' is Fueled by Islamophobia*, WASH. POST (June 13, 2019), <https://www.washingtonpost.com/opinions/2019/06/13/bill-ban-religious-symbols-quebec-is-fueled-by-islamophobia> (observing that although Bill 21 does not explicitly target Muslim women, the law's impact will be borne by them the most); *Quebec Bans Religious Symbols*, *supra* note 3 (citing critics who argue that Bill 21 threatens to foment Islamophobia).

11. See Jonathan Montpetit, *How Lawyers are Trying to Overturn Quebec's Religious Symbols Ban*, CBC NEWS (Dec. 12, 2019, 4:00 AM), <https://www.cbc.ca/news/canada/montreal/bill-21-quebec-court-challenges-1.5393074> [hereinafter *Quebec's Religious Symbols Ban*] (discussing the legal arguments that have been made by the groups challenging Bill 21's constitutionality); see also Usaid Siddiqui, *Court to Hear Challenge to 'Religious Symbols' Law*, AL JAZEERA (Nov. 1, 2020), <https://www.aljazeera.com/news/2020/11/1/canada-bill-21> (reporting that the challengers say the law is discriminatory and creates a "second-class citizenship" in Canada).

12. See Jonathan Montpetit, *As Trial Over Quebec Religious Symbols Ban*

Blanchard delivered a decision that upheld the vast majority of the law but declared that the religious symbols ban cannot be enforced against English school boards or members of the National Assembly.¹³ Both the provincial government and organizations opposed to Bill 21 intend to appeal the decision for two very different reasons: the former to challenge the exemptions, and the latter to continue the effort to overturn the law on constitutional grounds.¹⁴ The legal case against Bill 21 is complicated by the fact that, while passing the law, the National Assembly invoked the “notwithstanding clause” of the Canadian Charter of Rights and Freedoms (alternatively, “the Charter” or “Canadian Charter”).¹⁵ The “notwithstanding clause” permits the Canadian parliament or provincial legislatures to pass legislation that overrides certain fundamental rights contained in the Charter, including the freedom of religion.¹⁶ In the case of Bill 21, the National Assembly provided that

Wraps Up, Minority Rights Hang in the Balance, CBC NEWS (Dec. 21, 2020, 4:00 AM), <https://www.cbc.ca/news/canada/montreal/bill-21-laicity-democracy-1.5848103> [hereinafter *Minority Rights Hang in the Balance*] (noting how the trial involved twenty-nine days of hearings and combined several legal challenges that were brought by civil rights advocates, the English Montreal School Board, and a teachers' union).

13. See *Hak v. Attorney General of Quebec*, 2021 CarswellQue 5088 paras. 1125–1138 (Can. Que. QCCS) (WL) (upholding the constitutionality of Bill 21 while concluding that members of the National Assembly cannot be forced to leave their faces uncovered and the religious symbols ban cannot be imposed on English school boards, which are protected by minority-language education rights under the Canadian Charter of Rights and Freedoms).

14. See Allison Lampert, *Quebec to Appeal Court Ruling on Disputed Religious Symbols Law*, REUTERS (Apr. 20, 2021), <https://www.reuters.com/world/americas/canadian-court-calls-part-quebec-law-religious-symbols-invalid-2021-04-20> (reporting on Québec's commitment to appeal the decision); see also Brian Dryden, *Bill 21 Ruling Headed to Quebec Court of Appeal*, CATHOLIC REGISTER (May 14, 2021), <https://www.catholicregister.org/item/33090-bill-21-ruling-headed-to-quebec-court-of-appeal> (noting how both sides of the lawsuit intend to appeal the case to the Quebec Court of Appeal for two divergent reasons).

15. See *Quebec Bans Religious Symbols*, *supra* note 3 (explaining how the government invoked the “notwithstanding clause” to insulate Bill 21 from potential court action); see also Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c 11 § 33(1) (U.K.) [hereinafter Canadian Charter of Rights and Freedoms] (codifying the “notwithstanding clause”).

16. See Laurence Brosseau & Marc-André Roy, *Background Paper: The*

the law shall have effect “notwithstanding sections 2 and 7 to 15 of the [Canadian Charter].”¹⁷ Thus, by invoking the “notwithstanding clause” in the language of Bill 21, the National Assembly rendered the Canadian Charter’s guarantee of religious freedom, codified in Section 2, inoperable for the purposes of that legislation.¹⁸ Accordingly, the parties challenging Bill 21’s constitutionality are precluded from arguing that the religious symbols ban contravenes the Charter’s religious freedom guarantee as grounds for striking down the law.¹⁹

Although the National Assembly’s invocation of the “notwithstanding clause” provides Bill 21 with a legal shield in domestic courts, the law may be subject to more acute challenges under international law. Before Bill 21 was passed in the National Assembly, three legal experts working for the United Nations Human Rights Council sent a letter to the Canadian mission in Geneva expressing concern that the proposed legislation threatened certain freedoms protected by the International Covenant on Civil and Political Rights (ICCPR or “the Covenant”), to which Canada is a state party.²⁰ The authors of the letter specifically warned that if Bill 21 became law, it could violate the freedom of religion as well as

Notwithstanding Clause of the Charter, Library of Parliament (May 7, 2018), available at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201817E (explaining how section 33(1) of the Charter permits provincial legislatures to pass legislation overriding Section 2 of the Charter, which protects religious freedom).

17. Bill 21, *supra* note 2, § 34.

18. See Brosseau & Roy, *supra* note 16 (describing how invoking the “notwithstanding clause” in a piece of legislation renders the relevant Charter right(s) “not entrenched” for the purposes of that legislation).

19. See *Quebec’s Religious Symbols Ban*, *supra* note 11 (explaining how the parties challenging Bill 21’s constitutionality cannot appeal to large sections of the Canadian Charter).

20. See Philip Authier, *Bill 21: UN Human Rights Experts Express Concern About Quebec Secularism Legislation*, MONTREAL GAZETTE (May 23, 2019), <https://montrealgazette.com/news/quebec/bill-21-un-human-rights-experts-express-concern-about-quebec-secularism-legislation> [hereinafter *UN Human Rights Experts Express Concern*] (reporting that the authors of the letter noted that the bill does not specify why the religious symbols ban “is necessary and proportionate to protect the security, order, public health and morality or fundamental rights and freedoms of others”).

several equality guarantees contained in the ICCPR.²¹ Although the letter carries no legal weight, it demonstrates that even if the domestic legal challenge to Bill 21 fails, the law's detractors may seek recourse under international law.²²

The ICCPR was adopted by the United Nations General Assembly in 1966 and entered into force in 1976.²³ It is an international human rights treaty that enumerates a series of substantive rights that define the basic rights and fundamental freedoms of all persons.²⁴ Article 18 of the ICCPR specifically guarantees freedom of thought, conscience, and religion, including the freedom to manifest one's religion in worship, practice, and teaching.²⁵ While the freedoms of thought, conscience, and religion are inviolable, the freedom to manifest one's religion may be subject to limitations.²⁶ However, such limitations must be "prescribed by law and . . . necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others."²⁷ The permissible limitations are exhaustive, "must be directly related and proportionate to the specific need on which they are predicated, and may not be imposed for discriminatory purposes or applied in a discriminatory manner."²⁸

21. See Jonathan Montpetit, *UN Human Rights Observers Warn Quebec About Secularism Bill*, CBC NEWS (May 22, 2019, 3:53 PM), <https://www.cbc.ca/news/canada/montreal/bill-21-united-nations-human-rights-concerns-1.5145344> [hereinafter *UN Human Rights Observers Warn Quebec*] (describing how the letter reminds the Canadian government that it is bound by the ICCPR, as is Québec).

22. See *id.* (emphasizing that although the letter carries no weight, it could provide ammunition to groups who seek to challenge Bill 21 before the HRC).

23. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

24. See U.N. Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 15, Civil and Political Rights: The Human Rights Committee*, 2, May 2005, available at <https://www.refworld.org/docid/4794773c0.html> [hereinafter *Fact Sheet No. 15*] (noting that each of the United Nations human rights treaties, including the ICCPR, follow a similar pattern of setting out a series of substantive rights in what is known as the "normative" party of a treaty).

25. ICCPR, *supra* note 23, art. 18(1).

26. *Id.* art. 18(3) (providing limitations on the freedom to manifest one's religion or beliefs but excluding language limiting the freedom of thought, conscience, and religion).

27. *Id.*

28. Human Rights Comm., General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), ¶ 8, U.N. Doc.

Each state party to the ICCPR is required “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the [ICCPR], without distinction of any kind.”²⁹ If a state party fails to do so, then persons whose rights or freedoms have been violated must receive an effective, enforceable remedy.³⁰ The Human Rights Committee (HRC) is the quasi-adjudicative body that monitors state parties’ adherence to the terms of the ICCPR.³¹ The HRC has jurisdiction to receive and consider claims by a state party that another state party is failing to fulfill its obligations under the Covenant.³² State parties to the First Optional Protocol to the ICCPR also recognize the HRC’s competence “to receive and consider communications from individuals subject to [their] jurisdiction who claim to be victims of a violation . . . of any of the rights set forth in the [ICCPR].”³³ The recourse provided to individuals claiming to be victims of violations of the ICCPR extends to all parts of federal States without any limitations or exceptions.³⁴ After the HRC considers the individual’s complaint and the state party’s explanation, the HRC forwards its “views” to the state party and to the individual, which effectively serves as a judgment.³⁵ If the HRC finds that the state party is in violation of the ICCPR, then the state party is obligated to remedy the violation pursuant to Article 2(3) of

CCPRIC/21/Rev.1/Add.4 (July 30, 1993) [hereinafter General Comment No. 22].

29. ICCPR, *supra* note 23, art. 2(1).

30. *See id.* art. 2(3) (providing that each state party must ensure an effective remedy for those whose rights have been violated and that such remedy must be enforced by the competent authorities provided for by the legal system of the state party).

31. *See* Fact Sheet No. 15, *supra* note 24, at 14–15 (articulating the purpose and functions of the HRC); *see also* Gehan Gunatilleke, Criteria and Constraints: The Human Rights Committee’s Test on Limiting the Freedom of Religion or Belief, 15 REL. & HUM. RTS. 20, 30 (2020) (describing how the HRC performs a “quasi-adjudicative” function as part of its role in monitoring implementation of the ICCPR by state parties).

32. *See* ICCPR, *supra* note 23, art. 41 (outlining the procedure by which a state party may claim that another state party is failing to fulfill its obligations under the ICCPR).

33. G.A. Res. 2200A (XXI) Optional Protocol to the International Covenant on Civil and Political Rights, art. 1 (Dec. 19, 1966) [hereinafter First Optional Protocol].

34. *Id.* art. 10.

