

## Suffering for Her Faith: The Importance of an Intersectional Perspective on Gendered Religious Persecution in International Law

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*Women around the world suffer from discriminatory treatment ranging from violent persecution to social differentiation. Likewise, religious people are routinely targeted because of their faith. Moreover, many women of faith have historically been and are still today subject to increased risk of harm or actually experience a greater level of targeted harm (as compared to non-religious women or religious men) because of the interplay between their religious and gender identities. Despite this, a number of the most prominent international legal institutions that deal directly with discrimination against women inadequately use intersectional language to refer to religious women. In fact, there is a notable gap in scholarship and legal documents specifically addressing the disparate impact of discrimination toward religious women and a tendency to treat religion more as a source of oppression than as a distinct identity. Although many international organizations and agreements address issues of gender and religious discrimination separately, human rights bodies need to do more to address the intersection of gendered religious discrimination. This Note is directed both at audiences who may be skeptical of or hostile toward intersectionality as a legal or policy framework, and at audiences who may support intersectionality but who are skeptical of or hostile toward religion. It addresses the importance of religious and gender identities and the ways those two identities are often inextricably linked. This Note highlights a variety of historical and contemporary examples of persecution of religious women through an intersectional perspective, evaluates the failings of various international human rights institutions to address gendered religious persecution, and proposes a variety of recommendations for such groups to more consistently employ intersectionality to advance the human rights of women of faith.*

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## INTRODUCTION

In 2014, the terrorist group Daesh<sup>1</sup> abducted over five thousand people belonging to the Yazidi minority religion in Iraq.<sup>2</sup> While Daesh killed many, they specifically sold or used Yazidi women and girls as sex slaves.<sup>3</sup> Accounts from those who escaped from Daesh indicate that this practice was specifically targeted at Yazidi women—both because they were women, and because they belonged to the Yazidi faith.<sup>4</sup> Survivors gave accounts of repeated torture, systematic rape, and forced conversions, and how Daesh terrorists justified acts of sexual abuse by claiming that their interpretation of their Islamic faith permitted them to have sex with “slaves.”<sup>5</sup> Daesh’s treatment of Yazidi women was not arbitrary. Yazidis have historically been subject to persecution at the hands of those who view them as heretics, and Daesh’s targeting of them was an extension of this violent philosophy.<sup>6</sup>

While this targeting was not limited to Yazidis,<sup>7</sup> this practice demonstrates something beyond a mere coincidental overlap of human rights abuses. Rather, Daesh has intentionally singled out religious women (specifically women identifying with minority religions) for abduction, sexual slavery, and violence, believing that “the life force of a community is harmed by destroying its intimate relations on a family level as well as its reproductive force on a community level.”<sup>8</sup> Women from these minority religions were, in many cases, so traumatized by actual or threatened sexual abuse that many “attempted suicide during their captivity or witnessed suicide attempts to avoid rape, forced marriage, or forced religious conversion.”<sup>9</sup> The compounded religious factor, and the way that Yazidi religious culture af-

1. The terrorist organization alternatively known by other names such as the Islamic State of Iraq and the Levant (ISIL), Islamic State of Iraq and Syria (ISIS), and Islamic State (IS) has been referred to as “Daesh” by various governments and in numerous scholarship, both because it is an accurate acronym of the group’s full Arabic name, and because it rejects the use of Daesh’s nomenclatural propaganda—which seeks to portray the organization as a legitimate organization and not an extremist terrorist group—in favor of an Arabic play on words that criticizes the organization as “bigot[s] who impose[ ] [their] view on others.” Zeba Khan, *Words Matter in ‘ISIS’ War, So Use ‘Daesh,’* BOSTON GLOBE (Oct. 9, 2014), <https://perma.cc/GB89-9LF>; see also Benjamin K. Smith et al., *Framing Daesh: Failures and Consequences*, 10 PERSP. ON TERRORISM 42, 42 (2016).

2. Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES (Aug. 13, 2015), <https://perma.cc/YAG9-ARGL>.

3. *Id.*

4. *Iraq: ISIS Escapees Describe Systematic Rape*, HUM. RTS. WATCH (Apr. 14, 2015), <https://perma.cc/9YWJ-PV5T> [hereinafter *ISIS Escapees Describe*]; Amy Braunschweiger, *Interview: These Yazidi Girls Escaped ISIS. Now What?*, HUM. RTS. WATCH, <https://perma.cc/G7GG-22AY>.

5. *ISIS Escapees Describe*, *supra* note 4.

6. Braunschweiger, *supra* note 4.

7. Christian women have also been subject to abduction and rape by Daesh in a similar fashion. See *What Happened to the Christian Women Kidnapped by Islamic State?*, WEEK (July 16, 2018), <https://perma.cc/VD4Z-TRSZ>.

8. Pia Jäger et al., *Narrative Review: The (Mental) Health Consequences of the Northern Iraq Offensive of ISIS in 2014 for Female Yazidis*, 16 INT’L J. ENVTL. RES. & PUB. HEALTH 1, 6 (2019).

9. *ISIS Escapees Describe*, *supra* note 4.

fects women, has been described as “an additional load factor” for survivors, as it may lead to “fear of collective exclusion.”<sup>10</sup>

These religious women—many of whom remain in Daesh captivity today—were singled out because of the *intersection* of their dual identities as women and as people of faith, placing them and other similarly situated people at increased risk of violence. Yazidi women, however, are far from the only religious women who have faced undue risks or suffered disparately—either in terms of social discrimination or violent persecution—because of their dual identities as religious women. Pakistani soldiers raped hundreds of thousands of women who were Hindu or perceived as Hindu during the Bangladesh war for independence.<sup>11</sup> Boko Haram has kidnapped hundreds of Christian girls and women in Northern Nigeria.<sup>12</sup> The Communist Party of China is currently forcing hundreds of thousands of Muslim Chinese people into concentration camps on account of their religion, and government officials are raping and sexually abusing Muslim women and then forcing them to have abortions and undergo sterilization surgeries, creating unique risks for Muslim women.<sup>13</sup> And various European governments have suppressed the social participation and religious expression of Muslim women through so-called “burqa bans.”<sup>14</sup>

Although it is easy to discount such situations as being primarily about *either* female identity or religious identity (or, in some cases, ethnic identity), a comprehensive perspective on human rights requires that international human rights bodies recognize the *interplay* between religion and gender and how the identity of “religious women” results in women of faith often facing higher risks of targeted violence and uniquely disparate forms of discrimination. This paper seeks to bring together scholars and legal institutions who ascribe to intersectionality as well as those who may have reservations about, or are simply unfamiliar with, intersectionality in order to demonstrate the beneficial applications of that perspective with regards to women of faith.

10. Jäger et al., *supra* note 8, at 8.

11. YASMIN SAIKIA, *WOMEN, WAR, AND THE MAKING OF BANGLADESH: REMEMBERING 1971*, at 51–52 (2011).

12. HUM. RTS. WATCH, “THOSE TERRIBLE WEEKS IN THEIR CAMP:” BOKO HARAM VIOLENCE AGAINST WOMEN AND GIRLS IN NORTHEAST NIGERIA (2014) [hereinafter THOSE TERRIBLE WEEKS].

13. Ellen Ioanes, *Rape, Medical Experiments, and Forced Abortions: One Woman Describes Horrors of Xinjiang Concentration Camps*, BUS. INSIDER (Oct. 22, 2019), <https://perma.cc/GC5F-JYB9>.

14. There is an assortment of terms that indicate various levels of body covering. The bans on face coverings common in several European countries typically restrict use of “burqas” (a full face and body covering that veils the wearer’s eyes) and “niqabs” (a face covering that shows the wearer’s eyes). See *What’s the Difference Between a Hijab, Niqab and Burka?*, BBC NEWS (Aug. 7, 2019), <https://perma.cc/BGL2-QLJY>. Bans on such clothing are commonly referred to in the media as “burqa bans.” See, e.g., Liam Stack, *Burqa Bans: Which Countries Outlaw Face Coverings?* N.Y. TIMES (Oct. 19, 2017), <https://perma.cc/85TF-7Y9C>.

## OVERVIEW

This paper will explore this interplay through the theory of “intersectionality.”<sup>15</sup> While the theory has its limitations, it provides the best lens through which international human rights institutions can identify and respond to the unique experiences of religious women who face persecution because of their identities. The application of intersectional analysis can engender greater education about the importance of gendered religious issues within governments, improvement of legal doctrines and recommendations on issues concerning women of faith, increased cooperation between human rights institutions, and additional collaboration with religious communities. These solutions will enable human rights institutions to more accurately and responsively fulfill the goal they aspire to achieve: the protection of human rights. Part I will explore the frameworks of personal identity and intersectionality as valuable ways to evaluate human rights. Part II will examine instances of gendered religious persecution and discrimination, demonstrating the need for an intersectional approach when responding to such human rights abuses. Part III will evaluate if and how legal institutions currently apply intersectionality to religious women. Finally, Part IV will propose ways that international human rights organizations can better uphold the rights of women of faith.

This paper seeks to both demonstrate the validity and usefulness of intersectional perspectives as applied to religious women to readers who are either unfamiliar with or opposed to the theory, as well as to call out the human rights institutions that proclaim intersectionality but fail to adequately regard religious women as an intersectional identity. Both groups should ultimately recognize that religious freedom and gender equality are not inherently oppositional rights, but rather expressions of intersecting identities that require respect and attention.

## I. ANALYTICAL FRAMEWORKS

A. *The Framework of Personal Identity*

Each person’s identity is shaped by a myriad of factors. From more commonly recognized self-identifying groups (such as race, ethnicity, religion, sexual orientation, age, socioeconomic class, and gender identity) to less legally significant identity groups (including family size, dialect, employment status, and personality type), any combination of these characteristics can comprise someone’s personal identity.<sup>16</sup> No human being is reducible to one

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15. See *infra* notes 54–70 and accompanying text.

16. See GLOBAL JUSTICE AND THE POLITICS OF RECOGNITION 5 (Tony Burns & Simon Thompson eds., 2013); NAM-KOOK KIM, TRUST BUILDING AND REGIONAL IDENTITY IN NORTHEAST ASIA 3 (2017); JÜRGEN WERNER KREMER & R. JACKSON-PATON, ETHNOAUTOBIOGRAPHY: STORIES AND

or several identity traits. Nevertheless, many people *do* experience discrimination because of specific identities. Thus, to comprehensively affirm and protect human rights, scholarship, policymaking, and legal frameworks must address such targeting—including when people are singled out for belonging to *multiple* identity groups.

### 1. *The Importance of Gender as a Legal Identity*

Although gender is typically (and importantly) discussed in terms of gender *equality*, gender also serves an important role as a form of personal identity because of how that identity can inform legal answers to human rights abuses. Women's gender identity has been described as "a social construction of women's experiences,"<sup>17</sup> and much of feminist scholarship attempts to address "the distinctive experience of women."<sup>18</sup> In the context of law, gender is more than a comparative construct for identifying differences in how women and men are treated. It also enables society to recognize why and how the unique experiences of people of each gender may affect an individual's interactions with the law—and therefore how to change law and policy to better accommodate those experiences.<sup>19</sup>

The Universal Declaration of Human Rights (UDHR), proclaimed in December 1948, unequivocally affirms "the dignity and worth of the human person and . . . the equal rights of men *and women*."<sup>20</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognize the "equal right of men *and women* to the enjoyment of all" of the respective rights in each covenant.<sup>21</sup> The Declaration on the Elimination of Violence against Women (DEVAW) of 1993 recognizes the "urgent need for the universal application to women of the rights and principles with regard to

PRACTICES FOR UNLEARNING WHITENESS, DECOLONIZATION, AND UNCOVERING ETHNICITIES 101 (2014); Jennifer D. Adams, *Theorizing a Sense of Place in a Transnational Community*, 23 CHILD. YOUTH & ENV'TS 43, 47 (2013); Lakshmi Ramarajan, *Past, Present and Future Research on Multiple Identities: Toward an Intrapersonal Network Approach*, 8 ACAD. MGMT. ANNALS 589, 590 (2014).

17. ENGENDERING HONG KONG SOCIETY: A GENDER PERSPECTIVE OF WOMEN'S STATUS 3 (Fanny M. Cheung ed., 1997).

18. FEMINIST RESEARCH METHODS: EXEMPLARY READINGS IN THE SOCIAL SCIENCES (Joyce McCarl Nielsen ed., 1990); Dorothy S. McClellan, *Two Books on Women and Imprisonment*, 17 SOC. JUST. 141, 147 (1990); Amy Trauger et al., *Agricultural Education: Gender Identity and Knowledge Exchange*, 24 J. RURAL STUD. 432, 434 (2008).

19. Rosemary Hunter, *Deconstructing The Subjects Of Feminism: The Essentialism Debate In Feminist Theory And Practice*, 6 AUSTRALIAN FEMINIST L. J. 135, 135 (1996) ("The defining feature of feminist theories has been their grounding in women's experience. . . . The identification of a distinct 'women's experience' has in turn provided a basis for feminist politics. Feminist campaigns on issues . . . have been intended to benefit all women by ending their biologically, socially and/or economically-based oppressions").

20. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (emphasis added).

21. International Covenant on Civil and Political Rights art. 3, *adopted* Dec. 16, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (emphasis added); International Covenant on Economic, Social and Cultural Rights art. 3, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

equality, security, liberty, integrity and dignity of all human beings.”<sup>22</sup> On their face, these legal documents merely represent pure statements of equality—the idea that the rights and dignity of both men and women should be protected. However, because most of these documents specifically name both men and women, there are grounds for the argument that protecting the equal rights of men and women may, at times, necessitate considering differences between men and women and their experiences as such. This theory can be analogized to certain conceptions of gender-based affirmative action in the workplace: the idea that “equal opportunity does not guarantee an equal outcome.”<sup>23</sup> For example, protecting the equal rights of men and women may require laws that address and remedy situations of sexual harassment. However, if the law cannot account for the different ways in which a man or a woman experiences sexual harassment, a law that *functions* equally for both people may not necessarily result in the actual protection of rights.

The fact that documents like DEVAW even exist demonstrates the reality of this theory: if laws that do not take gender into account at all could perfectly ensure that human rights could be fully attained for all, legal conventions and treaties specific to women would simply not be necessary. Yet, of course, such mechanisms do exist. Accordingly, this Note stresses the importance of thinking about international human rights law “in terms of universal rights grounded in respect for the specific conditions that shape individual human experience”<sup>24</sup>—particularly with regards to gender.