35. *See id.* art. 5 (describing the method by which the HRC adjudicates disputes and communicates its conclusions).

the Covenant.³⁶

This Comment argues that under Article 18 of the ICCPR, Canada, as a signatory to both the ICCPR and the First Optional Protocol, is required to ensure that all its citizens enjoy the freedom to publicly manifest their religion, subject only to the limitations set forth in Article 18(3).³⁷ Bill 21, which prohibits certain public-sector employees from wearing religious symbols during the exercise of their functions,³⁸ limits the freedom to manifest religion. Québec justified the law by asserting that it is necessary to protect State laicity, or secularism.³⁹ Because the law limits the freedom to manifest religion and there is no evidence that the limitation is necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others, it is incompatible with Article 18 of the ICCPR.⁴⁰ Accordingly, since state parties to the ICCPR must ensure to all individuals within their territory the rights recognized in the treaty,⁴¹ and the provisions of the ICCPR extend to all parts of federal States without limitations or exceptions,⁴² Canada is violating its obligations under the ICCPR by virtue of Québec's implementation of Bill 21.

Part II of this Comment provides an overview of Bill 21, the potential impacts of the religious symbols ban on Québec's population, the ICCPR in general and Article 18 in particular, the

36. See Fact Sheet No. 15, *supra* note 24, at 27.

37. See Department of Justice, *International Human Rights Treaties to Which Canada is a Party*, <https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/tcp.html> (last updated July 30, 2019) [hereinafter *Canadian Human Rights Treaties*] (documenting Canada's adherence to the ICCPR and First Optional Protocol since 1976, when it acceded to both).

38. See Bill 21, *supra* note 2, § 6 (cross-referencing to Schedule II of the law, which lists the persons subject to the prohibition on wearing religious symbols).

39. *Id.* at preamble ("A[s] it is important that the paramountcy of State laicity be enshrined in Québec's legal order . . .").

40. See ICCPR, *supra* note 23, art. 18(3) (permitting limitations on the freedom to manifest religion if doing so is necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others).

41. *Id.* art. 2(1) ("Each State Party to the present Covenant undertakes to . . . ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant . . .").

42. *Id.* art. 50 ("The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.").

powers and responsibilities of the HRC, and a sample of the HRC's Article 18 jurisprudence.⁴³ Part III of this Comment assesses the provisions of Bill 21 in light of the ICCPR's religious freedom protections.⁴⁴ Part III also assesses the legality of Bill 21's religious symbols ban in relation to past judgments by the HRC in matters concerning limitations on the manifestation of religion.⁴⁵ Part IV recommends that Québec should cease implementation of its religious symbols ban, that the federal government of Canada should use all constitutional measures to ensure its compliance with the ICCPR, and that the HRC should clarify in what context, if ever, secularism can serve as a permissible justification for limitations on the freedom to manifest religion.⁴⁶

II. BACKGROUND

Bill 21, which prohibits certain public sector employees from wearing religious symbols during the exercise of their job functions, limits the freedom of Québécois, particularly religious minorities, to exercise their right to publicly manifest their religion in accordance with the ICCPR. Part A of this Section provides a brief overview of Bill 21. Part B explores the potential impacts of the law's religious symbols ban on Québec's population. Part C introduces the ICCPR, including Canada's obligations under the ICCPR, the ICCPR's scope, and the religious freedom guarantees provided under Article 18. Lastly, Part D offers a summary of the HRC's Article 18 jurisprudence.

A. AN OVERVIEW OF QUÉBEC'S BILL 21

On Sunday, June 16, 2019, the Québec National Assembly passed Bill 21, entitled "An Act Respecting the Laicity of the State."⁴⁷ The preamble to Bill 21 emphasizes the unique characteristics of Québec that have led it to develop an attachment to State laicity.⁴⁸ The

43. See discussion *infra* Part II.

44. See discussion *infra* Part III.A.

45. See discussion *infra* Part III.B.

46. See discussion *infra* Part IV.

47. Bill 21, *supra* note 2.

48. *Id.* at preamble; see also Blandine Chelini-Pont, *Is Laïcité the Civil Religion of France?*, 41 GEO. WASH. INT'L L. REV. 765, 769 (2010) (defining State

preamble continues by stressing the importance of enshrining the paramountcy of State laicity in Québec's legal order, noting the contribution of State laicity to the "fulfilment of the magistrature's duty of impartiality," and asserting that "State laicity" should be "affirmed in a manner that ensures a balance between the collective rights of the Québec nation and human rights and freedoms."⁴⁹

Section 1 of Bill 21 affirms that Québec is a lay State, meaning a state in which spiritual authority is detached from the state and its institutions.⁵⁰ Section 2 provides that State laicity is based on: (1) the separation of State and religions; (2) the religious neutrality of the State; (3) the equality of all citizens; and (4) freedom of conscience and freedom of religion.⁵¹ Section 3 provides that State laicity requires that parliamentary, government, and judicial institutions comply with the principles enumerated in Section 2.⁵² Section 4 stipulates that State laicity and the duty of religious neutrality requires compliance with the prohibition on wearing religious symbols.⁵³ Section 6 then explicitly states that the persons listed in Schedule II, such as teachers, prosecutors, and police officers, are prohibited from wearing religious symbols in the exercise of their job functions.⁵⁴

B. POTENTIAL IMPACTS OF BILL 21 ON QUÉBEC'S POPULATION

Although Bill 21 passed Québec's National Assembly by an overwhelming vote margin⁵⁵ and enjoys broad support among the voting public,⁵⁶ the law has elicited substantial controversy.⁵⁷ Critics

laicity as a process of secularization and "a detachment of spiritual authority from the state, its institutions, and from society itself.").

49. See Bill 21, *supra* note 2, at preamble.

50. *Id.* § 1; see also Chelini-Pont, *supra* note 48, at 769 (describing a lay State, in the context of France's Tradition of Laicity, as one in which the state distances itself from all things religious); Christian Joppke, *State Neutrality and Islamic Headscarf Laws in France and Germany*, 36 THEORY AND SOC'Y 313, 314 (2007).

51. See Bill 21, *supra* note 2, § 2.

52. *Id.* § 3.

53. *Id.* § 4.

54. *Id.* § 6, Schedule II.

55. See *Quebec Bans Religious Symbols*, *supra* note 3 (reporting that Bill 21 passed by a 73-35 margin in the National Assembly).

56. See Siddiqui, *supra* note 11 (citing a survey of more than 1,200 Québécois by Leger Marketing which showed that sixty-three percent of people in the

contend that the legislation excludes religious minorities from positions of authority in education and law enforcement and severely limits work opportunities for Muslim women.⁵⁸ Critics also note that although the law does not explicitly target any particular religion, the impact of the legislation will primarily fall on Muslim women.⁵⁹

Skepticism of the government's claim of religious neutrality is buoyed by the fact that Québec has a fraught relationship with its Muslim community. Bill 21 was passed just over two years after a 27-year-old man murdered six Muslim worshipers at a mosque outside Québec City.⁶⁰ Statistics from the Montréal Police Hate Crimes Unit show that in the first part of 2019, leading up to the passage of Bill 21, Muslims were the primary victims of hate crimes in Montréal.⁶¹ Moreover, a 2018 study published in an issue of *Canadian Review of Sociology* found that Islamophobia was widespread in Québec and more prevalent there than in other

province supported Bill 21 as of May 2019).

57. See, e.g., *Quebec's Religious Symbols Ban*, *supra* note 11 (discussing how Bill 21 prompted an outcry against the law's perceived attack on civil liberties, protests, and multiple lawsuits).

58. See, e.g., Tracey Lindeman, 'It Shut All My Doors': How a Quebec Law Banning Religious Symbols Derails Women's Careers, *GUARDIAN* (Nov. 7, 2019, 5:00 AM), <https://www.theguardian.com/world/2019/nov/07/quebec-law-banning-religious-symbols-derails-womens-careers> (telling the story of a 28-year-old Muslim lawyer whose dreams of becoming a Crown prosecutor were dashed by the passage of Bill 21).

59. See *id.* (noting because of "longstanding and effervescent anti-Islam sentiment" in Québec, many Quebecois believe the main targets of Bill 21 are Muslim women); see also Loreto, *supra* note 10 (opining that excluding religious minorities from public-sector employment opportunities will further marginalize them).

60. See Alan Freeman, Lindsey Bever & Derek Hawkins, *Student Known for Far-Right Sympathies Charged in Quebec City Mosque Attack*, *WASH. POST* (Jan. 30, 2017), https://www.washingtonpost.com/world/the_americas/student-known-for-far-right-sympathies-charged-in-canada-mosque-attack/2017/01/30/7e8d39b0-e703-11e6-903d-9b11ed7d8d2a_story.html?utm_term=.fecefelcd7b7&itid=lk_inline_manual_13 (reporting that Prime Minister Trudeau described the shooting as an unmistakable act of terror).

61. See René Bruemmer, *Muslims the Main Victims of Hate Crimes in Montreal This Year*, *MONTREAL GAZETTE* (June 21, 2019), <https://montrealgazette.com/news/local-news/muslims-the-main-victims-of-hate-crimes-in-montreal-this-year> (reporting that hate crimes targeting Muslims accounted for sixty percent of religion-based hate crimes in early 2019).

Canadian provinces.⁶²

Fear of marginalization among Muslims is exacerbated by the fact that the nationalist party that shepherded Bill 21 through the National Assembly invoked the “notwithstanding clause” of the Canadian Charter to override the constitutional right to freedom of religion.⁶³ In Section 2, the Charter cites the freedom of conscience and religion as a fundamental freedom that everyone enjoys.⁶⁴ Despite this apparent guarantee, the Charter stipulates that “the legislature of a province may expressly declare in an Act . . . of the legislature . . . that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 . . . of this Charter.”⁶⁵ Therefore, by invoking the “notwithstanding clause” of the Charter, Québec’s National Assembly managed to pass Bill 21 while shielding it from constitutional scrutiny.⁶⁶

The National Assembly’s use of the “notwithstanding clause” complicates the legal effort to overturn Bill 21 on constitutional grounds.⁶⁷ Therefore, if challengers to Bill 21’s constitutionality exhaust all domestic legal remedies, they may need to seek recourse

62. See Jonathan Montpetit, *Anti-Muslim Sentiment Higher in Quebec than Rest of Canada, Study Finds*, CBC NEWS (Mar. 22, 2018, 3:37 PM), <https://www.cbc.ca/news/canada/montreal/anti-muslim-sentiment-higher-in-quebec-than-rest-of-canada-study-finds-1.4577746> [hereinafter *Anti-Muslim Sentiment Higher in Quebec*] (revealing that seventy percent of respondents in Quebec expressed “significant” anti-Muslim sentiment).

63. See Canadian Charter of Rights and Freedoms, *supra* note 15, §§ 2(a), 33(1) (codifying the fundamental freedom of religion and the “notwithstanding clause,” respectively).

64. *Id.* § 2(a).

65. *Id.* § 33(1).

66. See Brosseau & Roy, *supra* note 16 (explaining that on the invocation of Section 33(1) by a legislature, the overriding legislation renders the relevant Charter right “not entrenched” for the purposes of that legislation).

67. See *Quebec’s Religious Symbols Ban*, *supra* note 11 (describing how each party challenging Bill 21 must contend with the “notwithstanding clause”); Stephanie Marin, *Quebec Government Lawyers Tell Court Bill 21 is Not a Violation of Freedoms*, TORONTO STAR (Dec. 9, 2020), <https://www.thestar.com/politics/2020/12/09/quebec-government-lawyers-tell-court-bill-21-is-not-a-violation-of-freedoms.html> (reporting how Bill 21’s challengers claim that the law is discriminatory toward religious minorities but are limited in their legal arguments because the law invokes the “notwithstanding clause”).

under the First Optional Protocol to the ICCPR.⁶⁸

C. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The ICCPR was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) on December 16, 1966.⁶⁹ After the necessary thirty-five States became parties to it, the ICCPR went into force on March 23, 1976.⁷⁰ Under the ICCPR, each State commits to ensuring that all persons subject to its jurisdiction enjoy the rights and freedoms recognized in the Covenant without distinction of any kind.⁷¹

1. *Canada as a Party to the ICCPR*

Canada acceded to the ICCPR on May 19, 1976.⁷² On the same day, it accepted the competence of the HRC to hear individual complaints pursuant to the ICCPR's First Optional Protocol.⁷³ The First Optional Protocol allows the HRC to review communications from individuals who claim to be victims of a violation by a state party of any of the rights set forth in the ICCPR.⁷⁴

2. *Scope of the ICCPR*

Article 2 of the ICCPR provides that each state party must ensure that all individuals subject to its jurisdiction enjoy the rights set forth in the ICCPR "without distinction of any kind."⁷⁵ Each state party must take the necessary steps "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the

68. See First Optional Protocol, *supra* note 33, art. 2 (allowing individuals to submit a written communication to the HRC for consideration if all domestic remedies have been exhausted).

69. ICCPR, *supra* note 23.

70. See Fact Sheet No. 15, *supra* note 24, at 3.

71. See ICCPR, *supra* note 23, art. 2(1).

72. See Canadian Human Rights Treaties, *supra* note 37.

73. *Id.*

74. See First Optional Protocol, *supra* note 33, art. 1 (stipulating that a state party to the ICCPR that becomes a party to the First Optional Protocol recognizes the competence of the HRC to adjudicate complaints lodged by individuals subject to the jurisdiction of the state party).

75. ICCPR, *supra* note 23, art. 2(1).

[ICCPR]”⁷⁶ and to ensure that any person whose rights or freedoms are violated shall have an effective, enforceable remedy.⁷⁷ The rights and freedoms enumerated in the ICCPR extend to all parts of federal States, without limitations or exceptions,⁷⁸ in recognition of the law of treaties that provides that a treaty is binding upon parties in respect of their entire territory.⁷⁹

The HRC, which was established pursuant to Article 28 of the ICCPR,⁸⁰ is responsible for monitoring state parties’ implementation of the ICCPR and ensuring that they meet their obligations under the Covenant.⁸¹ As part of its monitoring function, the HRC publishes general comments, which are designed to assist state parties by clarifying certain provisions of the ICCPR.⁸² Pursuant to the First Optional Protocol, the HRC also considers complaints made by individuals who claim a violation of their treaty rights by a state party.⁸³

Under the First Optional Protocol, “individuals who claim that any of their enumerated rights have been violated and who have exhausted all available domestic remedies may submit a written communication to the [HRC] for consideration.”⁸⁴ Article 10 of the First Optional Protocol provides that “[t]he provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.”⁸⁵ If the HRC finds that the state party is in violation of the ICCPR, it requests that the party remedy the

76. *Id.* art. 2(2).

77. *Id.* art. 2(3).

78. *Id.* art. 50.

79. *See* Vienna Convention on the Law of Treaties arts. 27, 29, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT] (providing that a party may not invoke the provisions of its internal law as justification for its failure to adhere to the terms of a treaty, and that a treaty is binding upon each party in respect of its entire territory).

80. ICCPR, *supra* note 23, art. 28.

81. *See Fact Sheet No. 15, supra* note 24, at 30 (describing the HRC as “the pre-eminent interpreter of the meaning of the [ICCPR].”).

82. *See, e.g.,* General Comment No. 22, *supra* note 28 (clarifying state parties’ obligations under Article 18 of the ICCPR).

83. *See* First Optional Protocol, *supra* note 33, art. 2 (explaining the method by which individuals may lodge complaints with the HRC).

84. *Id.*

85. *Id.* art. 10.

violation in accordance with Article 2(3) of the Covenant.⁸⁶

3. *Complying with Article 18 of the ICCPR*

Article 18(1) of the ICCPR codifies the right to freedom of religion, including the “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.”⁸⁷ The HRC considers the right to freedom of religion in Article 18(1) to be far-reaching and non-derogable.⁸⁸ The freedom to manifest religion encompasses a broad range of acts and may include “not only ceremonial acts but also such customs as the [wearing] of distinctive clothing or head coverings.”⁸⁹ Article 18(3) of the ICCPR provides that the freedom to manifest one’s religion may be subject only to such limitations as are prescribed by law and necessary to protect public safety,⁹⁰ order,⁹¹ health, or morals⁹² or the fundamental rights and freedoms of others.⁹³ Article 18(3) is to be strictly interpreted and amounts to an

86. See *Fact Sheet No. 15*, *supra* note 24, at 27 (describing what happens if the HRC finds in an individual’s favor); see also ICCPR, *supra* note 23, art. 2(3) (providing that each state party to the ICCPR undertakes to ensure an effective remedy to any person whose rights and freedoms are violated).

87. ICCPR, *supra* note 23, art. 18(1).

88. See General Comment No. 22, *supra* note 28, ¶ 1; see also ICCPR, *supra* note 23, art. 4(1)–(2) (shielding Article 18 from derogation during periods of public emergency).

89. General Comment No. 22, *supra* note 28, ¶ 4.

90. See U.N. Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, ¶¶ 33–34, E/CN.4/1985/4 (Annex) (Sept. 28, 1984) [hereinafter *Siracusa Principles*] (defining “public safety” as “protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property” while emphasizing that “public safety” cannot be used to justify vague or arbitrary limitations, and may only be invoked when adequate safeguards exist to prevent abuse).

91. See *id.* ¶ 22 (defining “public order” as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded,” including respect for human rights).

92. See *id.* ¶¶ 27–28 (providing states with a margin of discretion when invoking “public morality” to limit ICCPR rights, except when doing so is discriminatory).

93. See *id.* ¶¶ 35–36 (clarifying that the “rights and freedoms of others” that may act as a limitation extend beyond the ICCPR, but special weight should be afforded to ICCPR rights when there is a conflict); ICCPR, *supra* note 23, art. 18(3).

exhaustive list of permissible limitations.⁹⁴ Specifically, limitations must be: (1) provided by law; (2) applied only for a purpose prescribed in Article 18(3); and (3) “directly related and proportionate to the specific need on which they are predicated.”⁹⁵ The HRC also forbids limitations that are imposed for discriminatory purposes or are applied in a discriminatory manner.⁹⁶

D. THE HUMAN RIGHTS COMMITTEE’S ARTICLE 18 JURISPRUDENCE

The HRC has considered the permissibility of several laws under Article 18 of the ICCPR. This Section considers the cases of *Riley et al. v. Canada*,⁹⁷ *Raihon Hudoyberganova v. Uzbekistan*,⁹⁸ *Bikramjit Singh v. France*,⁹⁹ and *Miriana Hebbadj v. France*.¹⁰⁰ In each case, the HRC was petitioned by individuals claiming to be victims of violations of Article 18. The HRC was tasked with determining whether the laws or regulations in question limited the freedom to manifest religion and, if so, whether any of the permissible exceptions codified in Article 18(3) applied. Understanding the HRC’s resulting Article 18 jurisprudence is helpful in determining how the HRC would address the limitations on the freedom to manifest religion present in Bill 21.

94. See General Comment No. 22, *supra* note 28, ¶ 8 (clarifying that “restrictions are not allowed on grounds not specified [in Article 18(3)]”).

95. *Id.*; see also Gunatilleke, *supra* note 31, at 27.

96. General Comment No. 22, *supra* note 28, ¶ 8.

97. *Riley et al. v. Canada*, Communication 1048/2002, Human Rights Committee [Hum. Rts. Comm.], (Apr. 5, 2002), http://www.worldcourts.com/hrc/eng/decisions/2002.03.21_Riley_v_Canada.htm.

98. *Raihon Hudoyberganova v. Uzbekistan*, Communication 931/2000, Human Rights Committee, [Hum. Rts. Comm.], (Aug. 12, 2004), <http://hrlibrary.umn.edu/undocs/html/931-2000.html>.

99. *Bikramjit Singh v. France*, Communication 1852/2008, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html>.

100. *Miriana Hebbadj v. France*, Communication 2807/2016, Human Rights Committee [Hum. Rts. Comm.], (Mar. 3, 2003), <http://ccprcentre.org/decision/16904>.

1. Riley et al. v. Canada (2002)

In *Riley et al. v. Canada*,¹⁰¹ the authors of the communication were three Canadian nationals who claimed to be victims of a violation of Article 18 of the ICCPR.¹⁰² Two of the authors were retired members of the Royal Canadian Mounted Police (RCMP)¹⁰³ whose goal was to maintain tradition within the RCMP.¹⁰⁴ They lodged their complaint to the HRC because the Canadian government revised its RCMP regulations to allow a Sikh officer to substitute turbans for the traditional “Mountie” Stetson and forage cap.¹⁰⁵

The authors argued that the display of Sikh symbols, such as the turban, “imputes RCMP/State endorsement of the . . . Khalsa Sikh order.”¹⁰⁶ In addition, they argued that allowing the Sikh officer to wear a turban would undermine his appearance of impartiality when exercising law enforcement powers.¹⁰⁷ Moreover, the authors claimed that “in order to protect their rights under [A]rticle 18 of the [ICCPR] the State should remain secular.”¹⁰⁸ Therefore, according to the authors, the revision to the RCMP regulations that allowed the Sikh officer to wear a turban violated their rights under Article 18 because it “introduce[d] a denominational face to the most visible State agency.”¹⁰⁹

The HRC dismissed the authors’ communication as inadmissible because the HRC believed the authors failed to show how the enjoyment of their rights under the ICCPR were affected by allowing the Sikh officer to wear religious symbols.¹¹⁰ Because the authors could not show how their rights under the ICCPR were affected, the HRC concluded that the authors could not be considered “victims” within the meaning of Article 1 of the First Optional Protocol.¹¹¹

101. *Riley et al. v. Canada*, Communication 1048/2002, ¶ 2.2.

102. *Id.* ¶ 2.1.

103. *Id.* ¶ 3.2.

104. *Id.*

105. *Id.* ¶ 3.3.