## 2. *The Importance of Religion as a Legal Identity*

Religion is often thought of in pragmatic political or cultural terms, such as how interested parties can use religion to achieve certain outcomes or legitimize certain actions, or how it influences many societal institutions, from human rights philosophy, to family, to the environment, to economics.<sup>25</sup> Religion, however, can be and often is an important source of personal identity,<sup>26</sup> group identity, and worldview.<sup>27</sup> Religion often shapes the “beliefs, behavior, [and] belonging” of individuals who identify with a particu-

22. G.A. Res. 48/104, Declaration on the Elimination of Violence against Women, 1 (Dec. 20, 1996).

23. Erica French, *Approaches to Equity Management and Their Relationship to Women in Management*, 12 BRITISH J. MGMT. 267, 268 (2001).

24. Greg A. Mullins, *Subjects of Rights in Another City of God: Violence, Sexuality, and the Norms of Human Rights*, 54 ILHA DO DESTERRO 107, 118 (2008).

25. Jonathan Fox & Shmuel Sandler, *Quantifying Religion: Toward Building More Effective Ways of Measuring Religious Influence on State-Level Behavior*, 45 J. CHURCH & ST. 559, 563–64, 569 (2003).

26. LORNE L. DAWSON & DOUGLAS E. COWAN, RELIGION ONLINE: FINDING FAITH ON THE INTERNET 60 (2013).

27. See KRISTIN AUNE, SONYA SHARMA & GISELLE VINCETT, WOMEN AND RELIGION IN THE WEST CHALLENGING SECULARIZATION 195 (2016); Jeffrey R. Seul, “Ours is the Way of God:” Religion, Identity, and Intergroup Conflict, 36 J. PEACE RES. 553, 558–60, 564 (1999); Liliane Voyé, *Secularization in a Context of Advanced Modernity*, 60 SOC. RELIGION 275 (1999): 280 (arguing that religion can lead to people “shar[ing] the same fundamental values and the same worldview”).

lar faith.<sup>28</sup> Personal religious experiences that create truth claims about reality and humanity—often beyond the realms of verifiable science—“serve to confer identities on persons or groups” in ways that “are vital to human cultures.”<sup>29</sup>

The Universal Declaration of Human Rights (UDHR) recognizes this in article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”<sup>30</sup> The UDHR makes clear that the right to freedom of religion imposes an obligation upon states (and upon human rights bodies charged with enforcement of the UDHR) that individuals be able to “manifest” their religion in private and in public. Even if individuals choose not to publicly express themselves, international law has made clear that the *option* must be afforded to them, implicitly recognizing that “[a] policy of enforced privatization of religion would indeed require an authoritarian regime at odds with human rights.”<sup>31</sup>

However, the notion that some people’s religious identity requires expression is not always obvious—particularly to the non-religious<sup>32</sup>—and is sometimes even viewed as a “secondary right.”<sup>33</sup> It may be easy for some to conceive of religion as merely a set of internal beliefs that have minimal external impact on day-to-day life. For many, religious practices or even religious discussions take place primarily in private (such as within religious communities or among one’s own family).<sup>34</sup> For many others, however, religious identity may also necessitate public expression. This can come in the form of religious rituals, particular diets, types of clothing (like the headscarf for Muslim women or the yarmulke for Jewish men), and other forms of symbols that constitute “a part of daily life and of their identity” that cannot be put on or removed at will.<sup>35</sup> For many people who hold a religious identity, that identity—and its expression, in public or private forms—is “an integrated part of [their] selves” and thus “is an authentic expression of

28. *Religious Identity Formation: The 3B Framework: Beliefs, Behavior, Belonging*, RELIGIOUS FREEDOM CTR., <https://perma.cc/EE4V-AC97> (last visited Mar. 12, 2020).

29. Malise Ruthven, *Fundamentalist and Other Obstacles to Religious Toleration*, in *UNIVERSAL RIGHTS IN A WORLD OF DIVERSITY: THE CASE OF RELIGIOUS FREEDOM* 456, 474 (Mary Ann Glendon & Hans F. Zacher eds., 2012).

30. G.A. Res. 217 (III) A, *supra* note 20 (emphasis added).

31. Heiner Bielefeldt, *Misperceptions of Freedom of Religion or Belief*, 35 *HUM. RTS. Q.* 33, 50 (2013).

32. Nantiya Ruan, *Accommodating Respectful Religious Expression in the Workplace*, 92 *MARQ. L. REV.* 1, 6–7 (2008).

33. See Matthew Jones, Opinion, *First Among Freedoms*, *GUARDIAN* (Dec. 9, 2008), <https://perma.cc/H7XC-952B>.

34. See PENNY EDGELL, *RELIGION AND FAMILY IN A CHANGING SOCIETY* 74 (2013); Emma Green, *The Impoliteness of Talking About Religion*, *ATLANTIC* (Apr. 12, 2016), <https://perma.cc/AQ69-Z8W7>.

35. Margaretta Patrick et al., *Religion and Secularism: Four Myths and Bill 21*, *DIRECTIONS* 1, 8 (2019); Ananís Rentas Vega, (Un)spoken Codes: Is the New Generation Breaking the Pentecostal Dress Code? 12–13 (2019) (unpublished Master of Science paper, University of Rhode Island).

their world view.”<sup>36</sup> Laws that demand that religious individuals minimize or closet their own identity can be harmful because they demand the suppression of what a person may consider to be an integral part of who she is.<sup>37</sup>

Although none of the institutions discussed in this Note have explicitly advocated for the forced closeting of people’s religious identities, this Note advances the argument that a failure to treat religious identity as a meaningful identity, combined with a view of religion that is predominately hostile or that treats religion primarily as an inherent source of oppression, may contribute to a failure to adequately advance the human rights of religious women.

### 3. *Overlap of Religion and Gender*

It has long been taken as a given that women tend to be more religious than men.<sup>38</sup> Studies from the late 1990s and early 2000s, as well as Pew Research Center reports from 2016, confirm that this characterization still largely holds true today.<sup>39</sup> Even some who have challenged this view concede that this generalization is most clearly valid for “affective. . . religiousness” which includes “self-assessed intensity of religious identity.”<sup>40</sup> That is to say, women generally seem to identify more strongly with religion as an identity. Although there are a number of theories as to why this may be the case, the larger point is that religion is an important aspect of many people’s lives, and many of those people are women. As such, it seems evident that there is a significant overlap between people who are women and people who are religious. This is not to say that there is never tension between religion and gender, but it is important to note that many women choose to engage with these tensions head-on by embracing *both* feminist and religious identities, such as those who “are now working within religious settings in theological seminaries and in the congregations of believers, striving for a peaceful co-existence between traditional religious and feminist values.”<sup>41</sup> Even outside of directly religious institutions, religious identity can affect women in powerful ways. As Ratna Kapur points out by way of example, “the veil has also been a very empowering symbol for Muslim women in some countries.”<sup>42</sup>

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36. Ruan, *supra* note 32, at 6.

37. *See id.* at 6–7.

38. See Rodney Stark, *Physiology and Faith: Addressing the “Universal” Gender Difference in Religious Commitment*, 41 J. FOR SCI. STUDY RELIGION 495, 496 (2002).

39. *See generally* PEW RESEARCH CTR., THE GENDER GAP IN RELIGION AROUND THE WORLD (2016). *See also* Stark, *supra* note 38, at 495, 500.

40. D. Paul Sullins, *Gender and Religion: Deconstructing Universality, Constructing Complexity*, 112 AM. J. SOC. 838, 847 (2006).

41. Carole A. Rayburn, Samuel M. Natale & Judy Linzer, *Feminism and Religion: What Price Holding Membership in Both Camps?*, 26 COUNSELING & VALUES 154, 157 (1982).

42. Ratna Kapur, *Un-Veiling Women’s Rights in the War on Terrorism*, 9 DUKE J. GENDER L. & POL’Y 211, 218 (2002).



Despite the reality of these lived experiences, the idea that gender rights and religious expression should be understood as integrated is not always reflected in scholarship. Some have argued that “[o]ne . . . aspect of cultural diversity that is often overlooked is the importance of religion and spirituality in the lives of women.”<sup>43</sup> This “feminist blindness to the importance of religion (for women)” often manifests itself in two primary ways: the inattention to the positive aspects of religion in women’s life, and treating “religion as the root of women’s oppression.”<sup>44</sup> Such a tension can pose great difficulty for women seeking to identify fully with both ideologies,<sup>45</sup> especially when feminist scholars and advocates are “both blind and sometimes openly negative toward” the idea of collaboration between feminist and religious groups, as well as toward the idea that religious women have unique experiences that merit attention.<sup>46</sup>

Many assume that religious women must either be passively submitting to or actively resisting an oppressive system without considering whether those women *themselves* view their dual identities as being in tension.<sup>47</sup> Moreover, even academics and institutions dedicated to advancing human rights often operate on the implicit (if not explicit) assumption that religion and gender equality are inherently at odds or that religion is just an imposed external force that is primarily a cause of violence rather than a component of personal identity.<sup>48</sup> Although religion may be a negative experience for some, failing to give due attention to “positive aspects of religion in women’s lives” ignores the experiences that religious women have, dismisses

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43. Saba Rasheed Ali et al., *A Qualitative Investigation of Muslim and Christian Women’s Views of Religion and Feminism in Their Lives*, 14 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL.* 38, 38 (2008).

44. Elina Vuola, *Religion, Intersectionality, and Epistemic Habits of Academic Feminism: Perspectives from Global Feminist Theology*, 1 *FEMINIST ENCOUNTERS* 1, 3 (2017).

45. See Rayburn, Natale & Linzer, *supra* note 41, at 157.

46. Elina Vuola, *Intersectionality in Latin America? The Possibilities of Intersectional Analysis in Latin American Studies and Study of Religion*, in *BODIES & BORDERS IN LATIN AMERICA: CUERPOS Y FRONTERAS EN AMÉRICA LATINA* 131, 141 (Silje Lundgren, Thaïs Machado-Borges & Charlotta Widmark eds., 2012).

47. Sara Salem, *Feminist Critique and Islamic Feminism: The Question of Intersectionality*, 1 *POSTCOLONIALIST* 1, 9 (2013).

48. See *infra* Part III. See also, e.g., ALESSANDRO FERRARI & SABRINA PASTORELLI, *THE BURQA AFFAIR ACROSS EUROPE: BETWEEN PUBLIC AND PRIVATE SPACE* 31 n.12 (2016) (discussing the views of those who believe that “the burqa and the niqab [are] garments which symbolize the oppressive and discriminating character of Islam which is incompatible with gender equality and dignity”); RELIGION AND HUMAN RIGHTS: COMPETING CLAIMS? 8 (Carrie Gustafson & Peter H. Juviler eds., 1999); Sevgi Kiliç, Sawitri Saharso & Bergit Sauer, *Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity*, 15 *SOC. POL.: INT’L STUD. GENDER, ST. & SOC’Y* 397, 406–07 (2008) (“[In Austria,] . . . two right-wing populist parties have . . . tried to unscrupulously connect and exploit the veil . . . trumpet[ing] the gender equality card and Islamic patriarchalism to draw out the incompatibility of Islam with women’s equality.”); Shaira Nanwani, *The Burqa Ban: An Unreasonable Limitation on Religious Freedom or a Justifiable Restriction*, 25 *EMORY INT’L L. REV.* 1431, 1444 (2011). See also Gila Stopler, *The Free Exercise of Discrimination: Religious Liberty, Civic Community and Women’s Equality*, 10 *WM. & MARY J. WOMEN & L.* 459 (2004).

the way that religion may empower women, and rejects the possibility of feminism supplementing rather than antagonizing religious identity.<sup>49</sup>

Aside from the fact that religious expression is itself a human right,<sup>50</sup> a presumption that religion and gender are de facto incompatible can be deeply harmful to those who experience discrimination because of their unique identity as women of faith. UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt echoed this sentiment in his 2013 report to the UN General Assembly:

Unfortunately, the impression that freedom of religion or belief and equality between men and women allegedly constitute two essentially contradictory human rights norms seems to be widely shared. . . . Moreover, the abstractly antagonistic misconstruction of the relationship between freedom of religion or belief and equality between men and women fails to do justice to the life situation of many millions of individuals whose specific needs, wishes, claims, experiences and vulnerabilities fall into the intersection of both human rights, a problem disproportionately affecting women from religious minorities.<sup>51</sup>

This presents problems of ideological inconsistency and pragmatic consequences for feminists who assert goals of recognizing the unique experiences of women while simultaneously rejecting or giving undue attention to religion as a source of identity and positive experience.<sup>52</sup> If women's lived experiences are substantially shaped by their religious identities, then a failure to properly account for that unique identity could detract from the efficacy of legal and policy reforms.

The reader will note that this Note does not address the issue of women's oppression within and by their *own* religious communities. This is intentional. Although this is certainly an important issue, as reflected in the plentiful scholarship addressing that problem, this Note seeks to take a less conventional approach. Indeed, one of the primary arguments of this Note, as discussed in Part III, is that it is stereotypical for many legal scholars and human rights institutions to treat religion primarily as a source of oppression for the women in that community and that that stereotype contributes to a failure to recognize the unique experiences of religious women. This is not to say that an intersectional evaluation of the difficulties that women of faith face should *not* consider discrimination exerted by a woman's own religious community. Such an analysis is also important and deserves atten-

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49. Ali et al., *supra* note 43, at 39.

50. G.A. Res. 217 (III) A, *supra* note 20.

51. Heiner Bielefeldt (Special Rapporteur on Freedom of Religion or Belief), *Interim Report*, U.N. Doc A/68/290 (Aug. 7, 2013).

52. Dawn Llewellyn & Marta Trzebiatowska, *Secular and Religious Feminisms: A Future of Disconnection?*, 21 FEMINIST THEOLOGY 244, 255 (2013).

tion. However, this Note focuses exclusively on discrimination by actors outside a woman's own religious community (including religiously-motivated groups from *outside* the oppressed women's religious group) in order to identify religious ignorance or religiophobia in legal institutions as barriers to progress and to stress the importance of acknowledging women's religion for what it is: a rich source of meaning, values, power, and personal identity.<sup>53</sup>

### B. *The Analytical Framework of Intersectionality*

Although the principle behind intersectionality was not completely new at the time,<sup>54</sup> Kimberlé Crenshaw first coined the term in 1989 to classify a perspective that has since grown in popularity. Crenshaw championed the idea of "intersectionality" as a basis for her argument that black women in the United States have different experiences of discrimination that cannot be summed up as merely the combination of the experiences of black people and the experiences of women, and that those differences ought to be given legal and policy consideration.<sup>55</sup> Although the theory has failed to gain traction in United States jurisprudence,<sup>56</sup> various international groups have embraced it more readily.<sup>57</sup>

In the context of international human rights violations, intersectional discrimination may occur when a person is discriminated against because of the *interaction* between two or more identities. An example of this is when Boko Haram abducts Christian women and subjects them to sexual abuse—not simply because they are Christians (as Boko Haram would kill Christian men), nor simply because they are women (as Boko Haram would not capture or would quickly release *Muslim* women), but because they are *Christian women*. Boko Haram's desire to oppress a particular religious group by targeting women in that community through sexual violence constitutes a

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53. Obviously, criticisms of the incompatibility between religious identity and women's rights do not come solely from those with religiophobic perspectives. Activists who fight for greater gender equality either within religious groups or in general may also face the criticism of being anti-religious. See NIKKI VAN DER GAAG, *FEMINISM: WHY THE WORLD STILL NEEDS THE F-WORD* 65 (2018) (quoting Yemini feminist Alaa Al-Eryani as saying "I have been accused of wanting to destroy Yemeni girls: I was told that they are conservative and that I am trying to take them away from religion and traditions."). However, this Note's focus is not on the important topic of how religious communities can improve in their treatment of women, but rather about how *legal institutions* can improve.

54. Avtar Brah & Ann Phoenix, *Ain't I A Woman? Revisiting Intersectionality*, 5 J. INT'L WOMEN'S STUD. 75, 78–79 (2004).

55. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141–43 (1989).

56. See Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre-)History*, 95 B.U. L. REV. 713, 730 (2015); Kathleen Morris, *Through the Looking Glass: Recent Developments in Affirmative Action*, 11 BERKELEY WOMEN'S L. J. 182, 185 (1996); Crenshaw, *supra* note 55, at 141.

57. See *infra* Part III.

form of intersectional discrimination.<sup>58</sup> In the legal context, intersectionality is often used today in two ways: first, *as a way to think about and understand* how different identity categories are intertwined and relate to each other, and second, *as a way to react* to the ways that legal systems designed to prevent or respond to human rights abuses often focus on either one singular identity or two separate but unconnected identities.<sup>59</sup>

For the purposes of this Note, intersectionality is being used as a framework or analytical lens through which to evaluate people's experiences based upon those people's unique, complex, and "intersecting" identities.<sup>60</sup> Specifically, for legal institutions to "apply intersectionality" to situations of discrimination against religious women means that those institutions must evaluate how religious women's experiences are unique, determine what if any degree of increased risk religious women face on account of their intersectional identity (as compared to non-religious women or religious men), and respond directly to that increased risk.

It is important to distinguish between *intersectional* discrimination and other types of discrimination such as multiple and compound discrimination. Multiple discrimination occurs when an individual suffers several unconnected forms of discrimination on account of separate identities (such as when a woman is denied a promotion opportunity because of her gender and is also treated with hostility by her coworkers because of her race). Compound discrimination occurs when the discrimination that a person experiences because of one of their identities is made worse, or *compounded*, by discrimination based on another identity (such as when a black woman is denied a promotion because of sexist stereotypes about her competence, *and* her employer considers her a particularly incompetent woman because of racist stereotyping).<sup>61</sup>

While both multiple and compound discrimination demonstrate the problem of *additive* discrimination,<sup>62</sup> intersectionality is based on the premise that some identities are so closely intertwined that certain people are targeted for their *combined* identities and the way those identities interact

58. Gail Commandeur, *An analysis of the sexual exploitation of Yazidi women by Islamic State of Iraq and Syria (ISIS) and Christian women by Boko Haram: Spoils of war, holy war, or instrumental gain?* 18 (Apr. 2015) (unpublished dissertation) (on file with author).

59. Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful*, 9 FEMINIST THEORY 67, 71 (2008).

60. HANDBOOK OF THE SOCIOLOGY OF SEXUALITIES 263 (John D. DeLamater & Rebecca F. Plante eds., 2015).

61. See Pok Yin S. Chow, *Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence*, 16 HUM. RTS. L. REV. 453, 467–69 (2016); DAGMAR SCHIEK & ANNA LAWSON, EUROPEAN UNION NON-DISCRIMINATION LAW AND INTERSECTIONALITY: INVESTIGATING THE TRIANGLE OF RACIAL, GENDER AND DISABILITY DISCRIMINATION 3 (2016); Hege Skjeie & Trude Langvasbråten, *Intersectionality in Practice?: Anti-Discrimination Reforms in Norway*, 11 INT'L J. POL. 513, 514 (2009) (citing TIMO MAKKONEN, *Multiple, Compound and Intersectional Discrimination. Bringing the Experiences of the Most Marginalized to the Fore* (2002)).

62. See Chow, *supra* note 61, at 458, 473.

with each other.<sup>63</sup> An employer who promotes black men and white women but not black women exemplifies intersectional discrimination: while the employer may not discriminate overtly based on just a single identity trait (unlike the compound discrimination employer, who would not promote any woman regardless of whether she was black or white), they would discriminate on the basis of the *intersection* of those identities.<sup>64</sup>

Intersectionality has the potential to effectuate change for four primary reasons. First, at its core, it recognizes that human beings are comprised of multiple complex identities and that attacks which target multiple overlapping identities may pose greater risks of psychological harm because of more particularized fears of physical or social harm.<sup>65</sup> When women are targeted because of their gendered religious identity, it can also cause deep psychological harm both to the women and to their communities<sup>66</sup> because of how women's religious identity is often closely tied to community norms and values. Second, intersectionality highlights groups who are at a greater risk of discrimination or violence. Merely noting that "women are being targeted" or that "religious people are being targeted" underplays the relatively higher level of risk that women of faith *as such* can face in various parts of the world (as compared to non-religious women or religious men). This is similar to how early advocates of intersectionality, like Crenshaw, argued that black women face unique risks due to their intersectional identity and that those risks were being ignored due to a predominant focus on the experiences of white women.<sup>67</sup> Recognizing that women from minority communities experience different forms of discrimination than women from majority communities can lay the groundwork for legal institutions to better respond to specific forms of human rights abuses or improvements in policy systems that are meant to protect rights.<sup>68</sup> Third, international

63. Lisa Bowleg, *The Problem with the Phrase Women and Minorities: Intersectionality—An Important Theoretical Framework for Public Health*, 102 AM. J. PUB. HEALTH 1267, 1268 (2012).

64. See Paola Uccellari, *Multiple Discrimination: How Law can Reflect Reality*, 1 EQUAL RTS. REV. 24, 25 (2008).

65. NiCole T. Buchanan & Louise F. Fitzgerald, *Effects of Racial and Sexual Harassment on Work and the Psychological Well-Being of African American Women.*, 13 J. OCCUPATIONAL HEALTH PSYCHOL. 137, 143, 145 (2008).

66. Jasminka Kalajdzic, *Rape, Representation, and Rights: Permeating International Law with the Voices of Women*, 21 QUEEN'S L.J. 457, 478–79 (1995).

67. See Davis, *supra* note 59, at 73.

68. See Angelique Harris and Susannah Bartlow, *Intersectionality: Race, Gender, Sexuality, and Class*, in HANDBOOK OF THE SOCIOLOGY OF SEXUALITIES, *supra* note 60, at 264; Johanna E. Bond, *Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 157 (2003); Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38 SIGNS: J. WOMEN IN CULTURE & SOC'Y 1019, 1022–25 (2013) ("This is not to say that this is a case of race discrimination, but rather that minority race aggravates one's vulnerability as a woman by reducing one's options and undermining one's credibility and social worth."). See also ANDRA GILLESPIE, *WHOSE BLACK POLITICS?: CASES IN POST-RACIAL BLACK LEADERSHIP* 274 (2010) (noting that "[r]ecognizing that some people have multiple minority identities which affect their experiences and policy preferences represents huge theoretical progress").

human rights advocacy bodies are applying intersectionality more often.<sup>69</sup> Intersectionality necessarily focuses on “power systems” and systemic discrimination,<sup>70</sup> but it frequently does so with respect to the persons and parties responsible for *causing* such discrimination. This Note instead calls out the human rights institutions that have failed to fully extend the framework of intersectionality to women of faith in human rights advocacy. For this perspective to continue gaining legitimacy, human rights groups must apply intersectionality *consistently*—including to cases of religious women. Fourth, highlighting the intersectional nature of certain human rights violations has the potential to increase cooperative interaction between human rights organizations in ways that more effectively and efficiently uphold human rights, as discussed in Part IV.

The phrase “intersectionality” is admittedly a complex and loaded term. Not only can it be foreign to some outside academia, institutions of law and policy, or feminist circles, but even within those groups it is sometimes considered controversial.<sup>71</sup> Intersectionality is sometimes described as a “buzzword,”<sup>72</sup> “essentializing” (that is, tending to reduce people into just a few identities),<sup>73</sup> or just vague and confusing.<sup>74</sup> Despite these criticisms (which will be directly addressed in Part IV), intersectionality is nevertheless a valuable tool to use when analyzing legal institutions and their mechanisms because it enables us to evaluate how effective they are at upholding human rights in specific contexts and situations. Finally, it should be noted that though not every situation where religious women are subjected to rights violations is necessarily *intentional* intersectional discrimination, that does not mean that there is no benefit to applying an intersectional analysis to situations involving religious women. As will be discussed at length in Part IV, applying an intersectional lens to religious women as a distinct group has the potential to improve the lived situations of women of faith.

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69. See *infra* Part III.

70. See Anastasia Vakulenko, ‘Islamic Headscarves’ and the European Convention on Human Rights: an Intersectional Perspective, 16 SOC. & LEGAL STUD. 183, 185 (2007); Crenshaw, *supra* note 55, at 141 (surveying employment discrimination at General Motors).

71. See SUE WESTWOOD, AGEING, GENDER AND SEXUALITY: EQUALITY IN LATER LIFE 11 (2016); Ann Garry, *Intersections, Social Change, and “Engaged” Theories: Implications of North American Feminism*, 8 J. PAC. & AM. STUD. 99, 101 (2008); Margaret Anne Johnson, “Always in Second Place:” Transnational Women in East-Iceland, Intersectionality and Gender Equality in the Regions 27 (2019) (master’s thesis, Félagsvísindasvið Háskóla Íslands [University of Iceland]).

72. Davis, *supra* note 59, at 75.

73. WESTWOOD, *supra* note 71, at 11.

74. Danielle Mercer et al., *Intersectionality at the Intersection: Paradigms, Methods, and Applications—A Review*, in THE OXFORD HANDBOOK OF DIVERSITY IN ORGANIZATIONS 439 (Regine Bendl et al. eds., 2015). See also *infra* Part IV.

## II. INSTANCES OF GENDERED RELIGIOUS PERSECUTION AND DISCRIMINATION

Religious rights—and thus, the expression of religious identity—have been increasingly restricted worldwide. The Pew Research Center found that between 2007 and 2017 there was a thirty percent increase in the number of governments who impose “high” or “very high” levels of religious restrictions upon citizens, while hostilities against religious persons has risen over forty-three percent.<sup>75</sup> Some of the areas with the most substantial increases in religious hostility have been in sub-Saharan Africa (where groups have attempted to force religious change through conversions and kidnappings) and in Europe (where governments have increasingly restricted the permissible dress of Muslim women).<sup>76</sup> Harassment against religious groups—which is defined as “an offense against a religious group or person due to their religious identity,” which can include anything from verbal harassment to torture and killing—has remained at a ten-year high since Pew Research Center started tracking this data.<sup>77</sup> Because of the high number of women who are religious, this persecution necessarily affects religious women. Furthermore, this discrimination often occurs in an intersectional manner, meaning that religious women are at greater risk for violence or inequality (as compared to non-religious women or religious men) because of their combined identities.

Many of the following examples of intersectional discrimination and persecution involve crimes of a sexual nature. Although sex crimes in particular are by no means exclusively committed against women, sex crimes are often gendered, as the incidence of such crimes being perpetrated against women is generally substantially higher than the rate of (reported<sup>78</sup>) sex crimes committed against men.<sup>79</sup>

Perpetrators who target religious women for subjects of sexual assault often intend to strike a blow against those women’s religious communities

75. PEW RESEARCH CENTER, *A CLOSER LOOK AT HOW RELIGIOUS RESTRICTIONS HAVE RISEN AROUND THE WORLD* (2019) [hereinafter PEW, RELIGIOUS RESTRICTIONS].

76. *Id.*

77. *Id.* at 51.

78. It should be noted that some scholars have identified the deeply concerning lack of information about sexual violence against men. Although this paper focuses specifically on women, this should by no means be interpreted to disclaim the severity of sexual violence against men, nor limit intersectional approaches to women. The experiences of men who suffer sexual violence are also necessarily different from those of women and intersectional perspectives can and should be extended to them as well. See Chris Dolan, *Into the Mainstream: Addressing Sexual Violence Against Men and Boys in Conflict* (May 14, 2014) (Overseas Development Institute Briefing Paper), <https://perma.cc/3XZE-ZNF6>; Niamh Hayes, *The Bemba Trial Judgement – A Memorable Day for the Prosecution of Sexual Violence by the ICC*, PHD STUDIES IN HUMAN RIGHTS BLOG (Mar. 21, 2016), <https://perma.cc/9Y2P-MHWM>.