106. *Id.* ¶ 3.1.

107. *See id.* ¶ 3.2 (arguing that displays of religious beliefs by a police officer would raise an apprehension of bias).

108. *Id.* ¶ 3.3.

109. *Id.*

110. *Id.* ¶¶ 4.2, 5(a).

111. *Id.* ¶ 4.2.

2. *Raihon Hudoyberganova v. Uzbekistan (2004) and Bikramjit Singh v. France (2013)*

*Raihon Hudoyberganova v. Uzbekistan*¹¹² and *Bikramjit Singh v. France*¹¹³ both involved students who were expelled from state schools for refusing to remove religious clothing. In *Bikramjit Singh v. France*, a Sikh student was expelled from a French state school for refusing to comply with a law prohibiting students from wearing conspicuous religious symbols while at school.¹¹⁴ The student, who wore a keski¹¹⁵ in accordance with his Sikh faith, argued that his expulsion violated his freedom to manifest religion.¹¹⁶ France countered by arguing that the law was justified on the basis of the constitutional principle of secularism, as well as the explicitly permissible limitations of protecting the ‘rights and freedoms of others’ and ‘public order and safety.’¹¹⁷

The HRC adopted a flexible test¹¹⁸ and recognized that secularism

112. *Raihon Hudoyberganova v. Uzbekistan*, Communication 931/2000, Human Rights Committee, [Hum. Rts. Comm.], (Aug. 12, 2004), <http://hrlibrary.umn.edu/undocs/html/931-2000.html>.

113. *Bikramjit Singh v. France*, Communication 1852/2008, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html>.

114. *Id.* ¶ 2.6; *see also* Loi 2004-228 du 15 mars 2004 encadrant, en application du principe laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics [Law 2004-228 of Mar. 15, 2004 concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garb which shows religious affiliation in public primary and secondary schools], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 17, 2004, p. 5190 [hereinafter Act No. 2004-228] (introducing article L.141-5-1 in the Education Code, under which the conspicuous manifestation of religious affiliation through the wearing of symbols or clothing in public schools is forbidden).

115. *Bikramjit Singh v. France*, Comm. No. 1852/2008, ¶ 2.3 (describing a keski as a “small light piece of material . . . often used as a mini-turban, covering the long uncut hair considered sacred in the Sikh religion.).

116. *Id.* ¶ 3.2.

117. *See id.* ¶ 5.10 (arguing that the means were proportionate to the ends); *see also* ICCPR, *supra* note 23, art. 18(3) (allowing for limitations to protect the fundamental rights and freedoms of others as well as to maintain public order and safety).

118. *See* Gunatilleke, *supra* note 31, at 31–32 (describing the flexible test as one in which the specific legal criteria for determining the permissibility of a limitation are not always applied).

(laicity) “is itself a means by which a state party may seek to protect the religious freedom of all its population.”¹¹⁹ Nevertheless, the HRC still considered the author’s expulsion to be a violation of his freedom of religion because (1) France failed to provide sufficient evidence that, “by wearing his keski, the author would have posed a threat to the rights and freedoms of others or to order at the school,” (2) the author’s expulsion was disproportionate to the stated goals, and (3) the author’s expulsion was unnecessary.¹²⁰ Accordingly, the HRC, citing state parties’ obligation to prevent recurring violations,¹²¹ encouraged France to re-examine the law in light of the guarantees of Article 18.¹²²

Similar to *Bikramjit Singh v. France*,¹²³ *Raihon Hudoyberganova v. Uzbekistan*¹²⁴ involved a student who was expelled from a state university for refusing to comply with a regulation under which students had no right to wear religious clothing.¹²⁵ The student, who was a Muslim and wore a hijab, appealed to the HRC, arguing that Uzbekistan violated her rights under Article 18 of the ICCPR.¹²⁶ After remarking that the freedom to manifest one’s religion encompasses the right to publicly wear religious clothing, the HRC concluded that the student’s expulsion violated Article 18 because Uzbekistan made no effort to justify the restriction.¹²⁷

119. *Bikramjit Singh v. France*, Comm. No. 1852/2008, ¶ 8.6.

120. *Id.* ¶ 8.7.

121. *See* ICCPR, *supra* note 23, art. 2.3. (obligating state parties to ensure an effective, enforceable remedy).

122. *Bikramjit Singh v. France*, Comm. No. 1852/2008, ¶ 10 (“The State party is . . . under an obligation to prevent similar violations in the future and should review Act No. 2004-228 in light of its obligations under the [ICCPR], in particular [A]rticle 18.”).

123. *Id.*

124. *Raihon Hudoyberganova v. Uzbekistan*, Communication 931/2000, Human Rights Committee, [Hum. Rts. Comm.], (Aug. 12, 2004), <http://hrlibrary.umn.edu/undocs/html/931-2000.html>.

125. *See id.* ¶ 2.4 (noting that the student was told that the expulsion would be annulled if she complied with the regulation).

126. *Id.* ¶ 3.

127. *See id.* ¶ 6.2 (noting that Uzbekistan justified the expulsion upon the student’s refusal to comply with the hijab ban rather than upon any of the permissible limitations set forth in Article 18(3) of the ICCPR).

3. *Miriana Hebbadj v. France* (2018)

The alleged Article 18 violation in *Miriana Hebbadj v. France*¹²⁸ concerned a French law, Act No. 2010–1192, that prohibited publicly wearing an article of clothing intended to conceal the face.¹²⁹ The case was brought before the HRC by a Muslim woman who wore a niqab and was convicted under the law.¹³⁰ The author argued that the ban on concealing the face in public spaces, which necessarily encompasses the niqab, violated her freedom to manifest religion because the law had “no legitimate purpose within the meaning of [A]rticle 18(3) of the [ICCPR].”¹³¹

In defense of the law, France claimed that it pursued two legitimate aims: (1) the protection of the rights and freedoms of others, and (2) the protection of public order, both of which are permissible limitations on the freedom to manifest religion under Article 18(3).¹³² France also argued that the law was narrowly tailored because it allowed individuals to wear religious clothing provided the religious clothing did not conceal the face.¹³³

The HRC adopted a more rigorous test in assessing the limitations imposed by Act No. 2010–1192 than it did in *Bikramjit Singh v. France*.¹³⁴ Specifically, in addition to assessing whether the

128. *Miriana Hebbadj v. France*, Communication 2807/2016, Human Rights Committee [Hum. Rts. Comm.], (Mar. 3, 2003), <http://ccprcentre.org/decision/16904>.

129. *See* Loi 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public [Law 2010-1192 of October 11, 2010 Act Banning the Concealment of the Face in the Public Space] arts 1, 2., JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 12, 2010, p. 1 [hereinafter Act No. 2010-1192] (prohibiting the wearing of clothing designed to conceal the face in any public space, with limited exceptions).

130. *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 2.1.

131. *Id.* ¶¶ 2.4, 3.5 (arguing that the law deprives women of the ability to wear a full-face veil, which is protected by Article 18 of the ICCPR).

132. *Id.* at ¶ 5.7; ICCPR, *supra* note 23, art. 2(1).

133. *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 5.9 (rejecting the characterization of the law as prohibiting Muslim women from manifesting their religious belief).

134. *See* Gunatilleke, *supra* note 115, at 31, 34–35 (defining the rigorous test as one in which the HRC applies all legal criteria in considering the permissibility of a limitation in addition to considering other normative constraints, such as non-discrimination).

limitation was applied only for the purposes for which it was prescribed, and its proportionality, the HRC considered whether the restriction was imposed for discriminatory purposes or applied in a discriminatory manner.¹³⁵ The HRC then considered France's justifications for the law and concluded that (1) the ban on concealing the face in public spaces constituted a limitation of the author's freedom to manifest religion;¹³⁶ (2) that the ban was comprehensive, rather than narrowly tailored, and France failed to demonstrate how wearing the veil posed a threat to public safety and order that would justify a blanket ban;¹³⁷ (3) France failed to identify a specific fundamental freedom that was affected by the fact that some people choose to wear veils;¹³⁸ (4) the imposition of criminal penalties was disproportionate to the stated objectives;¹³⁹ and (5) despite its facial neutrality, the ban was discriminatory and, consequently, a violation of Article 18.¹⁴⁰

III. ANALYSIS

Canada is in violation of international law as a consequence of Québec's enactment of Bill 21.¹⁴¹ Freedom of religion is a

135. See *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 7.4 (emphasizing that Article 18(3) of the ICCPR is to be strictly interpreted).

136. See *id.* ¶ 7.3 (acknowledging that for a segment of Muslims, wearing a full-face veil is a customary act of religious observance).

137. See *id.* ¶ 7.7 (recognizing that States may be justified in requiring individuals to reveal their face in certain contexts, but that Act No. 2010-1192 is not limited to such contexts).

138. See *id.* ¶ 7.10 (concluding that the concept of "living together" is too vague to serve as a legitimate goal under the 'protection of the fundamental rights and freedoms of others' limitation).

139. See *id.* ¶ 7.17 (concluding that the criminal ban is not necessary and proportionate to a legitimate interest).

140. See *id.* (asserting that application of the criminal ban constitutes a form of intersectional discrimination based on gender and religion); see also ICCPR, *supra* note 23, art. 26 (prohibiting discrimination).

141. See Bill 21, *supra* note 2, § 6, Schedule II (prohibiting certain public sector employees from wearing religious symbols in the exercise of their job functions); ICCPR, *supra* note 23, arts. 18, 50 (guaranteeing the freedom to manifest religion subject to limited exceptions and providing that the enumerated rights and freedoms in the ICCPR extend to all parts of federal States without limitations or exceptions); VCLT, *supra* note 79, arts. 27, 29 (stipulating that a party to a treaty "may not invoke the provisions of its internal law as justification for its failure to perform a treaty" and that "a treaty is binding upon each party in respect of its

fundamental human right recognized in international law through the ICCPR.¹⁴² The freedom of religion includes the “freedom, either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice, and teaching.”¹⁴³ The observance and practice of religion may include customs such as displaying certain symbols and wearing distinctive clothing or head coverings.¹⁴⁴ Limitations imposed on the freedom to manifest one’s religion must be prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.¹⁴⁵ Moreover, state parties to the ICCPR who seek to impose a limitation on the freedom to publicly manifest religion have the burden of proving, with specific evidence, that the limitation is legal, necessary, justifiable, proportionate, and non-discriminatory, both in design and in application.¹⁴⁶ The analysis that follows will first assess the

entire territory.”); *Canadian Human Rights Treaties*, *supra* note 37 (listing Canada as a state party to the ICCPR since 1976).

142. See ICCPR, *supra* note 23, art. 18(1) (providing that “[e]veryone shall have the right to freedom of thought, conscience and religion.”).