79. See Etienne G. Krug et al., *The World Report on Violence and Health*, 360 LANCET 1083 (2002); HELENE FISHER & ELIZABETH MILLER, *GENDERED PERSECUTION: WORLD WATCH LIST 2018 ANALYSIS AND IMPLICATIONS* 5 (2018).

as a whole.<sup>80</sup> Although all rape is horrific for the individual against whom it is committed, this violence can also cause deep harm to the religious community to which that person belongs (due to their religious beliefs about sexuality or their group's valuation of women as central to the community).<sup>81</sup> Although some scholars take issue with the claim that rape often permanently harms religious women's community participation because of how it functions as a form of 'social death,'<sup>82</sup> the fact remains that many women in religious communities *do* often experience feelings of shame or rejection because of the violence that their attackers inflict upon them both as women *and* as members of their religious community—and, indeed, as religious women.<sup>83</sup> Although there are often multiple causes for sexual crimes (including racism, homophobia, and classism, among others), many such crimes intentionally single out religious women because of the perpetrators' knowledge of the aforementioned social consequences of such violence.<sup>84</sup>

### A. *Examples of Intersectional Discrimination Against Religious Women*

#### 1. *Sex Trafficking and Torture of Yazidi Women*

As discussed in the introduction, Yazidi women have been subject to and continue to face severe violence at the hands of Daesh terrorists in the Middle East.<sup>85</sup> Daesh does not hide the fact that “[r]eligious minorities and women have particularly precarious positions in [their] sharia society; [religious minorities and women] are subjected to mass persecution and second-class-citizen status.”<sup>86</sup> Indeed, they have even boasted of the dehumanizing way they treat Yazidi women: “[Daesh] proudly published in Dabiq magazine what they did to the Yazidis: ‘After capture, the Yazidi women and children were then divided according to the Shari’ah amongst the fighters of the Islamic State who participated in the [Sinjar] operation’ (Dabiq, 2014).”<sup>87</sup>

The way that Daesh justified its horrific treatment of Yazidi women is also no secret. Sharia students of Daesh were tasked with researching

80. See ERICK STAKELBECK, *ISIS EXPOSED: BEHEADINGS, SLAVERY, AND THE HELLISH REALITY OF RADICAL ISLAM* 14 (2015).

81. See *THE WOMEN AND WAR READER* 5 (Lois Ann Lorentzen & Jennifer E. Turpin eds., 1998). See also *infra* notes 90–93 and accompanying text.

82. See, e.g., MISHA GLENNY, *THE FALL OF YUGOSLAVIA: THE THIRD BALKAN WAR* 209 (3d ed. 1996).

83. See Caroline Kennedy-Pipe & Penny Stanley, *Rape in War: Lessons of the Balkan Conflicts in the 1990s*, 4 *INT'L J. HUM. RTS.* 67, 75 (2000).

84. See, e.g., Lene Hansen, *Gender, Nation, Rape: Bosnia and the Construction of Security*, 3 *INT'L FEMINIST J. POL.* 55, 56, 59 (2000).

85. See generally *supra* notes 2–10 and accompanying text.

86. STAKELBECK, *supra* note 80, at 12.

87. Suha Hazeem Hassen, *Investigating Sexual and Gender-Based Violence as a Weapon of War and a Tool of Genocide Against Indigenous Yazidi Women and Girls by ISIS in Iraq* 15–16 (May 2016) (unpublished master's thesis), <https://perma.cc/Z29X-6W38>.



whether Yazidi women should be treated as ancient apostates of the Islamic faith or as an “originally mushrik group.”<sup>88</sup> Daesh determined that because the Yazidi religion is fundamentally heretical, “[u]nlike the Jews and Christians, there was no room for jizyah payment,” meaning that “[the Yazidi] women could be enslaved unlike female apostates who the majority of the fuqahā’ say cannot be enslaved and can only be given an ultimatum to repent or face the sword.”<sup>89</sup> Because parentage is also considered tied to religious identity, “by sexually enslaving Yazidi women and girls and forcing them to bear the children of [Daesh] fighters, [Daesh] views the offspring as belonging to the father, superior to the mother, and prevents another generation of Yazidis from being born’.”<sup>90</sup>

Beyond merely justifying their enslavement and rape of Yazidi women, Daesh also intentionally used tools of violence and sexual exploitation against the Yazidi community. Nadia Murad, a Yazidi woman who was appointed UN Goodwill Ambassador for the Dignity of Survivors of Human Trafficking and who was formerly detained as a sex slave, said that “[Daesh] knew how devastating [abduction and sex slavery] was for an unmarried Yezidi woman. Our worst fears—those of our community and our clergy, so they will not be resumed—have been shamelessly exploited.”<sup>91</sup> Research shows that Yazidi “women and girls are [particularly] affected by sexual violence” due both to “the physical and psychological consequences for those affected” and “because of the consequences for the community.”<sup>92</sup> To this end, Daesh has even “forced [captured Yazidi women] to call their parents and tell them they had been married or raped in order to dishonour their families.”<sup>93</sup>

Intersectional persecution occurs here because terrorists deliberately single out people on the basis of the *interaction* between their religious and gender identities: terrorists consider women belonging to religious minorities as prime targets for sexual assault, sex trafficking, and torture, particularly because of the psychological effect that such an attack will have upon both them and their communities.

## 2. *Mass Rape of Hindu and Bengali Muslim Women during the Bangladesh War of Independence.*

During the Bangladesh War of Independence in the 1970s, it is estimated that Pakistani soldiers raped between 200,000 to 400,000 girls and women

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88. Vanderbilt School of Law, *Yazidi Genocide: Opinion - Executive Summary* 3 (2015) (unpublished report) (citing Daesh’s magazine DABIQ, Issue 4).

89. *Id.*

90. Commandeur, *supra* note 58, at 13.

91. Jäger et al., *supra* note 8, at 7.

92. *Id.* at 6.

93. STAKELBECK, *supra* note 80, at 14.

from ages seven to seventy-five, targeting primarily Hindu women.<sup>94</sup> During this conflict, Pakistani troops frequently used mass rape as a way to inflict further suffering upon communities by targeting religious women who they considered needed religious “purification” due to their Hindu religious background—whether they had converted from Hinduism or were still Hindu at the time.<sup>95</sup> This created a unique situation in that women were targeted not only based on their *actual* religious identity, but also based on their *perceived* religious identity. Because many religious minorities in Bangladesh were often ethnically Bengali,<sup>96</sup> this caused ethnicity to serve as a proxy for gendered religious violence. One scholar writes that although many women were targeted:

The plight of the Hindu community was thus highly gendered in nature. Women were targeted in two ways: first, Hindu women were raped and usually killed; second, Bengali Muslim women, according to the Pakistani rationale, were imagined to have had strong Hindu influences, and were forcibly impregnated to create a ‘pure’ Muslim identity.<sup>97</sup>

This situation exemplifies the complex nature of gendered religious discrimination: if an attacker or discriminatory party *believes* a woman to be part of a disfavored religious group, they may subject that woman to more intentional targeting than if they did not believe her to be associated with that religious identity. Thus, although it is easy to see the violence perpetrated by the Pakistani Army as primarily about ethnicity, an understanding of the perceived association between the Bengali ethnicity and the Hindu religion demonstrates that it was religion that was the predominant driving force behind the atrocities that the Pakistani forces and their supporters committed. Of course, this should not be understood to mean that ethnicity played *no* role behind the mass rape of predominately Bengali women. On the contrary, this demonstrates that gendered religious ethnic violence is an even more complex form of intersectional persecution. An intersectional analysis of this situation, therefore, permits a fuller understanding of the reality behind the mass rape of the Bangladesh War of Independence.

This discrimination did not end after the war. In 2001, Amnesty International reported that “Hindu women [in Bangladesh] have been also subjected to sexual violence,” and that “[h]uman rights organizations in Bangladesh believe over 100 women may have been subjected to rape” fol-

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94. Kajalie Shehreen Islam, *Breaking Down the Birangona: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh's Independence Movement*, 6 INT'L J. COMM. 2131, 2134 (2012).

95. Kennedy-Pipe & Stanley, *supra* note 83, at 71; Nayanika Mookherjee, *The Absent Piece of Skin: Gendered, Racialized and Territorial Inscriptions of Sexual Violence During the Bangladesh War*, 46 MOD. ASIAN STUD. 1572, 1579 (2012).

96. Amena A. Mohsin, *Religion, Politics and Security: The Case of Bangladesh*, in RELIGIOUS RADICALISM AND SECURITY IN SOUTH ASIA, 467, 469–70 (Satu P. Limaye et al. eds., 2004).

97. BINA D'COSTA, NATIONBUILDING, GENDER, AND WAR CRIMES IN SOUTH ASIA 139 (2011).

lowing the general elections there.<sup>98</sup> Even in 2017, discrimination may persist. As Shafinur Nahar, a senior lecturer at the University of Creative Technology Chittagong located in Bangladesh, writes about the experiences of religious minority women in Bangladesh:

[W]omen from minority religious communities in Bangladesh . . . [are] more vulnerable than majority women. They are under a 'double curse' situation . . . first as members of a religious minority, especially one viewed with hostility and anger by the majority and secondly, by virtue of being women. This double cursed status is first at [the] 'official' or state level, secondly at the public level and thirdly at the individual level. These hurdles make life really difficult for minority women at many levels. . . .<sup>99</sup>

Women of the Hindu faith in Bangladesh have faced, and by some accounts continue to face, discrimination and violence on account of their religious status and their identity as women, leading to an outcome where Hindu (or Hindu-perceived) women face a relatively higher risk of discrimination and harm than do non-Hindu women and Hindu men.

### 3. *Abductions of Christian Women by Boko Haram*

In 2014, the terrorist group known as Boko Haram—which is fundamentally opposed to the education of women—kidnapped several hundred young women between the ages of sixteen and eighteen from a girls' school in Chibok, Nigeria.<sup>100</sup> Although Boko Haram claimed to conduct the kidnappings for the primary purpose of exchanging the schoolgirls with Boko Haram prisoners in government custody, the attack on these Chibok girls can hardly be considered random. First, although Nigeria is a majority Muslim country,<sup>101</sup> Chibok is a majority Christian town in the northeast region.<sup>102</sup> Second, Boko Haram specifically targeted this town because of the girls who had chosen to attend secondary school—which, in northern Nigeria, is especially uncommon.<sup>103</sup> After their abduction, many women were forcibly made to convert to Islam and to marry their captors.<sup>104</sup> Notably, it

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98. AMNESTY INTERNATIONAL, *BANGLADESH: ATTACKS ON MEMBERS OF THE HINDU MINORITY* (2001).

99. SOUTH ASIA STATE, SOCIETY AND DEVELOPMENT 169–70 (Gull Mohd Wani ed., 2018).

100. *Boko Haram: Nigerian Terror Group Sells Girls Into Slavery*, NBC NEWS (May 1, 2014), <https://perma.cc/49HA-RUK8>.

101. Jeff Diamant, *The Countries with the 10 Largest Christian Populations and the 10 Largest Muslim Populations*, PEW RESEARCH CENTER (Apr. 1, 2019), <https://perma.cc/YWSS-XXGG>.

102. Adam Nossiter, *Tales of Escapees in Nigeria Add to Worries About Other Kidnapped Girls*, N.Y. TIMES (May 14, 2014), <https://perma.cc/T6AS-VTRF>.

103. Francie Diep, *The True Story of the Nigerian Schoolgirls Who Survived Boko Haram*, PAC. STANDARD MAG. (July 10, 2019), <https://perma.cc/N4Z8-3PB> (“ . . . in the early 2000s, [o]nly 4 percent of girls were graduated from secondary school, from high school, in [northern Nigeria].”).

104. Tulip Mazumdar, *Chibok Girls “Forced to Join Nigeria’s Boko Haram,”* BBC NEWS (June 29, 2015), <https://perma.cc/H9D3-6QCJ>.

was women, and not men, who were exclusively targeted for these kidnappings, and it was a Christian town, not a Muslim town, that was specifically attacked.<sup>105</sup> Moreover, Muslim women and girls were allowed to leave while Christians were not, indicating Boko Haram's specific targeting of women for their specific religious identities.<sup>106</sup> Although some of the women were eventually released, many remain captive to this day.<sup>107</sup> When more schoolgirls (predominately Muslim) were abducted in early 2018, the Nigerian government negotiated for their eventual release. Boko Haram released all but one—the only Christian woman, Leah Sharibu, for refusing to convert to Islam—and has threatened to make her a “slave for life.”<sup>108</sup>

#### 4. *Sexual Torture, Forced Abortions, and Forced Sterilizations of Muslim Women in China*

Uyghurs, a minority group in China whose ethnic and religious identities are closely intertwined, represent the largest Muslim group in the country.<sup>109</sup> For years, the Communist Party of China has barred Muslim women from wearing face veils, which constitutes a direct form of intersectional discrimination.<sup>110</sup> Recently, the Chinese government has increased its targeting of Uyghurs and other smaller predominately Muslim ethnic groups as part of its larger goal to “sinicize” Islam, which has resulted in the detention of anywhere from 800,000 to upwards of two million Chinese Muslims.<sup>111</sup> Although the Chinese government does not seem to discriminate on the basis of gender, insofar as it has forced both women and men into these internment camps for “extremist” behavior (such as growing out beards or wearing a veil),<sup>112</sup> a number of women escapees have testified to the repeated sexual abuses, routine rapes (individual, gang rapes, and public

105. *But see* Vasco Molini, Abul Kalam Azad & Michele Di Maio, *How Much Did Boko Haram Forbid Education in Nigeria?* WORLD BANK BLOGS (May 23, 2019), <https://perma.cc/78V4-D9SZ>. Molini, et al. explain that Boko Haram on the whole has affected Muslims slightly more than Christians due to its education-disrupting attacks. This article, however, does not speak to abductions in particular, nor does it address Nigeria's status as a majority Muslim nation as an alternative explanation for why Boko Haram has affected Muslims more than Christians.

106. THOSE TERRIBLE WEEKS, *supra* note 12.

107. Dionne Searcey, *Why the Chibok Girls Returned by Boko Haram Are Still Not Entirely Free*, INDEPENDENT (May 1, 2018), <https://perma.cc/8GTF-4VYR>.

108. *Leah Sharibu*, U.S. COMMISSION ON INT'L RELIGIOUS FREEDOM (2019), <https://perma.cc/2Y5X-UYST>; Ruth Maclean & Isaac Abrak, *Schoolgirls Seized by Boko Haram Tell of Christian Friend's Escape Bid*, GUARDIAN (Mar. 30, 2018), <https://perma.cc/J7A4-BXLF>.

109. Li Tang, *A History of Uighur Religious Conversions (5th - 16th Centuries)* at 72 (Asia Res. Inst. Nat'l U. of Singapore, Working Paper Series No. 44) (2005).

110. *Deconstructed: Why Don't We Care About China's Uighur Muslims?*, INTERCEPT (Dec. 29, 2019), <https://perma.cc/SB5Y-ETGL>; *Xinjiang Authorities Tighten Controls Over Muslim Women*, CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA (Apr. 27, 2010), <https://perma.cc/D2RT-AULB>.

111. ANNUAL REPORT OF THE U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 34 (2019); Jane Perlez, *China Wants the World to Stay Silent on Muslim Camps. It's Succeeding.*, N.Y. TIMES (Sept. 25, 2019), <https://perma.cc/H86Z-7W8>.

112. Chris Buckley, *China Is Detaining Muslims in Vast Numbers. The Goal: 'Transformation.'*, N.Y. TIMES (Sept. 8, 2018), <https://perma.cc/Q5LZ-YY45>; UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 111, at 36.

rapes), forced abortions, and forced sterilizations imposed by the Chinese authorities.<sup>113</sup>

Although many of these accounts indicate that camp employees have also inflicted sexual torture upon male detainees, this violence nonetheless has a gendered component. Government officials have raped many women, resulting in unwanted pregnancies and forced abortions. This creates a higher risk of harm for Uyghur Muslim women in these concentration camps because of their intersecting identities.

### 5. “Burqa Bans” in Europe

One of the most analyzed examples of intersectional discrimination against religious women is found in bans in many European countries on aspects of Muslim women’s clothing,<sup>114</sup> especially as more European countries have moved to adopt laws prohibiting face veils in recent years.<sup>115</sup> This issue is likely to only increase in relevance due to pending legislative proposals and various litigation against recently-enacted laws pertaining to bans on face coverings.<sup>116</sup>

So-called “burqa bans” are somewhat different from the previously mentioned instances of persecution in that these bans are not always explicitly about religion or gender and because the bans are government-instituted, although the actual likelihood of such laws being completely religion-neutral in intent is questionable.<sup>117</sup> Governments have sometimes justified these restrictions as furthering the values of “public safety” and “living together” through universalization.<sup>118</sup> Some feminist scholarship has even advocated for such restrictions because of the perspective that religion is inherently oppressive and that Muslim women must be “liberated” from the mandates

113. See Olivia Enos & Yujin Kim, *China’s Forced Sterilization of Uighur Women Is Cultural Genocide*, HERITAGE FOUND. (Aug. 29, 2019), <https://perma.cc/E7FL-FWRE>; Amie Ferris-Rotman, *China Accused of Genocide Over Forced Abortions of Uighur Muslim Women as Escapees Reveal Widespread Sexual Torture*, INDEPENDENT (Oct. 6, 2019), <https://perma.cc/RN2M-XE5H>; Peter Stubley, *Muslim Women ‘Sterilised’ in China Detention Camps, Say Former Detainees*, INDEPENDENT (Aug. 12, 2019), <https://perma.cc/YZ5M-G73D>.

114. Sophie Eliassen, *Strategies of Resistance: How Muslim Women Challenge Representations in the Norwegian Public* 17 (Mar. 2018) (unpublished master’s thesis, Norwegian University of Life Sciences).

115. Irene Zempi & Neil Chakraborti, *Criminalising Oppression or Reinforcing Oppression: The Implications of Veil Ban Laws for Muslim Women in the West*, 64 N. IR. LEGAL Q. 63, 64 (2013).

116. *Burqa Bans Have Proliferated in Western Europe*, ECONOMIST (Aug. 9, 2019), <https://perma.cc/SY8E-EUWP>.

117. See, e.g., Eva Brems, *Face Veil Bans in the European Court of Human Rights: The Importance of Empirical Findings*, 22 J. L. & Pol. 517, 533–34 (2015); *World Directory of Minorities and Indigenous Peoples - Bulgaria*, MINORITY RIGHTS GROUP INTERNATIONAL (Jul. 2018), <https://perma.cc/N9VW-SBR2>.

118. See generally, e.g., Christos Tsevas, *Human Rights and Religions: ‘Living Together’ or Dying Apart? A Critical Assessment of the Dissenting Opinion in S.A.S. v. France and the Notion of ‘Living Together’*, 45 RELIGION, ST. & SOC’Y 203 (2017); Marian Burchardt, Zeynep Yanasmayan & Matthias Koenig, *The Judicial Politics of Burqa Bans in Belgium and Spain—Socio-Legal Field Dynamics and the Standardization of Justificatory Repertoires*, 44 L. & SOC. INQUIRY 333, 333–58 (2019).

of Islam.<sup>119</sup> Both of these perspectives ignore the reality that many Muslim women *choose*, sometimes even against the wishes of their family, to wear face coverings, including for expressive religious purposes and to openly embrace their identity as religious women.<sup>120</sup>

These bans on women's facial coverings represent another form of intersectional discrimination because Muslim women in particular are forced by law to express themselves in ways inconsistent with their identities as women of the Islamic faith. Not only is there probable intent-based intersectional discrimination, given that at least some of these laws appear to target Muslim women specifically, but burqa bans tend to have a disparate impact on religious women because Muslim women tend to be the ones predominately affected by such laws.<sup>121</sup> Thus, Muslim women in European countries with laws restricting face coverings are at greater risk of intersectional discrimination due to their identities as women of faith.

#### 6. *Parallels with Ethnic & Racial Intersectional Discrimination*

Women often face a greater risk of being targeted for violence depending on their identities, such as ethnicity<sup>122</sup> or their belonging to a particular social group.<sup>123</sup> Examples of this include the use of mass rape during World War II when Japanese forces targeted various Asian women for use as sex slaves, and during armed conflicts in the 1990s in Yugoslavia and Rwanda when armed forces routinely targeted women for rape based on their ethnicity.<sup>124</sup> This targeting, and especially the infliction of sexual violence, “strikes at the core of notions of identity”<sup>125</sup> of both the women survivors and the communities with which they identify—especially when those communities “place great emphasis on women’s ‘honor’ as the site of ethnic

119. See, e.g., Azam Kamguyan, *Islam And The Liberation Of Women In The Middle East*, CTR FOR INQUIRY (Nov. 10, 2018), <https://perma.cc/9HG4-K3EE> (arguing that women must be liberated through secularism); Berrin Koyuncu Lorasdağ, *The Headscarf and ‘Resistance Identity-Building’: A Case Study on Headscarf-Wearing in Amsterdam*, 32 WOMEN’S STUD. INT’L F. 453, 455, 461 (2009) (responding to feminism that considers headscarves inherently oppressive); M. Brinton Lykes & Geraldine Moane, *Editors’ Introduction: Whither Feminist Liberation Psychology? Critical Explorations of Feminist and Liberation Psychologies for a Globalizing World*, 19 FEMINISM & PSYCHOL. 283, 289 (2009) (cautioning against overly one-dimensional views of Muslim women).

120. Singhi, *supra* note 117, at 8–9; Zempi & Chakraborti, *supra* note 115, at 67–68.

121. Ivana Radacic, *Gender Equality Jurisprudence of the European Court of Human Rights*, 19 EUR. J. INT’L L. 841, 853 (2008). See also Anastasia Vakulenko, ‘Islamic Headscarves’ and the European Convention on Human Rights: an Intersectional Perspective, 16 SOC. & LEGAL STUD. 183, 186–188 (2007).

122. Aisha Nicole Davis, *Intersectionality and International Law: Recognizing Complex Identities on the Global Stage*, 28 HARV. HUM. RTS. J. 205, 225 (2015) (“In these conflicts, most of the raped women were targeted based on their ethnicity, and thus the victims were chosen both because of their gender as well as their ethnicity.”).

123. Christine Chinkin, *Rape and Sexual Abuse of Women in International Law*, 5 EUR. J. INT’L L. 326, 328 (1994) (“[V]iolence against women may be directed toward the social group of which she is a member because ‘to rape a woman is to humiliate her community.’”) (internal citations omitted).

124. Bond, *supra* note 68, at 114–16.

125. *Id.* at 115.

purity and identity.”<sup>126</sup> Thus, sexual violence against certain ethnic women may be “fueled simultaneously and inextricably by both gender-based oppression and oppression based on racial or ethnic identity.”<sup>127</sup>

This rationale applies with equal force to religious women, as demonstrated throughout Part II of this Note. Gendered religious violence can be intersectional both in its intent (such as when terrorist organizations or militaries single out religious women) and in its impact (such as when governments, as part of broader efforts to restrict religion or control society, subject religious women to unique forms of social limitations or even violence). It is therefore essential that international legal institutions apply an intersectional perspective to these situations and others like them to uphold human rights adequately and consistently.

### III. CURRENT LEGAL FRAMEWORKS AND MECHANISMS

This Note primarily focuses on international law—not because grassroots and national-level institutions are less valuable (on the contrary, they are essential to achieving reform<sup>128</sup>), but because international law has particular potential to create changes in *values* which have trickle-down effects at the national and local level. Examples of this include the Beijing Platform for Action in 1995 and General Recommendations by the Convention on the Elimination of Discrimination Against Women (CEDAW), both of which served and continue to serve as a foundation for change “that women’s rights activists have used to agitate for reform in their own countries.”<sup>129</sup> International human rights law can drive change by creating “increased expectations of compliance,” “legitimiz[ing] claims of rights,” and creating a “common language” with which to drive policy reform.<sup>130</sup>

The United Nations is the primary focus of this Note primarily because of its willingness to adopt intersectionality or intersectionality-related language in its documents, decisions, and recommendations.<sup>131</sup> Although inter-

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126. *Id.*

127. *Id.*

128. See *infra* notes 271–281 and accompanying text.

129. Bond, *supra* note 68, at 78, 92.

130. Douglass Cassel, *Does International Human Rights Law Make a Difference*, 2 CHI. J. INT’L L. 121, 126–29 (2001).

131. This Note also evaluates (to a lesser degree) the European Court of Human Rights (ECtHR) for similar reasons: the ECtHR has applied intersectionality inconsistently, as discussed later in this section. This Note does not address groups like the African Commission, the African Court of People’s and Human Rights, or the Inter-American Commission. Regarding the former two institutions, this is because both the African Commission and African Court have only ever dealt with three situations of women’s rights *combined*, and did not apply an intersectional perspective in any of them. See Mariam Wambui Kamunyu, *The Gender Responsiveness of the African Commission on Human and Peoples’ Rights* 275 (Nov. 2018) (Doctor of Laws thesis, University of Pretoria); Alice Banens, *African Court issues its first judgment on women’s rights*, INTLAWGRRLS (Sept. 13, 2018). Thus, addressing their lack of focus on religious women seems premature. The Inter-American Commission (IAC), on the other hand, applied intersectionality for the first time in 2015, see *Gonzales Lluy et al. v. Ecuador*, Preliminary Objections,

sectionality has substantial room to grow,<sup>132</sup> various UN groups have been referencing it (implicitly or explicitly) with increasing frequency.<sup>133</sup> The particular groups that this Note evaluates—the UN High Commissioner for Human Rights (OHCHR), the UN Special Rapporteur on Violence Against Women (SRVAW), the Committee on the Elimination of Discrimination Against Women (CEDAW), UN Women, the Human Rights Committee (HRC), the Special Rapporteur on Freedom of Religion or Belief (SRFORB), and the European Court of Human Rights—were chosen both because of their focus on women’s rights issues and their use of intersectionality. If intersectionality is a useful and valid perspective (as this author believes it to be), it is crucial that its advocates apply it with consistency—both for its own credibility and for the benefit of those affected by intersectional discrimination.

As this section will demonstrate, despite progress in the use of intersectionality, intersectional language is not commonly used in contexts specifically about religious women. Although religion is sometimes grouped alongside lists of other identities when used in a neutral manner, it is more frequently referred to as a source of harm than as an identity. This failure of states and human rights bodies to adequately address human rights issues of religious women through an intersectional lens may lead to the types of issues discussed in Part II being mis-prioritized or even ignored altogether. When groups that champion intersectionality in some contexts turn a blind eye to the heightened risk that women of faith face, they delegitimize the real identities of millions of people in a manner that is contradictory to their stated goals, which can indicate institutional failure at best, and animus-driven religiophobia at worst.

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Merits, Reparations, and Costs, Concurrent Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 102/13, ¶ 6 (Sept. 1, 2015), yet does not appear to include “religion” as an identity in several of its discussions about intersectionality in various documentation. *See* Legal Standards Related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application Updates from 2011 to 2014, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. 14, Doc. 60 ¶ 28 (Nov. 3, 2011); THE ATLAS OF THE STRUGGLES OF WOMEN: 90 YEARS OF THE INTER-AMERICAN COMMISSION OF WOMEN 65 (2018); EDISON LANZA, ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2018: ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION 275 (2018). While the recommendations of this Note should certainly be applied to the IAC, this author has chosen to focus on institutions more closely related to the examples discussed in Part II simply because intersectional persecution of religious women in the Americas does not appear to be as well-documented as the examples in other parts of the world. Of course, this does not mean such examples do not exist, but additional scholarship should be devoted to addressing that issue in particular.

132. *See* Aisha Nicole Davis, *Intersectionality and International Law: Recognizing Complex Identities on the Global Stage*, 28 HARV. HUM. RTS. J. 205, 222 (2015).

133. Meghan Campbell, *CEDAW and Women’s Intersecting Identities: A Pioneering Approach to Intersectional Discrimination* 12 (Oxford Human Rights Hub, Working Paper Vol. 2, No. 3, 2016) (“There is no reference to intersectional discrimination in the text of either the ICCPR or ICESCR, but both CESCR and the HRC have addressed intersectional discrimination in the General Comments.”).



### A. UN High Commissioner

The Office of the UN High Commissioner for Human Rights (OHCHR) is the “leading UN entity on human rights” and the office that provides technical assistance for implementation of human rights and that “speaks out objectively on human rights violations.”<sup>134</sup> As such, OHCHR addresses a wide range of international issues pertaining to human rights. To evaluate the nature of the OHCHR’s view on the intersectional identity of religious women, the author selected seven documents from the OHCHR’s website, six of which were from the webpage entitled “Useful reports and documentation” under the “Women’s Rights and Gender Section” of the OHCHR website.<sup>135</sup> As of the publication of this Note, most of the items listed under “reports and documentation” dealt with specific issues (such as female genital mutilation, maternal mortality, education, sexual and reproductive health, etc.) and/or specific countries (East Africa, Palestine, Democratic Republic of the Congo, etc.).<sup>136</sup> The reports selected for this analysis were broader in scope and were chosen for their more comprehensive and general nature. The reports chosen were:

- Manual on Human Rights Monitoring, Chapter 15: Integrating Gender into Human Rights Monitoring (2012) (“Manual Chapter 15”),<sup>137</sup>
- Women’s Rights are Human Rights (2014),
- Beijing +20: Human Rights of Women (2014) (“Beijing+20”),
- A Framework to Underpin Action to Prevent Violence Against Women (2015),
- Women’s Rights in Africa (2017) (“Framework”),
- Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice (listed on the website as “Gender integration into human rights investigations – Guidance and practice”) (2018) (“Guidance document”), and
- Manual on Human Rights Monitoring, Chapter 28: Monitoring and Protecting the Human Rights of Women (2018) (“Manual Chapter 28”).