143. *Id.*

144. See General Comment No. 22, *supra* note 28, ¶ 4 (clarifying that the freedom to manifest religion encompasses a broad range of acts, including the wearing of distinctive clothing or head coverings); see also *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 7.3 (concluding that wearing a full-face veil is customary for a segment of the Muslim faith, and is a component of the observance and practice of religion for such people); *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 8.3, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html> (finding that the Sikh student’s use of a keski is a ~~religiously-motivated~~ religiously motivated act); *Raihon Hudoyberganova v. Uzbekistan*, Communication 931/2000, ¶ 6.2, Human Rights Committee, [Hum. Rts. Comm.], (Aug. 12, 2004), <http://hrlibrary.umn.edu/undocs/html/931-2000.html> (asserting that the freedom to manifest one’s religion encompasses the right to publicly wear clothes in conformity to one’s religion).

145. See ICCPR, *supra* note 23, art. 18(3) (listing the acceptable limitations on the freedom to manifest one’s religion).

146. See General Comment No. 22, *supra* note 28, ¶ 8 (clarifying the permissible scope of limitations on the freedom to manifest religion or belief); see also *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 7.17 (concluding that a criminal ban on concealing the face in public places amounts to a form of intersectional discrimination towards Muslim women and thus violates articles 18 and 26 of the ICCPR); *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 8.7 (finding the student’s expulsion for refusing to remove his keski to be

provisions contained in Bill 21 against the freedoms guaranteed by Article 18 of the ICCPR. The analysis will then consider Bill 21 in the context of the HRC's Article 18 jurisprudence.

A. ASSESSING BILL 21 AGAINST THE FREEDOMS GUARANTEED BY THE ICCPR

Québec's Bill 21 is entitled "An Act Respecting the Laicity of the State."¹⁴⁷ By its name alone, the law justifies the measures contained within on the ground of respecting laicity, or secularism.¹⁴⁸ The preamble to the law refers to Québec's unique characteristics, such as its civil law tradition, distinct social values, and history that have led it to develop an attachment to State laicity.¹⁴⁹ The preamble

unnecessary and disproportionate to the stated goals of protecting the fundamental rights and freedoms of others and maintaining order); Stephanie E. Berry, *A Good Faith Interpretation of the Right to Manifest Religion: The Diverging Approaches of the European Court of Human Rights and the UN Human Rights Committee*, 37 LEGAL STUD. 672, 677 (2017) (asserting that the State bears the burden of proof and must demonstrate that interference with the freedom to manifest religion was justifiable and proportionate); U.N. Commission on Human Rights, 'Civil and Political Rights, including the Question of Religious Intolerance - Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir', ¶ 53, U.N. doc E/CN.4/2006/5 (Jan. 6, 2006) [hereinafter *Religious Intolerance*] (emphasizing that a prohibition on wearing religious symbols which is based on "mere speculation or presumption rather than on demonstrable facts" is considered a violation of religious freedom); Elizabeth K. Cassidy, *Restricting Rights? The Public Order and Public Morality Limitations on Free Speech and Religious Liberty in UN Human Rights Institutions*, 13 THE REV. OF FAITH & INT'L AFF. 5, 11 (2015) [hereinafter *Restricting Rights?*] (noting that governments "bear the burden of identifying the permitted ground and proving the limitation's necessity and proportionality.").

147. Bill 21, *supra* note 2, at preamble.

148. *See id.* (stating that "it is incumbent on the Parliament of Québec to determine the principles according to which and manner in which relations between the State and religions are to be governed in Québec"); *see also* Chelini-Pont, *supra* note 48, at 769 (defining State laicity as a process of secularization and "a detachment of spiritual authority from the state, its institutions, and from society itself.").

149. Bill 21, *supra* note 2, at preamble; *see also* Carey Knight, *The Quandary of Quebec: Separate Culture, Separate Nation?*, 13 HARV. INT'L REV., 45, 45-46 (recounting the historical development of Québec from a French colony to its subsequent annexation into the British Empire, explaining its unique cultural identity, and describing the attendant political and cultural tensions vis-à-vis English-speaking Canada).

emphasizes the importance of ensuring that State laicity is enshrined in Québec's legal order and notes that the concept should be affirmed in a manner that ensures a balance between the collective rights of the Québec nation and human rights and freedoms.¹⁵⁰ Although the preamble to Bill 21 is not binding, it sets forth the justifications used by the Québec National Assembly to impose the law's religious symbols ban.¹⁵¹

In Sections 1 and 2, the law affirms the laicity of the State of Québec and asserts in Section 4 that State laicity requires that various government institutions comply with a prohibition on wearing religious symbols.¹⁵² The justification contained within Section 4 is that the prohibition on wearing religious symbols will foster adherence to State religious neutrality.¹⁵³ Thus, Bill 21 justifies a blanket prohibition on the wearing of religious symbols by the enumerated public-sector employees on the ground of safeguarding the secularism and religious neutrality of the State.¹⁵⁴

Section 34 of Bill 21 invokes the "notwithstanding" clause found in Section 33(1) of the Canadian Charter of Rights and Freedoms.¹⁵⁵ In doing so, the Québec National Assembly foreclosed the possibility that critics of the law would challenge its constitutionality on the ground that it abrogates Section 2 of the Charter, which states that

150. Bill 21, *supra* note 2, at preamble.

151. See Kent Roach, *The Uses and Audiences of Preambles in Legislation*, 47 MCGILL L.J. 129, 158 (2001) (discussing how preambles can, among other things, be used to explain a law's purposes, articulate its aspirations, or simply serve as an advertising slogan).

152. See Bill 21, *supra* note 2, §§ 1–2, 4 (affirming explicitly that Québec is a lay State, that the laicity of the State is based on (1) the separation of State and religions; (2) the religious neutrality of the State; (3) the equality of all citizens; and (4) freedom of conscience and freedom of religion, and that State laicity requires compliance with the prohibition on wearing religious symbols).

153. *Id.* § 4 ("State laicity requires compliance with the prohibition on wearing religious symbols . . . and with the duty of religious neutrality.").

154. *Id.* §§ 4, 6.

155. See *id.* § 34 (providing that the law has effect notwithstanding section 2 of the Canadian Charter of Rights and Freedoms); see also Canadian Charter of Rights and Freedoms, *supra* note 15, § 33(1) (containing the "notwithstanding clause" that Bill 21 invokes); Brosseau & Roy, *supra* note 16 (remarking that the overriding legislation renders the relevant Charter right "not entrenched" for the purposes of that legislation).

everyone has the fundamental freedom of conscience and religion.¹⁵⁶ Section 33(1) specifically provides that “[p]arliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or provision thereof shall operate notwithstanding a provision included in section 2 . . . of this Charter.”¹⁵⁷ The National Assembly’s decision to invoke the “notwithstanding” clause can reasonably be perceived as a tacit acknowledgement that the law imposes a constitutionally impermissible restriction on the freedom of religion.¹⁵⁸

Unlike the fundamental freedom of religion found in Section 2 of the Charter,¹⁵⁹ the freedom to manifest one’s religion enshrined in Article 18 of the ICCPR may not be overridden by invoking an obscure provision of a state party’s domestic constitutional law.¹⁶⁰ Rather, the provisions of the ICCPR are binding on all state parties.¹⁶¹ Therefore, to comply with international law, a limitation on the freedom to publicly manifest one’s religion must adhere to the

156. Canadian Charter of Rights and Freedoms, *supra* note 15, § 2(a); *see also Quebec’s Religious Symbols Ban*, *supra* note 11 (reporting how the myriad legal cases challenging the constitutionality of Bill 21 must each contend with the “notwithstanding clause,” which prevents challengers from appealing to substantial sections of the Canadian Charter to argue that Bill 21 is unconstitutional); *Quebec Bans Religious Symbols*, *supra* note 3 (noting the difficulty of challenging Bill 21 because it is considerably insulated from court action due to the National Assembly’s invocation of the “notwithstanding clause”).

157. Canadian Charter of Rights and Freedoms, *supra* note 15, § 33(1).

158. *See Quebec’s Religious Symbols Ban*, *supra* note 11 (describing how the province is invoking the “notwithstanding clause” to override some of the fundamental freedoms outlined in the Canadian Charter of Rights and Freedoms).

159. Canadian Charter of Rights and Freedoms, *supra* note 15, § 2(a).

160. *See ICCPR*, *supra* note 23, art. 18(1) (codifying the freedom to manifest religion); *see also id.* art. 2(2) (requiring each state party to the ICCPR to take necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR); General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 13, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter General Comment No. 31] (providing that where there are inconsistencies between domestic law and the ICCPR, Article 2 of the ICCPR requires that the domestic law be changed to accord with the state party’s obligations under the ICCPR); VCLT, *supra* note 79, art. 27 (prohibiting state parties to a treaty from invoking domestic law as justification for failing to perform treaty obligations).

161. ICCPR, *supra* note 23, art. 2.

justifiable exceptions listed in Article 18(3).¹⁶²

In the case of Bill 21, Québec's National Assembly did not justify the ban on wearing religious symbols upon any of the permissible grounds expressed in Article 18(3) of the ICCPR.¹⁶³ Rather, it justified the ban on the ground of maintaining secularism and the religious neutrality of the State.¹⁶⁴ Despite the National Assembly's failure to justify Bill 21 using any of the permissible limitations set forth in Article 18(3),¹⁶⁵ if an individual submits a written communication to the HRC claiming to be a victim of a violation of their rights under Article 18, Québec may still argue that Bill 21 complies with the Article.¹⁶⁶ Therefore, it is useful to analyze whether — based on the language of Bill 21 and the standards used to judge the permissibility of restrictions on the freedom to manifest religion — Bill 21 may be legally justified under Article 18.

The prohibition on certain public sector employees from wearing religious symbols during the exercise of their job functions is necessarily prescribed by law by virtue of its codification in Bill 21.¹⁶⁷ Therefore, Bill 21 satisfies the first prong in the Article 18(3) analysis. Although the limitation is prescribed by law, it must also be “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹⁶⁸

The ban on wearing religious symbols for the purpose of affirming

162. *Id.* art. 18(3).

163. *See* Bill 21, *supra* note 2, §§ 3–4 (justifying the religious symbols ban on the ground that the ban is necessary to affirm State laicity).

164. *See id.* § 4 (“State laicity requires compliance with the prohibition on wearing religious symbols . . . and with the duty of religious neutrality. . .”).

165. *See* ICCPR, *supra* note 23, art. 18(3) (permitting limitations that are prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others).

166. *See* First Optional Protocol, *supra* note 33, art. 4 (stipulating that upon receiving a communication from an individual claiming to be a victim of a violation of the ICCPR by a state party, the HRC shall bring the communication to the attention of the state party and allow it to submit written explanations clarifying the matter).

167. *See* Bill 21, *supra* note 2, § 6, Schedule II (“The persons listed in Schedule II are prohibited from wearing religious symbols in the exercise of their functions.”); ICCPR, *supra* note 23, art. 18(3) (requiring limitations on the freedom to manifest one’s religion to be prescribed by law).