The author then evaluated each document for its use of terms relating to intersectionality (including references to “multiple discrimination” or “multiple forms of discrimination”) as well as its use of the words “religion” or “religious.” Total religious references (hereinafter referred to as “religion,” meant to include both the words “religious” and “religion”) were counted and divided into four broad categories: neutral uses (which refer to

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134. *Office of the High Commissioner for Human Rights: Who We Are*, U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., <https://perma.cc/CA96-Y23U> (last visited Nov. 28, 2019).

135. *Office of the High Commissioner for Human Rights: Useful Reports and Documentation*, U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., [HTTPS://PERMA.CC/A2JN-B6RA](https://perma.cc/A2JN-B6RA) (last visited Feb 8, 2020).

136. *Id.*

137. This document was not listed on the “Useful reports and documentation” page but was internally referenced by the document entitled “Integrating a Gender Perspective into Human Rights Investigations.” See *infra* notes 176–182.

the existence of a particular religious system or custom, data that should be collected, or religion as a factor that affects social positioning), collaborative uses (which recommend states collaborate or engage with religious leaders or communities), intersectional uses (which reference religion as a form of identity), and negative uses (which refer to religion, implicitly or explicitly, as a cause of harm to women). A breakdown of the results of this analysis follows.

Manual Chapter 15 is designed to provide “practical guidance on how to integrate a gender perspective” into human rights monitoring.<sup>138</sup> Manual Chapter 15 mentions religion eight times, and only once in an intersectional manner, while referring to religion as a negative factor on four occasions<sup>139</sup> (with the other three references to religion falling into the neutral category<sup>140</sup>). In the paragraph where religion is referenced intersectionally, Manual Chapter 15 notes that “[t]he interplay of identities linked to gender, ethnicity, religion, race, sexual orientation, disability, national origin, age, etc. results in experiences of exclusion and disadvantage that are unique to those with multiple identities,” terming such interplay “multiple discrimination.”<sup>141</sup> However, the very next sentence, which refers to “intersectional analysis” omits religion from its list when it notes that human rights violations are often based on the “intersection of age, ethnicity, national origin, sexual orientation, class, health status, etc. with gender.”<sup>142</sup> It is unclear if Manual Chapter 15 is differentiating between multiple discrimination and intersectional discrimination, which are often considered different concepts in feminist scholarship,<sup>143</sup> or if it is equating the two. At any rate, it is still worth noting that religion is left off of the list when the document specifically discusses what identities *gender* intersects with.

In the 2014 report “Women’s Rights are Human Rights,” OHCHR provides an overview of women’s human rights from an international law perspective.<sup>144</sup> OHCHR acknowledges that intersecting forms of discrimination, along many identities and statuses, have existed for a long time but have only received recognition as such in recent decades.<sup>145</sup> This document is slightly more balanced as compared to others in this analysis in that it actually acknowledges religion as one ground for multiple discrimination against women. The report contains five intersectional uses of the

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138. UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS MONITORING: CHAPTER 15: INTEGRATING GENDER INTO HUMAN RIGHTS MONITORING 4 (2012), <https://perma.cc/25SK-WT5P>.

139. *Id.* at 9, 13, 14.

140. *Id.* at 7, 13.

141. *Id.* at 6.

142. *Id.* at 6.

143. See generally *supra* notes 60–64 and corresponding text.

144. MANUAL CHAPTER 15, *supra* note 138, at 1.

145. U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., WOMEN’S RIGHTS ARE HUMAN RIGHTS 37 (2014).

words religion or religious,<sup>146</sup> six negative uses,<sup>147</sup> nine neutral uses,<sup>148</sup> and one collaborative use.<sup>149</sup> Moreover, two of the intersectional uses occur in the chapter of the document discussing “intersectionality.”

This is not the say the report is perfect. Intersectional violence against religious women seems particularly underrepresented. When specifically addressing violence against women in the chapter on intersectionality, although the report also lists thirteen “factors that increase women’s and girls’ vulnerability,” neither religion nor faith were included.<sup>150</sup> And in the section on violence against women, religion—unlike sexual orientation,<sup>151</sup> transgenderism,<sup>152</sup> race,<sup>153</sup> disability,<sup>154</sup> socioeconomic status,<sup>155</sup> employment status,<sup>156</sup> migrant status,<sup>157</sup> and status as combatants,<sup>158</sup> to name a few—is never called out on its own as a specific identity for which women may face higher risks of violence. Nevertheless, its relative balanced references between intersectional and negative uses of religion is a positive development.

In the Beijing +20 report, OHCHR outlines the ways it is contributing to the goals of the Beijing Declaration and Platform for Action.<sup>159</sup> In this report, there is only one mention of religion in which it is stated that “OHCHR also builds the capacity of women belonging to national, ethnic, religious and linguistic minorities, and works with civil society groups on combatting discrimination, including discrimination faced by women belonging to caste affected communities.”<sup>160</sup> There is one mention in Beijing +20 of “multiple and intersecting forms of violence against women” under the section about the Special Rapporteur on Violence Against Women, but otherwise the report does not discuss intersectionality.<sup>161</sup>

The document entitled “A Framework to Underpin Action to Prevent Violence Against Women” outlines ways to prevent and remedy violence against women through discussion of strategy and root causes of violence.<sup>162</sup>

146. *Id.* at 1, 36, 37, 38, 83.

147. *Id.* at 12, 27, 33, 42, 48, 63

148. *Id.* at 3, 4, 36, 53, 75, 115.

149. *Id.* at 105.

150. *Id.* at 39.

151. *Id.* at 75.

152. *Id.*

153. *Id.* at 38.

154. *Id.* at 75.

155. *Id.* at 70–71.

156. *Id.* at 70.

157. *Id.* at 86.

158. *Id.* at 107.

159. See U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., BEIJING +20: HUMAN RIGHTS OF WOMEN 2 (2014), <https://perma.cc/N4SA-ELVZ>.

160. *Id.* at 9.

161. *Id.* at 4.

162. See U.N. WOMEN, A FRAMEWORK TO UNDERPIN ACTION TO PREVENT VIOLENCE AGAINST WOMEN 9 (2015), <https://perma.cc/NUK2-ZYMP>. Notably, this document is a publication of UN Wo-

The Framework contains three references to intersectionality directly<sup>163</sup> and five references to “multiple forms of discrimination,”<sup>164</sup> yet only two mentions of religion—both of which show up only in the glossary.<sup>165</sup> The references to intersectional/multiple forms of discrimination, noting that “certain groups of women, in particular those who suffer multiple forms of discrimination, are especially vulnerable,” include women with disabilities, from minority ethnic or indigenous communities, refugees and asylum seekers, women who are lesbian, bisexual, transgender, or intersex, women from communities experiencing environmental disaster, women in communities with rapid changes in gender power dynamics, women in rural communities, women affected by poverty, women with HIV, and women who are migrant or domestic workers.<sup>166</sup> Notably absent from this list is any reference to religion. Another intersectional reference indicates that “[s]ome groups are disproportionately affected by [violence against women] because they experience multiple forms of discrimination. These groups include: women with disabilities, women from ethnic or racial minorities or indigenous groups, sex workers, lesbian, bisexual or transgender or intersex women, among others.”<sup>167</sup> Religion is once again not mentioned. Appendix 2 of the Framework even lists “[k]ey resources for working with particular population groups to prevent violence against women” and lists “[g]irls,” “[i]ndigenous women,” “[w]omen with disabilities,” “[c]onflict situations/fragile states,” and “[l]esbian, bisexual, transgender and intersex women,”<sup>168</sup> but does not mention women of faith.<sup>169</sup>

The report entitled “Women’s Rights in Africa,” which provides an overview of improvements and current challenges surrounding human rights efforts in Africa,<sup>170</sup> mentions religion seventeen times, but nine of those times are negative usages,<sup>171</sup> four are neutral,<sup>172</sup> and three are collaborative,<sup>173</sup> while only one is intersectional.<sup>174</sup> Despite other references to intersectionality, however, religion is never again mentioned. The report states that “[o]ften, violence is exacerbated by the intersection of many socio-economic factors. For instance, women with disabilities, migrant women, women with non-binary gender identity and sexual minorities can be particularly vulner-

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men but is promoted by OHCHR. As such, it presents an area of cross collaboration where both groups have room to improve in their intersectional treatment of religious women.

163. *Id.* at 29–30.

164. *Id.* at 13, 16, 19, 31.

165. *Id.* at 46.

166. *Id.* at 19.

167. *Id.* at 13.

168. *Id.* at 55.

169. *Id.*

170. See U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., WOMEN’S RIGHTS IN AFRICA 8 (2019).

171. See *id.* at 13, 19, 20, 33, 34, 35, 52, 55.

172. See *id.* at 2, 15, 30, 35.

173. See *id.* at 24, 33, 37.

174. See *id.* at 16.

able to violence.”<sup>175</sup> Despite many instances of gendered religious violence in various countries throughout Africa,<sup>176</sup> religion is not mentioned as an intersectional identity that can exacerbate the risk of violence.

To its credit, the report concedes that “the issue of multiple discrimination and intersectionality of violations are areas which also require further analysis but which is not the focus of this report.”<sup>177</sup> Nevertheless, the omission of more references to religious women as an intersectional group seems particularly ironic considering the report’s early comment that “[p]rotection gaps . . . are particularly striking *as is the non-recognition of intersectional forms of discrimination*” and that “[i]n many countries, these gaps are also compounded by political instability and conflict.”<sup>178</sup> Despite acknowledging the problem of the non-recognition of intersectional forms of discrimination, this report contributes to that non-recognition by discussing religion as an intersectional factor only once and primarily using it negatively.

In the document called “Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice,” which “aims to strengthen the content of human rights reports in order to accurately depict the different experiences of women, men, girls and boys,”<sup>179</sup> there are twelve mentions of religion, with four negative uses,<sup>180</sup> two intersectional uses,<sup>181</sup> and six neutral<sup>182</sup> or collaborative<sup>183</sup> uses. As with several of the previously mentioned documents, there is a list of intersectional identities without religion included. The report states that “[w]omen, men and others may be subjected to intersecting forms of discrimination based on, inter alia, sex, age, race, ethnicity, national origin, sexual orientation, gender identity, and class.”<sup>184</sup> Given the Guidance document’s goal of “accurately depict[ing] the different experiences of women,”<sup>185</sup> the omission of religion in this list appears to be a deficiency.

The final report, Manual Chapter 28, which offers guidance regarding ways to better monitor women’s rights issues,<sup>186</sup> references religion twenty-three times, with five intersectional uses,<sup>187</sup> eight negative uses,<sup>188</sup> four col-

175. *Id.* at 30.

176. *See generally supra* Part II.

177. WOMEN’S RIGHTS IN AFRICA, *supra* note 170, at 20.

178. *Id.* at 11 (emphasis added).

179. U.N. Office of the High Comm’r for Hum. Rts., *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice*, at 12, U.N. Doc. HR/PUB/18/4 (Sept. 2018).

180. *See id.* at 8, 31, 40.

181. *See id.* at 19, 48.

182. *See id.* at 7, 26, 37.

183. *See id.* at 33.

184. *Id.* at 48.

185. *Id.* at 12.

186. *See* U.N. Office of the High Comm’r for Hum. Rts., *Manual on Human Rights Monitoring: Chapter 28: Monitoring and Protecting the Human Rights of Women*, at 4, U.N. Doc. HR/P/PT/7/Rev.1 (2018).

187. *See id.* at 7, 15, 27, 31.

188. *See id.* at 10, 19, 21, 24, 29, 41, 51.

laborative uses,<sup>189</sup> and six neutral uses.<sup>190</sup> The Manual Chapter 28 explicitly defines “intersecting forms of discrimination [against women]” as “[t]he accumulation of discrimination on more than one ground (e.g., gender, age, race, ethnicity, migrant status, disability, HIV/AIDS status, sexual orientation, gender identity, *religion*, etc.),” which perhaps goes the furthest among any of these documents to overtly address religious women.<sup>191</sup>

On the whole, although there appears to be a slight chronological trend toward referencing religion with regards to women in a more intersectional manner, most of these OHCHR general documents demonstrate a stronger hostile or cautionary view of religion (if religion is mentioned substantively at all) than they do a recognition of religion as a real and lived identity and experience for women around the world.

### B. UN Special Rapporteur on Violence Against Women

The UN Special Rapporteur on Violence Against Women (SRVAW) was established in 1994 to be responsible for seeking out information on causes and consequences of violence against women and for recommending ways to address such violence while working closely with other similar human rights groups.<sup>192</sup> SRVAW issued a report in 2009 in which it reviewed its mandate, assessed international compliance, and specifically pointed out the importance of an intersectional framework.<sup>193</sup> Despite the great extent to which intersectionality is discussed in this fifty-five page report, “religion” or “religious” only appear on eight occasions in total (two of which are simply footnotes referring by name to the Special Rapporteur on Freedom of Religion or Belief).<sup>194</sup> Four of those mentions refer to religion as a cause of harm toward women.<sup>195</sup> The single reference that could possibly be construed as a recognition that religious women’s dual identities may place them at heightened risk is in the context of violence against women resulting from (among other things) “religious and *anti-religious* extremism.”<sup>196</sup>

But this is far from an explicit acknowledgement of the deeply held religious identities central to so many women around the world, and to the intersectional role it can play in their treatment by third parties and their own government. Indeed, it is particularly ironic how negatively religion is treated in this report given the claim that SRVAW is “critical of State ap-

189. See *id.* at 20, 24.

190. See *id.* at 8, 26, 28, 29, 44.

191. *Id.* at 15 (emphasis added).

192. Radhika Coomaraswamy (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Preliminary Rep. of the S.R. on VAW*, ¶ 1–2, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994).

193. See Yakin Ertürk (Special Rapporteur on Violence Against Women), *15 Years of The United Nations Special Rapporteur on Violence against Women (1994–2009)—A Critical Review*, 7, 9, 25, 42–50, A/HRC/11/6.Add.5 (May 27, 2009), <https://perma.cc/4PN9-69FH>.

194. See *id.* at 5, 37, 39, 41, 43.

195. See *id.* at 5, 37, 39.

196. See *id.* at 5 (emphasis added).

proaches that essentialize certain cultures as inherently violent and discriminatory towards women.”<sup>197</sup> Similarly, women’s rights advocates, proponents of religious expression, and scholars of intersectionality should be critical of the approaches of human rights bodies that essentialize religion as inherently violent and discriminatory towards women.