168. ICCPR, *supra* note 23, art. 18(3).

State laicity cannot be justified by invoking ‘public safety.’ The Siracusa Principles provide that ‘public safety’ means “protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.”¹⁶⁹ However, invoking ‘public safety’ may not be used to impose “vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.”¹⁷⁰ There is nothing in the language of Bill 21 that purports to justify the law on the ground of public safety.¹⁷¹ If Québec were to eventually cite ‘public safety’ as a justification for the limitation, the law would still fail on the ground that the religious symbols ban is vague, invites arbitrary enforcement, and is devoid of safeguards to prevent abuse.¹⁷²

Similarly, Québec cannot justify Bill 21 on the ground of preserving ‘public order.’ The Siracusa Principles define “public order” as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded.”¹⁷³ Importantly, “[r]espect for human rights is part of public order.”¹⁷⁴ The preamble of Bill 21 emphasizes the importance of enshrining State laicity in Québec’s legal order.¹⁷⁵ Sections 1 and 2 of Bill 21 affirm that Québec is a lay State committed to both the separation of State and religions, and the religious neutrality of the State.¹⁷⁶ The foregoing can reasonably be interpreted to constitute fundamental principles on which Québec society is founded.¹⁷⁷ However, the

169. Siracusa Principles, *supra* note 90, ¶ 33.

170. *Id.* ¶ 34.

171. *See generally* Bill 21, *supra* note 2.

172. *See Quebec’s Religious Symbols Ban*, *supra* note 11 (describing how challengers to Bill 21 assert that the law’s definition of “religious symbols” is vague and that the ban will therefore be arbitrarily applied); *see also* Star Editorial Board, Editorial, *Quebec’s Embarrassing Week Defending the Indefensible Bill 21*, TORONTO STAR (July 14, 2019), <https://www.thestar.com/opinion/editorials/2019/07/14/quebecs-embarrassing-week-defending-the-indefensible-bill-21.html> (reporting on the legal challenges to Bill 21, which include the argument that the definition of a religious symbol is so vague that the ban will be arbitrarily applied and violate protections for minority rights).

173. Siracusa Principles, *supra* note 90, ¶ 22.

174. *Id.*

175. Bill 21, *supra* note 2, at preamble.

176. *Id.* §§ 1–2.

177. *See, e.g.*, Alex Ballingall, *How Secularism Became Quebec’s Religion: The*

means employed to ensure the secular nature of the State and its religious neutrality – banning certain public sector employees from wearing religious symbols during the exercise of their functions – are disproportionate and unnecessary under the HRC's interpretation of Article 18 in General Comment No. 22.¹⁷⁸ Furthermore, because respect for human rights is part of public order,¹⁷⁹ and Bill 21 disrespects a non-derogable human right,¹⁸⁰ the law cannot be justified on the basis of protecting public order.

Québec may not cite 'public morality' as a justification for limiting the freedom to manifest religion. Owing to the diversity of global cultures, states enjoy a margin of discretion in determining when 'public morality' may be invoked as a ground for restricting freedom of religion.¹⁸¹ Importantly, however, such discretion "does not apply to the rule of non-discrimination as defined in the [ICCPR]."¹⁸² Citing the margin of discretion states enjoy in imposing

Distinct Path to Bill 21, TORONTO STAR (Apr. 5, 2019), <https://www.thestar.com/politics/2019/04/05/how-secularism-became-quebecs-religion-the-distinct-path-to-bill-21.html> (describing how the Coalition Avenir Québec, the party behind Bill 21, has positioned laicity as the next step in Québec's modernization, which began with the reforms uncoupling the Catholic Church from public institutions during the 1960s).

178. General Comment No. 22, *supra* note 28, ¶ 8 (providing that limitations must be directly related and proportionate to the specific need on which they are predicated); compare Dan Bilefsky, *A Quebec Ban on Religious Symbols Upends Lives and Careers*, N.Y. TIMES (Mar. 7, 2020), <https://www.nytimes.com/2020/03/07/world/canada/quebec-religious-symbols-ban.html> [hereinafter *A Quebec Ban on Religious Symbols*] (telling the stories of four women – two Muslims, one Sikh, and one Orthodox Jew – whose professional lives were upended following the enactment of Bill 21), with Lindeman, *supra* note 58 (revealing how Bill 21 dashed the dreams of a Muslim woman aspiring to become a Crown prosecutor).

179. Siracusa Principles, *supra* note 90, ¶ 22.

180. *Id.* ¶ 58 (stipulating that the freedom of religion is not derogable under any circumstance, including the asserted purpose of preserving the life of the nation); ICCPR, *supra* note 23, art. 4 (disallowing any derogation from Article 18 in times of public emergency); G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 2, 18 (Dec. 10, 1948) (proclaiming the universality of freedom of religion).

181. Siracusa Principles, *supra* note 90, ¶ 27 ("[A] state which invokes public morality as a ground for restricting human rights, while enjoying a margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community").

182. *Id.* ¶ 28; ICCPR, *supra* note 23, art. 26 (prohibiting discrimination on any

restrictions on human rights to safeguard public morals, Québec could try to justify Bill 21's religious symbols ban by emphasizing its unique characteristics, distinct social values, and specific history, all of which have led it to develop an attachment to State laicity.¹⁸³ However, because Muslim women are disproportionately impacted by the ban,¹⁸⁴ and the margin of discretion does not permit states to abrogate the ICCPR's rule of non-discrimination,¹⁸⁵ the law cannot be justified on the ground of protecting public morals.

Lastly, Québec may not invoke the 'protection of the rights and freedoms of others' to justify Bill 21's religious symbols ban. The Siracusa Principles allow for the scope of the 'rights and freedoms of others' that may act as a limitation upon Covenant rights to extend beyond those rights and freedoms recognized in the ICCPR.¹⁸⁶ This provides some leeway for Québec to argue that by ensuring the religious neutrality of the state, Bill 21 is protecting the rights and freedoms of others. However, "[w]hen a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the [ICCPR] seeks to protect the most fundamental rights and freedoms."¹⁸⁷ Accordingly, the burden would be on Québec to show that whatever rights and freedoms of others Bill 21 is purportedly protecting supersede the freedom to manifest religion guaranteed in the ICCPR.¹⁸⁸

The goal of maintaining a secular society is not one of the

ground, including sex and religion).

183. Bill 21, *supra* note 2, at preamble.

184. See Lindeman, *supra* note 58 (noting how many Québécois agree that the main targets of Bill 21 are women and reporting about the deleterious impact the law has on Muslim women seeking jobs as teachers and prosecutors); see also Verity Stevenson, 'We Will Keep on Fighting': Muslim Women Devastated by Appeal Court Decision to Uphold Bill 21, CBC NEWS (Dec. 12, 2019, 7:41 PM), <https://www.cbc.ca/news/canada/montreal/court-of-appeal-bill-21-reaction-1.5394522> (reporting on a Muslim substitute teacher who has avoided taking teaching assignments because of her aversion to removing her hijab, resulting in her financial dependence on her husband, and demonstrating how the effects of Bill 21 contradict one of the National Assembly's justifications for passing the law: to promote equality between men and women).

185. Siracusa Principles, *supra* note 90, ¶ 28.

186. *Id.* ¶ 35.

187. *Id.* ¶ 36.

188. *Id.*

permissible limitations on the freedom to manifest religion found in Article 18(3) of the ICCPR.¹⁸⁹ “Secularism” or “State laicity” is also absent from the Siracusa Principles as a permissible limitation to the freedom to manifest one’s religion.¹⁹⁰ Moreover, the HRC explicitly clarified in General Comment No. 22 that the limitations set forth in Article 18(3) are to be strictly interpreted, and that restrictions are not allowed on grounds not specified there.¹⁹¹ Accordingly, because the Québec National Assembly justified Bill 21 on the ground of protecting secularism,¹⁹² and failed to cite any of the permissible limitations set forth exhaustively in Article 18(3),¹⁹³ Bill 21 violates international law.

B. CONSIDERING BILL 21 IN RELATION TO THE HRC’S JURISPRUDENCE

A review of past decisions issued by the HRC regarding Article 18 complaints demonstrates that Bill 21 imposes an unjustifiable limitation on the freedom to manifest religious belief.¹⁹⁴ The stated

189. See ICCPR, *supra* note 23, art. 18(3) (excluding the maintenance of a secular society as a permissible limitation on the freedom to manifest one’s religion).

190. See *Siracusa Principles*, *supra* note 90 (allowing limits on religious freedom only to the extent that it promotes public safety, order, health, or morals).

191. See General Comment No. 22, *supra* note 28 (limiting regulations regarding religious freedom to situations where necessary to promote public safety, order, health, or morals).

192. See Bill 21, *supra* note 2, at Preamble (“As it is important that the paramountcy of State laicity be enshrined Québec’s legal order . . .”).

193. See ICCPR, *supra* note 23, art. 18(3) (listing the protection of public safety, order, health, morals, or the fundamental rights and freedoms of others as permissible limitations to the freedom to manifest one’s religion).

194. See *supra* note 129, *Miriana Hebbadj v. France*, Communication 2807/2016, ¶¶ 7.12, 7.17, Human Rights Committee [Hum. Rts. Comm.], (Mar. 3, 2003), <http://ccprcentre.org/decision/16904> (finding that a criminal ban on publicly wearing full-face veils violated the author’s freedom to manifest religion and was discriminatory toward Muslim women); see also *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 8.7, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html> (concluding that the student’s expulsion from a state school for refusing to remove his keski was unnecessary, disproportionate to the stated objectives of the law, and violated the student’s freedom to publicly manifest his religion); *Raihon Hudoyberganova v. Uzbekistan*, Communication 931/2000, ¶ 7, Human Rights Committee, [Hum. Rts. Comm.], (Aug. 12, 2004), <http://hrlibrary.umn.edu/undocs/html/931-2000.html>

justification for Bill 21, to preserve religious neutrality and secularism,¹⁹⁵ is most analogous to the justification used in France for the law prohibiting the wearing of conspicuous religious symbols in public schools, which was at issue in *Bikramjit Singh v. France*.¹⁹⁶ Just as the HRC found that France's Act No. 2004-228 was not justified according to any legitimate aim recognized in Article 18(3) of the ICCPR, the HRC would find that Bill 21 lacks a permissible justification.¹⁹⁷

Bill 21 is also analogous to *Bikramjit Singh v. France* because in neglecting to single out a particular religion, neither Québec's Bill 21 nor France's Act No. 2004-228 is facially discriminatory.¹⁹⁸ In practice, however, members of certain religious minorities are disproportionately harmed by the two laws because they manifest their religion by wearing conspicuous religious symbols.¹⁹⁹

If the HRC were to receive a complaint from a citizen of Québec

(asserting that the student's expulsion from a state university for refusing to comply with a hijab ban violated the student's freedom to manifest religion, especially considering the university provided no justification for the expulsion aside from their policy banning hijabs).

195. See Bill 21, *supra* note 2, §§ 1–4 (affirming the laicity of the State of Québec and asserting that State laicity and the preservation of religious neutrality requires the prohibition on wearing religious symbols).

196. *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 2.1 (noting that the law, Act No. 2004-228, in conformity with the principle of secularism, prohibited "the wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner" in public primary schools, secondary schools, and lycées).

197. See *generally id.* ¶ 8.7 (concluding that prohibiting the Sikh student from wearing his keski at school was not necessary under Article 18(3) of the ICCPR, infringed on his right to manifest his religion, and constituted a violation of Article 18 of the ICCPR).

198. See Bill 21, *supra* note 2, § 6, Schedule II (prohibiting persons listed in Schedule II of the law from wearing religious symbols in the exercise of their functions without singling out any particular religion); *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 3.14 (recognizing that Act No. 2004-228 did not specifically target Sikh students).

199. See *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 3.15 (describing how observant Jewish, Muslim, and Sikh students, who often wear so-called conspicuous religious symbols such as kippahs, hijabs, and turbans, may be excluded from attending school with other French children under Act No. 2004-228); see also Loreto, *supra* note 10 (arguing that although Bill 21 does not explicitly target Muslim women, the law's impact will be borne by them the most).

victimized by Bill 21, the government of Québec may distinguish Bill 21 from the law at issue in *Bikramjit Singh v. France* by emphasizing the fact that Bill 21 only applies to certain public-sector employees who are in positions of authority while the law in *Bikramjit Singh v. France* was imposed on public school students.²⁰⁰ Therefore, the Québec government could argue that Bill 21 is uniquely necessary and narrowly tailored to ensure religious neutrality.²⁰¹ However, in *Riley et al. v. Canada*, the HRC rejected the authors' claim that a Sikh officer being allowed to wear a turban while working as a Mountie would undermine his impartiality.²⁰² *Riley et al. v. Canada* is particularly relevant in the context of Bill 21 because Bill 21 specifically lists "peace officers" as persons subject to the ban on wearing religious symbols in the exercise of their job functions.²⁰³

Bill 21's ban on religious symbols is also similar, in effect, to the French law at issue in *Miriana Hebbadj v. France* that banned concealing the face in public spaces.²⁰⁴ Like the French law, Bill 21

200. See Bill 21, *supra* note 2, at Schedule II (listing justices of the peace, prosecutors, and peace officers as some of the persons subject to the prohibition on wearing religious symbols in the exercise of their functions); see also *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 2.1 (noting how the facts of the case are related to France's Act No. 2004-228, which prohibited pupils in public primary schools, secondary schools, and lycées from manifesting their religion with conspicuous religious symbols and clothing).

201. See Bill 21, *supra* note 2, § 4, Schedule II (justifying Bill 21 as being necessary to foster adherence to State religious neutrality and limiting the persons subject to the prohibition on wearing religious symbols in the exercise of their functions to those listed in Schedule II of Bill 21).

202. See *supra* note 101, *Riley et al. v. Canada*, Communication 1048/2002, ¶¶ 4.2, 5, Human Rights Committee [Hum. Rts. Comm.], (Apr. 5, 2002), http://www.worldcourts.com/hrc/eng/decisions/2002.03.21_Riley_v_Canada.htm (concluding that the authors' communication is inadmissible because the authors failed to show how their rights under the ICCPR had been affected by allowing Sikh officers to wear religious symbols).

203. See Bill 21, *supra* note 2, at Schedule II (listing "peace officers who exercise their functions mainly in Québec" as being subject to the prohibition on wearing religious symbols in the exercise of their functions).

204. See *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 2.2, 7.17, Human Rights Committee [Hum. Rts. Comm.], (Mar. 3, 2003), <http://ccprcentre.org/decision/16904> (quoting Article 1 of France's Act No. 2010-1192 as stipulating that "[n]o one may, in a public space, wear any article of clothing intended to conceal the face.").

does not cite one of the permissible limitations on the freedom to manifest religion enshrined in Article 18(3).²⁰⁵ In *Miriana Hebbadj v. France*, the HRC found that France's justifications for the ban on concealing the face in public spaces, which were not cited in the law's text but were later argued before the HRC, were too attenuated from the impact of the ban to amount to a permissible limitation under Article 18(3).²⁰⁶ Rather, the HRC found the ban to be disproportionate to the purported objectives²⁰⁷ and discriminatory.²⁰⁸ Similarly, if the HRC were to hear a complaint regarding Bill 21, it most certainly will look to the *Miriana Hebbadj v. France* precedent²⁰⁹ and find that Bill 21's goal of State laicity and religious neutrality does not justify a blanket ban on the wearing of religious symbols by certain public officials during the exercise of their job functions, and that the law's practical effect is to discriminate against Muslim women.²¹⁰

Bill 21 prohibits certain public-sector employees from wearing

205. See Bill 21, *supra* note 2, at preamble, § 4 (justifying the law on the ground of affirming State laicity and religious neutrality, rather than the protection of public safety, order, health, morals, or the fundamental rights and freedoms of others).

206. See *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 7.10 (concluding that one of France's justifications for the law, that the law would promote the concept of "living together," was vague and abstract, and that France had not identified a specific fundamental right or freedom that would be affected by the fact that some people have their face covered in public).

207. See *id.* ¶¶ 7.12, 7.17 (holding that "the State Party has not demonstrated that the limitation of the author's freedom to manifest her religion or belief by wearing the niqab was necessary and proportionate within the meaning of [A]rticle 18(3) of the [ICCPR].").

208. See *id.* ¶ 7.17 (concluding that the law banning covering the face in public spaces constitutes a form of intersectional discrimination based on gender and religion under Article 26 of the ICCPR).

209. See Gunatilleke, *supra* note 31, at 30–31 (noting that although the legally binding nature of the HRC's views should not be overstated, how the HRC adjudicates certain cases is important to understanding how the ICCPR's limitations on the freedom of religion are interpreted and applied in practice).

210. See *UN Human Rights Experts Express Concern*, *supra* note 20 (reporting that three legal experts working for the HRC expressed their concerns about Bill 21, specifically noting that the law does not specify why the ban on wearing religious symbols "is necessary and proportionate to protect the security, order, public health and morality or fundamental rights and freedoms of others" and that "the clause in Bill 21 requiring services to be delivered and received with the face visible 'affects mainly certain religious minorities.'").

religious symbols during the exercise of their job functions.²¹¹ Article 18 of the ICCPR provides all individuals with the freedom to publicly manifest their religion, “subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”²¹² The permissible limitations set forth in Article 18(3) are exhaustive.²¹³ In addition to complying with one of the permissible limitations, restrictions on the freedom to manifest religion must be applied only for the specific purpose for which they are designed, be proportionate, and “may not be imposed for discriminatory purposes or be applied in a discriminatory manner.”²¹⁴ Because Bill 21 imposes a limitation on the freedom of certain public sector employees from publicly manifesting their religion,²¹⁵ and the limitation is not justifiable under Article 18(3), Bill 21 violates Article 18 of the ICCPR.²¹⁶

IV RECOMMENDATIONS

Québec’s ban on wearing religious symbols during the exercise of certain public-sector job functions, codified in Bill 21: An Act Respecting the Laicity of the State,²¹⁷ violates Article 18 of the ICCPR.²¹⁸ Therefore, if an individual were to author a communication to the HRC claiming a violation of their freedom to manifest religion under Article 18 of the ICCPR, the HRC would

211. See Bill 21, *supra* note 2, § 6, Schedule II (articulating the prohibition and listing persons subject to it).

212. ICCPR, *supra* note 23, art. 18.

213. See General Comment No. 22, *supra* note 28, ¶ 8 (“restrictions are not allowed on grounds not specified there . . .”).

214. *Id.*

215. See *id.* ¶ 4 (noting that the freedom to manifest religion extends to wearing distinctive clothing or head coverings); see also Bill 21, *supra* note 2, § 6 (imposing a ban on wearing religious symbols during the exercise of job functions).

216. See ICCPR, *supra* note 23, art. 18 (listing the protection of public safety, order, health, morals, or the fundamental rights and freedoms of others as permissible limitations to the freedom to manifest one’s religion).

217. Bill 21, *supra* note 2, § 6 (imposing a ban on public sector employees wearing religious symbols during the exercise of job functions).

218. See ICCPR, *supra* note 23, art. 18 (guaranteeing the freedom of religion, including the freedom to manifest one’s religion).

likely find in the author's favor and demand that Canada take remedial measures. To avert the HRC's condemnation, Québec's National Assembly should cease the implementation of Bill 21. Moreover, Canada's federal government should use all constitutionally permissible measures to challenge Bill 21. Lastly, recognizing the frequency with which laws purporting to protect State laicity are brought before the HRC for review, the HRC should issue a general comment that clarifies the appropriate circumstances, if any, under which upholding State laicity can justify limitations on the freedom to manifest religion.

A. QUÉBEC SHOULD CEASE IMPLEMENTATION OF BILL 21

Since the religious symbols ban codified in Bill 21 violates Article 18 of the ICCPR, Québec should cease implementation of the ban and rescind Bill 21. Under Article 18 of the ICCPR, state parties are expected to guarantee the freedom of religion, including the freedom to manifest one's religion in worship, observance, practice, and teaching.²¹⁹ The freedom to manifest one's religion is 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.²²⁰ Because the justifiable limitations listed in Article 18(3) of the ICCPR are exhaustive,²²¹ and the aim of secularism and religious neutrality, by itself, is insufficient to limit the freedom to manifest religion,²²² Québec's Bill 21 violates Article 18 of the ICCPR. Therefore, Québec's National Assembly should

219. See ICCPR, *supra* note 23, art. 18(1) ("Everyone shall have the right to freedom of thought, conscience and 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 private, to manifest his religion in worship, observance, practice, and teaching.").

220. ICCPR, *supra* note 23, art. 18(3).

221. See General Comment No. 22, *supra* note 28, ¶ 8 (stating that restrictions on the freedom to manifest one's religion are not allowed on grounds not specified in Article 18(3) of the ICCPR).

222. See *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 3.5, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html> (asserting that the aim of secularism "may be considered a legitimate aim, though not an end in itself, and only to the extent that it serves one or more of the aims set out exhaustively in article 18, paragraph 3, if strictly interpreted.").

cease implementing Bill 21 and rescind the law entirely.