### C. *Committee on the Elimination of Discrimination against Women*

The Committee on the Elimination of Discrimination against Women (CEDAW) is a body of independent experts tasked with monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. The primary mechanism by which CEDAW elaborates on the obligations of states under the Convention are General Recommendations which are issue-based calls for reform.<sup>198</sup>

Over the years, CEDAW has increasingly employed intersectionality through its General Recommendations. This can be seen through General Recommendation 28 in 2010 when CEDAW stated that “discrimination of women based on sex and gender is inextricably linked with other factors that affect women” and urged that “States parties must legally recognize such intersecting forms of discrimination” to eliminate that discrimination.<sup>199</sup> Both its implicit and explicit references to intersectionality suggest that CEDAW “is clearly aware of the complexity of gender discrimination and [violence against women].”<sup>200</sup>

Despite this increasing use of intersectionality, scholars have noted that CEDAW often refers to religion in a negative light and that CEDAW regularly engages in “conflation of (injurious) culture, tradition, and religion as well as its very concept of culture,” despite having “had the opportunity to comment on [freedom of religion or belief], but [choosing not] to do so in its 34 general recommendations to date.”<sup>201</sup> Others have argued that CEDAW is “strongly suspicious of religion in general” and that it “[has] been dismissive, pointing to the connection between religious and cultural stereotypes and discrimination against women.”<sup>202</sup>

To evaluate these claims in greater depth, the author evaluated the references to religion in all thirty-seven CEDAW General Recommendations. This analysis indicates that although there are a number of references to

197. *Id.* at 41.

198. See Vedna Jivan & Christine Forster, *Challenging Conventions: In Pursuit of Greater Legislative Compliance with CEDAW in the Pacific*, 10 MELB. J. INT’L L. 655, 659–60 (2009).

199. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 28*, ¶ 18, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [GR 28].

200. LORENA SOSA, INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN: AT THE CENTRE OR THE MARGINS? 78 (2017).

201. NAZILA GHANEA-HERCOCK, WOMEN AND RELIGIOUS FREEDOM: SYNERGIES AND OPPORTUNITIES 5–6 (2017).

202. Helge Årsheim, *Secularist Suspicion and Legal Pluralism at the United Nations*, 11 RELIGION & HUM. RTS. 166, 176, 177 (2016).

religion as a form of intersectional identity in recent years, there remains substantial room for CEDAW to better address the unique situations of risk that many religious women face.

The methodology of this analysis is as follows: the author first sorted the General Recommendations by topic, noting that fifteen General Recommendations pertain chiefly to non-violent discrimination against women (“discrimination GRs”) (GRs 3, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 29, 33, 36, and 37), ten General Recommendations deal primarily with violence against women (“violence GRs”) (GRs 12, 14, 19, 26, 27, 30, 31, 32, 34, and 35), and thirteen General Recommendations are primarily technical or procedural in nature (“procedural GRs”) (GRs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 20, 22, and 28).<sup>203</sup> The author then evaluated each General Recommendation to determine whether intersectional language was used, either implicitly or explicitly. An explicit use of intersectional language might be in the form of a reference to “intersecting discrimination,”<sup>204</sup> while an implicit use of intersectional language would be phrased in terms such as “double discrimination,”<sup>205</sup> “multidimensional” discrimination,<sup>206</sup> or recognition that women belonging to multiple identity groups may “experience higher rates”<sup>207</sup> of disadvantage.<sup>208</sup> Next, the author counted the number of occurrences of the words “religion” or “religious” in the body of each General Recommendation, finding a total of ninety-seven such uses throughout all the General Recommendations. Finally, the author broke down the use of the words “religion” or “religious” into the same four categories used in the OHCHR analysis: neutral uses<sup>209</sup> (which refer to the existence of a particular

203. GR14 (pertaining to female genital mutilation) is intentionally listed in both of the first two categories. Although the General Recommendation does not refer to “violence” as do those listed in the “violence against women” category, the author elected to list it twice due to the inherently physically harmful nature of female genital mutilation. GR14 was not double counted for any other purpose, such as the number of uses of certain words.

204. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 34*, ¶ 14, U.N. Doc. CEDAW/C/GC/34, (Mar. 4, 2016) [CEDAW GR34].

205. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 18*, at 1, U.N. Doc. A/46/38 (1991) [CEDAW GR18].

206. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 27*, ¶ 13, U.N. Doc. CEDAW/C/GC/27, (Dec. 16, 2010) [CEDAW GR27].

207. CEDAW GR 34, *supra* note 204, ¶ 14.

208. Such a characterization of what constitutes “intersectional” is, admittedly, generous. Although a number of CEDAW reports evaluate the particular risks that women of specific backgrounds may face, a “true intersectional analysis would examine the intersection of multiple forms of discrimination and recognize that this is not equivalent to gender discrimination that is slightly worse for certain segments of the population.” Bond, *supra* note 68, at 145.

209. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 21*, ¶¶ 13, 39, U.N. Doc. A/49/38 (1994) [CEDAW GR21]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 23*, ¶ 31, U.N. Doc. A/52/38 (1997) [CEDAW GR23]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 24*, ¶ 9, U.N. Doc. A/54/38 (1999) [CEDAW GR24]; CEDAW GR 28, *supra* note 199, ¶ 5; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation 29*, ¶¶ 1–3, 10, 12, 13, 15, 19, 20, 21, 55 U.N. Doc. CEDAW/C/GC/29, (Oct. 30, 2013) [CEDAW GR29]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 33*, ¶¶ 5, 46, 61, 62, 63, U.N. Doc. CEDAW/C/GC/33



religious justice system or religious custom), collaborative uses<sup>210</sup> (which recommend states engage with religious leaders or communities to address problems), intersectional uses<sup>211</sup> (which reference religion as a form of identity), and negative uses<sup>212</sup> (which refer to religion as either an implicit or explicit cause of harm to women<sup>213</sup>).

The author's analysis of this data indicates that religion is referred to over twice as many times in a negative manner than as it is referred to as an intersectional identity throughout all of the General Recommendations. While religion is used in an intersectional way once in the technical GRs, four times in the discrimination GRs, and nine times in the violence GRs, for a total of fourteen intersectional mentions,<sup>214</sup> it is referenced negatively twice in the technical GRs, nineteen times in the discrimination GRs, and seventeen times in the violence GRs, for a total of thirty-eight negative usages.<sup>215</sup>

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(Aug. 3, 2015) [CEDAW GR33]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 37*, ¶ 38, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018) [CEDAW GR37].

210. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 14*, at 1, U.N. Doc. A/45/38 (1990) [CEDAW GR14]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 31*, ¶¶ 34, 70, 77, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18, 81 (Nov. 14, 2014) [CEDAW GR31]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 35*, ¶ 30, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) [CEDAW GR35]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 36*, ¶ 55, U.N. Doc. CEDAW/C/GC/37 (Nov. 27, 2017) [CEDAW GR36]; CEDAW GR 37, *supra* note 209, ¶ 57.

211. U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 26*, ¶ 14, U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008) [CEDAW GR26]; CEDAW GR 28, *supra* note 199, ¶ 18; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 30*, ¶¶ 36, 57, 60, U.N. Doc. CEDAW/C/GC/30 (Nov. 1, 2013) [CEDAW 30]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 32*, ¶¶ 6, 16, U.N. Doc. CEDAW/C/GC/32 (Nov. 14, 2014) [CEDAW GR32]; U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 33*, ¶ 8, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015) [CEDAW GR33]; CEDAW GR34, *supra* note 204, ¶¶ 14, 15; CEDAW GR35, *supra* note 210, ¶ 12; CEDAW GR36, *supra* note 210, ¶¶ 31, 66; CEDAW GR37, *supra* note 209, ¶ 2. Note that although CEDAW GR25 ¶ 12 appears to reference religious identity, it refers to "ethnic or religious identity," making it seem as if religion and ethnicity are interchangeable. As such, it was not counted in the number of intersectional usages. Even if it were counted, however, the results of the analysis would be virtually identical.

212. CEDAW GR21, *supra* note 209, ¶¶ 16, 17, 41, 44, 48, 50; CEDAW GR28, *supra* note 199, ¶¶ 29, 33; CEDAW GR29, *supra* note 209, ¶¶ 10, 54; CEDAW GR31, *supra* note 210, ¶¶ 7, 27, 30, 31, 43, 44, 55; CEDAW GR33, *supra* note 211, ¶¶ 22, 25, 64; CEDAW GR34, *supra* note 204, ¶ 8; CEDAW GR35, *supra* note 210, ¶¶ 7, 14, 21, 26, 29; CEDAW GR36, *supra* note 210, ¶¶ 38, 52, 55.

213. CEDAW GR33, *supra* note 211, ¶ 22, which exemplifies implicit negative use, states: "Women, nonetheless, face many difficulties in gaining access to justice as a result of direct and indirect discrimination . . . the Committee, therefore, notes that judicial institutions must apply the principle of substantive or de facto equality, as embodied in the Convention, and interpret laws, including national, religious and customary laws, in line with that obligation." *Id.* (emphasis added). An example of an explicit negative use can be found in GR33 ¶ 25, which states: "The Committee recommends that States parties . . . Protect women and girls from interpretations of *religious* texts and traditional norms that create barriers to their access to justice and result in discrimination against them." *Id.* ¶ 25 (emphasis added).

214. See *supra* note 211.

215. See *supra* note 213.

Although a simple explanation for this data is that religion is referred to so much more negatively because it actually *is* a causal factor in many cases of violence and discrimination against women, to end the inquiry there would merely emphasize the identities of the oppressors as more significant than the identities of the women being oppressed in various situations. In reality, as demonstrated in Section II, although the religion of the oppressor often does play a role in the persecution of women, that risk of persecution can increase when the *woman's* religious identity is also accounted for.

Moreover, the argument that religion is looked upon with far more negativity than as a form of personal identity is strengthened by the fact that although six separate General Recommendations have been dedicated to specific forms of intersectional identities of women that put them at greater risk of discrimination or violence, religion remains without a similarly devoted General Recommendation. These six General Recommendations address women migrant workers (GR 26), older women (GR 27), women in conflict prevention, conflict, and post-conflict situations (GR 30), girls (GR 31), refugee status, asylum-seeking, and stateless women (GR 32), and rural women (GR 34).<sup>216</sup> It is particularly notable that—especially in light of the past decade seeing the rise of Daesh and Boko Haram, which target certain religious women, growing Islamophobia in Europe, and the increasing persecution of religious women by the Communist Party of China—there have been (as of yet) no new General Recommendations to specifically address the heightened vulnerability that many women of faith face in various countries around the world.

Given that General Recommendations are issue-specific and designed to provide “guidance on the meaning of CEDAW’s articles,”<sup>217</sup> critics of this analysis might argue that because none of the CEDAW articles reflect religion or even freedom of belief,<sup>218</sup> a General Recommendation about religious women would not fit within the mission and purpose of the General Recommendations. These concerns, however, can be easily answered by looking at existing General Recommendations that do not neatly fit this mold. CEDAW largely based GR 19—which addresses gender-based violence as a form of discrimination against women—on Article 2 (which speaks generally to states’ obligation to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”<sup>219</sup>) and Article 3 (which obligates states to guarantee women “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”<sup>220</sup>) of the

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216. See CEDAW GR26, *supra* note 211; CEDAW GR27, *supra* note 206; CEDAW GR30, *supra* note 211; CEDAW GR31, *supra* note 210; CEDAW GR32, *supra* note 211; CEDAW GR34, *supra* note 204.

217. See Jivan & Forster, *supra* note 198.

218. See generally U.N. Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

219. *Id.* art. 2.

220. *Id.* art. 3.

Convention on the Elimination of All Forms of Discrimination against Women. Notably, no CEDAW article deals expressly with violence against women.<sup>221</sup> Nevertheless, GR 19 not only makes powerful statements about the problems of gender-based violence, but it reflects the many circumstances—family life, the workplace, rural communities, and others—in which gender-based violence poses specific threats to the wellbeing of women. The fact that there is no CEDAW article about freedom of religion or belief should not impede the Committee from issuing a General Recommendation that deals specifically with the issue of religious women from an intersectional perspective, just as it has done for at least six other intersectional groups.

#### D. *UN Women*

UN Women is “the United Nations entity dedicated to gender equality and the empowerment of women.”<sup>222</sup> Although this group has also increasingly adopted intersectionality as a lens through which to address various forms of gender-based discrimination, there is a notable silence with regard to religion as an intersectional identity for women. In 2019, Rebecca Symes conducted a quantitative analysis of the frequency and nature of the uses of “religion,” “religious,” or “spiritual” in seven critical UN international guidance documents between 1979 and 2015 that serve to establish norms for women’s equality.<sup>223</sup> This scholarship demonstrated that there “there is a clear *decline* of 87% between 1995-2015” in the frequency of reference to religion in the seven critical documents by UN Women.<sup>224</sup>

The contrast between the types of uses between the 1995 Beijing Declaration and the 2015 Sustainable Development Goal 5 highlight the qualitative nature of the change as well. In the 1995 Beijing Declaration, religion is referred to 42% of the time as an intersectional identity factor, 28% of the time as a woman’s right to freedom of religion or belief, and over 12% of the time as women’s increased risk of religious persecution—a total of 82% of the time in a manner that reflects an intersectional perspective.<sup>225</sup> In stark contrast, the 2015 Sustainable Development Goal 5 reflects a use of religion that considered religion as an intersectional identity less than 16% of the time, less than 7% of the time as a woman’s right to freedom of religion or belief, and less than 7% of the time as women’s increased risk of religious

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221. See generally *id.* Article 6 speaks to trafficking of women and the exploitation of the prostitution of women, but does not address violence more generally.

222. *About U.N. Women*, U.N. WOMEN, <https://perma.cc/GYN9-YPD4> (last visited Nov. 28, 2019).

223. See generally Rebecca CM Symes, *To examine the treatment of, and outcomes for affected Christians and the effectiveness of international responses- in particular the UN*, CHRISTIAN PERSECUTION REVIEW 1–6 (July 2019). As indicated in Figure 2 of the source, Symes evaluated the Convention on the Elimination of all Forms of Discrimination Against Women 1979, the Declaration on the Elimination of Violence Against Women 1993, the Beijing Declaration (each of the 1995, 2000, 2005, and 2010 updates), and Sustainable Development Goal 5: Gender Equality (2015). *Id.* at 3.

224. *Id.* at 3 (emphasis added).