B. CANADA'S FEDERAL GOVERNMENT SHOULD USE ALL
CONSTITUTIONALLY PERMISSIBLE MEASURES TO CHALLENGE
BILL 21

As a state party to the ICCPR and the First Optional Protocol to the ICCPR, Canada may be held accountable by the HRC for violations committed by the legislatures of any of its constituent provinces and territories.²²³ To foreclose that possibility, Canada's federal government should use all constitutionally permissible measures at its disposal to challenge Québec's Bill 21, including by expediting the current litigation over the law's constitutionality, intervening as a party to the litigation, repealing the "notwithstanding clause" of the Canadian Charter of Rights and Freedoms, and nullifying the law entirely.²²⁴ Although the political appetite for doing so may be complicated by the law's overwhelming popularity among Québécois,²²⁵ allowing Bill 21 to stand may expose Canada to international condemnation by the HRC for its failure to adhere to its obligations under the ICCPR.²²⁶

223. See ICCPR, *supra* note 23, art. 50 (providing that the provisions of the ICCPR extend to all parts of federal States); see also General Comment No. 31, *supra* note 160, ¶ 4 (providing that the obligations of the ICCPR are binding on every state party as a whole, including regional and local governments *First Optional Protocol*, *supra* note 33, arts. 1–2, 10 (providing that States Parties to the ICCPR that become a Party to the Optional Protocol recognize the HRC's competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of an ICCPR violation, and that the Optional Protocol extends to all parts of federal States without limitations or exceptions).

224. See *UN Human Rights Observers Warn Quebec*, *supra* note 21 (reporting that a letter U.N. human rights observers sent to the Canadian mission in Geneva expressing concern about Bill 21 could provide ammunition to groups seeking to challenge Bill 21, specifically by providing them with a blueprint to file a complaint with the HRC which, if successful, will put the Canadian government under significant pressure to comply with the HRC's prescriptions).

225. See, e.g., Philip Authier, *Majority of Canadians Disapprove of Bill 21, but Quebecers are in Favour: Poll*, MONTREAL GAZETTE (Aug. 6, 2019), <https://montrealgazette.com/news/quebec/majority-of-canadians-disapprove-of-bill-21-but-quebecers-are-in-favour-poll> [hereinafter *Majority of Canadians Disapprove of Bill 21*] (reporting on a poll conducted in July 2019 that showed sixty-four percent of Québécois supported Bill 21).

226. See General Comment No. 31, *supra* note 160, ¶ 17 (noting that it is common for the HRC in cases under the Optional Protocol to include in its Views

The Québec National Assembly's use of the "notwithstanding clause" of the Canadian Charter of Rights and Freedoms limits the options available to the federal government to intervene.²²⁷ However, the "notwithstanding clause" does not provide Québec with wholesale protection. First, the federal government could accelerate the current litigation by referring Bill 21 directly to the Supreme Court of Canada so that the Court can issue an opinion on the law's constitutionality.²²⁸ Second, the Attorney General of Canada may intervene as a party in the litigation and argue that Bill 21 abuses the "notwithstanding clause."²²⁹ Third, the federal government could amend the constitution to repeal the "notwithstanding clause."²³⁰ Lastly, and most controversially,²³¹ the federal government could use its disallowance power to constitutionally invalidate Bill 21.²³²

the need for measures to avoid recurrence of the violation in question, and that such measures may require changes to the state party's laws).

227. See Canadian Charter of Rights and Freedoms, *supra* note 15, § 33 (allowing the legislature of a province to declare that an Act shall operate notwithstanding a provision included in Section 2 of the Charter, such as freedom of religion).

228. See Kristopher Kinsinger, *Conservatives Should Show Leadership on Bill 21 and Defend Religious Freedom*, POL'Y OPTIONS (Sept. 18, 2020), <https://policyoptions.irpp.org/magazines/september-2020/conservatives-should-show-leadership-on-bill-21-and-defend-religious-freedom/> (indicating that the federal government has the authority to refer directly to the Supreme Court and avoid the delays associated with protracted litigation).

229. See *id.* (arguing that intervention by the Canadian attorney general would be the most prudent option because it would signal opposition to Bill 21 while avoiding a direct challenge to the "notwithstanding" clause, which could cause a kerfuffle with the provinces).

230. See Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.) §§ 38-49 (outlining the general procedure for amending the Constitution of Canada).

231. See Chantal Hébert, Opinion, *Voters Deserve to Know Ottawa's Intentions Towards Quebec's Secularism Law*, TORONTO STAR (June 19, 2019), <https://www.thestar.com/politics/political-opinion/2019/06/19/no-good-reason-for-trudeau-to-rush-in-and-challenge-quebecs-secularism-law.html> (arguing that using the constitutional disallowance power would be the political equivalent of "the nuclear option," which would trigger a backlash against Prime Minister Trudeau's party in Québec).

232. See Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.) §§ 55-56 (providing the Queen with the power to disallow a bill passed by the Canadian Parliament and extending that disallowance power to the federal

Any attempt by the Canadian federal government to abrogate Bill 21, either through litigation or constitutional measures, would be politically challenging. Not only does Bill 21 enjoy substantial support among Québécois,²³³ intervention by the federal government could re-ignite the Québec separatist movement.²³⁴ The controversy surrounding Bill 21 amounts to a zero-sum contest between Canada's dual commitments to human rights and democracy. Attempting to nullify the law would contravene the popular will of Québécois while allowing the law to stand would enable Québec to continue to run roughshod over the rights of religious minorities.

Domestic politics aside, Canada is obliged to adhere to its commitment under the ICCPR.²³⁵ By restricting the freedom of certain public-sector employees to publicly manifest their religion without justifying the restriction under any of the permissible limitations listed in Article 18(3), Bill 21's religious symbols ban is illegal under international law.²³⁶ Further, because Canada is responsible before the HRC for the laws passed by its constituent provinces and territories, the HRC may hold Canada accountable for Québec's contravention of the ICCPR.²³⁷ Therefore, the Canadian federal government should use all constitutionally permissible measures to invalidate Bill 21.

C. The United Nations Human Rights Committee Should Clarify

government over acts of the provincial legislatures).

233. See Siddiqui, *supra* note 11 (citing a survey of more than 1,200 Québécois by Leger Marketing which showed that sixty-three percent of people in the province supported Bill 21 as of May 2019).

234. See Dan Bilefsky, *The Reawakening of Quebec's Nationalism*, N.Y. TIMES (Nov. 1, 2019), <https://www.nytimes.com/2019/11/01/world/canada/Bloc-Quebecois-Nationalism.html> [hereinafter *The Reawakening*] (reporting on the resurgence of the nationalist Bloc Québécois in the 2019 Canadian elections and quoting a pollster who asserts that "the bloc's surge reflected the extent to which Quebecers recoil when the rest of Canada tries to tell them what to do.").

235. See VCLT, *supra* note 79, arts. 27, 29 (providing that a party may not invoke the provisions of its internal law as justification for its failure to adhere to the terms of a treaty, and that a treaty is binding upon each party in respect of its entire territory).

236. See discussion *supra* Part III.

237. See ICCPR, *supra* note 23, art. 50 (stating that the provisions of the ICCPR extend to all parts of federal States); see also First Optional Protocol, *supra* note 33, art. 10 ("the provisions of the present Protocol shall extend to all parts of Federal States . . .").

the Terms of Article 18 by Issuing a General Comment

Bill 21 is not without precedent. Several states in Western Europe have justified statutes imposing limitations on the freedom to manifest religious belief on the ground of maintaining state secularism.²³⁸ The laws often disproportionately affect Muslim women and other religious minorities, as was the case in *Miriana Hebbadj v. France*²³⁹ and *Bikramjit Singh v. France*.²⁴⁰ As the quasi-adjudicative body tasked with ensuring that state parties fulfill their obligations under the ICCPR, the HRC should clarify under what circumstances, if ever, secularism may serve as a permissible justification for limitations on the freedom to publicly manifest religion.²⁴¹ The migration crises and concomitant rise of populism throughout Western Europe and North America may continue to entice legislatures in those regions to impose limitations on public manifestations of religious belief under the guise of secularism.²⁴²

238. See, e.g., *Austrian Court Overturns Primary School Headscarf Ban*, BBC NEWS (Dec. 11, 2020), <https://www.bbc.com/news/world-europe-55277840> (describing an Austrian law, which proscribed the wearing of “religious clothing that is associated with a covering of the head” for children up to ten years of age in Austrian primary schools, and which was struck down by Austria’s constitutional court); Act No. 2004-228, *supra* note 114 (banning conspicuous religious symbols from being worn by students in public primary schools, secondary schools, and lycées in France); Act No. 2010-1192, *supra* note 129 (instituting a criminal ban in France on publicly wearing clothing that conceals the face).

239. See *Miriana Hebbadj v. France*, Communication 2807/2016, ¶ 7.17, Human Rights Committee [Hum. Rts. Comm.], (Mar. 3, 2003), <http://ccprcentre.org/decision/16904> (concluding that the application of the French law which prohibited the concealing of a person’s face in public spaces constituted intersectional discrimination).

240. See *Bikramjit Singh v. France*, Communication 1852/2008, ¶ 3.14, Human Rights Committee, [Hum. Rts. Comm.], (Feb. 4, 2013), <http://hrlibrary.umn.edu/undocs/1852-2008.html> (noting that although Act No. 2004-228 did not specifically target Sikh students, it would likely have a disproportionately harmful effect on them).

241. See Gunatilleke, *supra* note 31, at 30 (describing how the HRC performs a “quasi-adjudicative” function as part of its role in monitoring implementation of the ICCPR by state parties).

242. See Shada Islam, *Europe’s Migration ‘Crisis’ Isn’t About Numbers. It’s About Prejudice.*, GUARDIAN (Oct. 8, 2020, 8:07 AM), <https://www.theguardian.com/world/2020/oct/08/europe-migration-crisis-prejudice-eu-refugee-orban-christian> (arguing that the discussion in Europe concerning refugee settlement is “entangled in Europe’s dismal record on racism, the rise in anti-Muslim sentiment, and the continent’s complex post-colonial

The HRC should therefore publish a general comment, using precise language, to clarify when secularism may, if ever, justify limitations on Article 18 rights.

V. CONCLUSION

Québec's Bill 21, entitled "An Act Respecting the Laicity of the State" violates Article 18 of the International Covenant on Civil and Political Rights. Bill 21 prohibits certain public-sector employees from wearing religious symbols during the exercise of their job functions. Article 18 of the ICCPR guarantees to everyone the freedom of thought, conscience, and religion, including the freedom to manifest one's religion in worship, observance, practice, and teaching. Any limitation imposed by a state party on the freedom to manifest religion must be prescribed by law and necessary to protect public safety, order, health, or morals or the rights and freedoms of others. Because wearing religious symbols is a recognized form of manifesting one's religion and affirming State laicity is not one of the permissible limitations on the freedom to manifest religion, Bill 21 violates Article 18 of the ICCPR.

Accordingly, since Canada is a state party to the ICCPR and state parties are responsible for ensuring that the freedom guarantees contained therein shall extend to all parts of federal States without limitations or exceptions, Québec's implementation of Bill 21 renders Canada in violation of the ICCPR. Therefore, Québec must rescind Bill 21, the Canadian federal government should use all constitutional measures available to challenge Bill 21, and the HRC should clarify the terms of Article 18 of the ICCPR by publishing a general comment specifying whether secularism may, if ever, serve as a permissible justification for imposing limitations on the freedom to manifest religion.

relations with its southern, especially African, neighbors.").