225. *Id.* at 4.

persecution. Over 43% of the mentions of religion characterized it as a form of violence, which “included religion as a form of fundamentalism, or religious traditions, which justify harms against women and girls.”<sup>226</sup>

Symes expounds upon this research in her dissertation.<sup>227</sup> She analyzes twenty-one reports from the UN Commission on the Status of Women (which is “the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women” and a “functional commission of the Economic and Social Council”<sup>228</sup>) from 1996–2019 and finds a comparable result: religion was either not mentioned at all, or was most frequently mentioned when it was discussed in the context of fundamentalism and violence.<sup>229</sup> These patterns seem to indicate that “the way the UN Women are speaking about religion has shifted, from seeing it as an intersectional vulnerability, to seeing it as a cause for violence against women.”<sup>230</sup>

Although the Symes analyses indicate that there has been a decline in the use of religion generally and an increase in its negative usage specifically since the 1995 Beijing Declaration, Mary Ann Glendon, who served as a representative of the Holy See during the 1995 Beijing Declaration negotiations, sees this trend as nothing new. Glendon recounts her experience from the drafting conference, recalling how a coalition of countries led by the European Union “sought to remove all references to religion, morals, ethics, or spirituality, except where religion was portrayed as associated with intolerance or extremism” and how these countries “objected to a paragraph providing for freedom of conscience and religion in the context of education.”<sup>231</sup> Even authors who have described the Holy See as being “oppos[ed] to women’s human rights”<sup>232</sup> have cited Glendon’s foundational premise objectively, noting her statement that “the Holy See has had strenuously to emphasise that marriage, motherhood and the family, or the adherence to religious values, should not be presented only in a negative manner.”<sup>233</sup> In this situation, religious advocates were the ones advocating for intersectionality on behalf of religious women while others sought to demonize or even silence references to religion.

226. *Id.* at 5.

227. See Rebecca CM Symes, *The ‘Left Behind’: An Analysis of the United Nations’ Response to the Intersecting Identities of Gender and Religion* 23–26, 49, 53–56 (May 2019) (unpublished B.A. dissertation, University of Exeter) (on file with author).

228. *Commission on the Status of Women*, UN WOMEN, <https://perma.cc/GYN9-YPD4> (last visited Feb 8, 2020).

229. Symes, *supra* note 227, at 23–24.

230. *Id.* at 26.

231. Mary Ann Glendon, *What Happened at Beijing*, FIRST THINGS (Jan. 1996), <https://perma.cc/G38C-3BB3>.

232. Doris E. Buss, *Robes, Relics and Rights: The Vatican and the Beijing Conference On Women*, 7 SOC. & LEGAL STUD. 339, 346 (1998). *But see id.* at 340 for internal inconsistency in the source, where the author describes the Vatican’s position *not* as opposition to women’s rights, but as having its “*own vision* of women’s rights” (emphasis added).

233. *Id.* at 346 (internal citations omitted).

This silence has continued to this day. UN Women held their second regular session in early September 2019,<sup>234</sup> during the same time period that the Communist Party of China was increasingly targeting Muslim women for detention, rape, and forced abortions and sterilizations.<sup>235</sup> Despite this, UN Women remained wholly silent about the abuses that the Chinese government was inflicting upon Muslim women. UN Women and the UN Commission on the Status of Women were accordingly described by Tibetan human rights activists as “actively ignoring serious human rights violations against Uyghur, Tibetan, Mongolian and Ha[n] Chinese women.”<sup>236</sup> Regrettably, this characterization is not new.<sup>237</sup>

Despite this dominant attitude toward religion, UN Women has not been entirely disconnected from matters relating to people of faith. In 2018, UN Women engaged with the United Nations Inter-Agency Task Force on Religion and Sustainable Development (“IATF-R”) and indicated their goal of “ensur[ing] a strengthened coalition of faith actors, feminists and social justice movements (religious leaders, faith communities, faith advocates, young faith advocates, academia) that systematically engage in global advocacy efforts at global, regional and country level.”<sup>238</sup> Lopa Banerjee, the UN Women’s Director of the Civil Society Division, made comments at multiple Parliament of the World’s Religions<sup>239</sup> panels indicating the importance of “challeng[ing] the patriarchal ideologies that condone the subservience of women in religion and society . . . .”<sup>240</sup>

Although certainly a laudable goal, this nevertheless fails to go as far as explicitly referring to religion as an intersectional identity and continues to operate on the assumption that religion is inherently harmful to women. The beginning of the IATF-R report’s section regarding UN Women’s participation highlights this omission. The report indicates that at the Commission on the Status of Women (CSW) 62, the UN Women’s Civil Society Division met with a variety of partners, including faith-based organizations, to discuss 2030 policy goals “for rural women and girls, with all the inter-

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234. *Second regular session 2019*, U.N. WOMEN, <https://perma.cc/M79E-GHAE> (last visited Feb 8, 2020).

235. As of February 2020, the Communist Party of China continues to target Muslim Chinese citizens. See Matthias von Hein, *Opinion: China’s brutal treatment of Uighurs in Xinjiang*, DEUTSCHE WELLE NEWS (Feb. 18, 2020), <https://perma.cc/AK4E-KSDF>; AMNESTY INTERNATIONAL, UYGHURS TELL OF CHINA-LED INTIMIDATION CAMPAIGN ABROAD (2020), <https://perma.cc/T5DL-HTPQ>.

236. *UN Women Staying Silent as China Forcibly Sterilizes Uyghur Women in Detention Centers*, TIBET TRUTH (Sept. 2, 2019), <https://perma.cc/4E9T-KJWP>. See also *China’s “re-education” / concentration camps in Xinjiang*, UYGHUR HUMAN RIGHTS PROJECT, <https://perma.cc/9ZUL-PPFV> (last visited March 12, 2020).

237. *UN Women Offer Cold Shoulder to Those Forcibly Sterilized by China’s Regime*, TIBET TRUTH (Mar. 16, 2019), <https://perma.cc/P85P-P2QX>.

238. UN INTER-AGENCY TASK FORCE ON ENGAGING FAITH-BASED ACTORS FOR SUSTAINABLE DEVELOPMENT, ENGAGING WITH RELIGION AND FAITH-BASED ACTORS ON AGENDA 2030/THE SDGs 34 (2018).

239. *Id.* at 35. Described by the IATF-R report as “the oldest, largest, most diverse and inclusive Global Interfaith event with peoples of faith advocating for a more just, peaceful, and sustainable world.”

240. *Id.*

sectional complexities of widowhood, marital status disability, sexual orientation, gender identity and expression, sex characteristics, indigenous and ethnic identities, age, refugee or migrant status.”<sup>241</sup> For a report on UN Women’s participation in engaging *religion* and *faith-based actors*, it is striking that neither “religion” nor “faith” are included in the list of “intersectional complexities.” This omission reflects, at best, negligent consideration of the many identities of women.

### E. European Court of Human Rights

The European Court of Human Rights (ECtHR) is another international human rights institution that has room for intersectional improvement—particularly with regards to the rights of Muslim women. Despite “[c]ases presented by Muslim women . . . [that] had a clear intersectional dimension,” such cases of “Muslim women in particular . . . were systematically defeated in the cases they presented.”<sup>242</sup> In *Şahin v. Turkey*, the ECtHR upheld a ban on Muslim women’s headscarves on the basis of the “principle of secularism” and “equality before the law of men and women” and rejected the importance of religion, treating it as subservient to secularism.<sup>243</sup> In her dissenting opinion, Justice Françoise Tulkens called out the Court’s assumption that Muslim women who wear headscarves had not freely adopted them as they have the right to do and advocated for the harmonization of principles the majority considered to be in tension.<sup>244</sup> In other cases, such as *Dahlab v. Switzerland*, scholars have noted the Court’s reliance on “negative generalizations” about religion,<sup>245</sup> and in *Karaduman v. Turkey*, the Court interpreted a Muslim woman’s religious beliefs for her, finding that mandatory removal of her headscarf would not violate her rights.<sup>246</sup> The Court’s decisions have been described as “overly simplistic” and its “extremely broad margin of appreciation” has been said to have eroded the potential for greater intersectional jurisprudence.<sup>247</sup> Although this pattern indicates a broader problem—that the ECtHR “has failed to protect religious freedom in general”<sup>248</sup>—that still contributes to the specific problem of failing to apply intersectional perspectives to religious women despite having had the opportunity to do so.

241. *Id.* at 34.

242. Pablo Castillo-Ortiz, Amal Ali & Navajyoti Samanta, *Gender, Intersectionality, and Religious Manifestation Before the European Court of Human Rights*, 18 J. OF HUM. RTS. 76, 86 (2019).

243. *Şahin v. Turkey*, 2005-XI Eur. Ct. H.R. 173 ¶¶ 114, 116.

244. *See id.* ¶¶ 4, 10–12 (Tulkens, J., dissenting).

245. Turan Kayaoglu, *Trying Islam: Muslims before the European Court of Human Rights*, 34 J. MUSLIM MINORITY AFF. 345, 346 (2014).

246. *Id.* at 351.

247. Stephanie Berry, *The UN Human Rights Committee Disagrees with the European Court of Human Rights Again: The Right to Manifest Religion by Wearing a Burqa*, EJIL: TALK! BLOG OF THE EUROPEAN JOURNAL OF INTERNATIONAL LAW (Jan. 3, 2019), <https://perma.cc/J8U8-3QDE>.

248. Kayaoglu, *supra* note 245, at 347.

### F. *Notable Efforts to Apply Intersectionality to Religious Women*

Fortunately, the international community has not entirely abdicated a consistent commitment to intersectionality or to the rights of religious women. Notably, the UN Human Rights Committee (HRC) and the Special Rapporteur on Freedom of Religion or Belief (SRFORB) (which reports to the HRC) have demonstrated more willingness to recognize religious women as an intersectional identity group.

In 2000, the HRC stated in a General Comment that “[d]iscrimination against women is often intertwined with discrimination on other grounds,” of which religion is one of many.<sup>249</sup> It also stated both that states should not permit freedom of thought, conscience, and religion to justify discrimination against women, and that states should prevent infringement of such freedoms “in respect of women.”<sup>250</sup> Although this demonstrated a recognition of the religious rights of women, the HRC focused more on religion as a right rather than as an intersectional identity that many women share.

In 2015, however, the HRC expressed concern in its report on France that bans on conspicuous religious symbols in schools would “have a disproportionate impact on members of specific religions and on girls.”<sup>251</sup> The HRC applied this reasoning when it ruled against France (and in a manner contrary to the ECtHR) in *Yaker v. France*. In *Yaker*, a French Muslim woman was prosecuted and convicted for wearing a niqab in public based on a 2012 statute prohibiting clothing that conceals the face.<sup>252</sup> The HRC held that the ban “disproportionately affects the author as a Muslim woman who chooses to wear the full-face veil, and introduces a distinction between her and other persons who may legally cover their face in public that is not necessary and proportionate to a legitimate interest,” notably concluding that the law and its application “constitutes a form of intersectional discrimination based on gender and religion, in violation of article 26 of the Covenant.”<sup>253</sup> Instead of dismissing religious identity as less important than other values or redefining it entirely as the ECtHR has sometimes done,<sup>254</sup> the HRC openly acknowledged how the French government was discriminating against religious women.

SRFORB has recognized the apparent failure of other UN branches as it has criticized the lack of intersectionality as applied to religious women. In 2013, the Special Rapporteur noted that “[viewing religion and gender equality as inherently contradictory] can cause serious protection gaps. For

249. Human Rights Comm., *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, ¶ 30, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

250. *Id.* ¶ 21.

251. Human Rights Council, *Concluding Observations on the Fifth Periodic Report of France*, ¶ 22, U.N. Doc. CCPR/C/FRA/CO/5 (Aug. 17, 2015).

252. Human Rights Council, Communication No. 2747/2016, *Yaker v. France*, U.N. Doc. CCPR/C/123/D/2747/2016, at 2.1–2.2 (Dec. 7, 2018).

253. *Id.* at 8.17.

254. See *supra* notes 242–248 and accompanying text.

instance, efforts to explore and create synergies between freedom of religion or belief and gender equality are sometimes ignored or even openly discouraged.”<sup>255</sup> SRFORB’s explicit references to religious women as an intersectional group has also increased in frequency based on the mentions of women between 1995 and 2018 by FORB Special Rapporteurs.<sup>256</sup> Finally, SRFORB has urged international human rights institutions to “direct all their efforts to ensuring that there are no human rights protection gaps” because of how “women from religious or belief minorities . . . may suffer from multiple or intersectional forms of discrimination.”<sup>257</sup>

The HRC and SRFORB represent aspects of the UN and the international community that have taken more specific steps to recognize the application of intersectionality to religious women. One theory of why SRFORB in particular has been quicker to adopt intersectional analyses with regards to religious women is due to its inherent structure and the increasingly prominent focus in the international community on women’s rights issues in the past several decades. As an institution specifically designed to address religious matters, SRFORB has no choice but to evaluate the situations of religious people around the world. As women’s rights issues grow in importance and as countries make or are encouraged to make improvements in legal protections for women, SRFORB would also likely need to address women’s rights issues as a matter of contemporary politics. Thus, it would follow that SRFORB may be more willing to adopt perspectives that evaluate the interplay between religious and gender identities.

A similar theory follows for why the HRC may have been willing to explicitly recognize the intersection between religion and gender in *Yaker*: the HRC operates from a position in which religion is explicitly protected because of Article 18.<sup>258</sup> Contrast this with a group like CEDAW which lacks any explicit article pertaining to religion. Groups that have an explicit religious mandate or which derive their authority from a convention that explicitly addresses religion may feel stronger internal pressure to address such issues. Given the general trend amongst OHCHR, CEDAW, and the HRC to make strides in this area, another theory is that they have been influenced by rhetoric from the SRFORB on the matter, which represents some of the strongest official UN language about religious women to date.

Although some groups have begun adopting explicitly intersectional perspectives in reports and legal decisions in recent years, religious women remain largely ignored and underserved by several major international human rights bodies within the UN, such as the Office of the High Commissioner,

255. Heiner Bielefeldt (Special Rapporteur on Freedom of Religion or Belief), *Interim Report*, U.N. Doc. A/68/290 (Aug. 7, 2013).

256. See Symes, *supra* note 227, at 21.

257. Heiner Bielefeldt (Special Rapporteur on Freedom of Religion or Belief), *Report*, U.N. Doc. A/HRC/22/51 (Dec. 24, 2012).

258. Human Rights Council, Communication No. 2747/2016, *supra* note 252, at 3.2.



CEDAW, UN Women, and the Special Rapporteur on Violence Against Women. Because these groups not only stand for women's rights but also for the increased use of intersectional policy and legal approaches, this pattern of sidelining is fundamentally inconsistent with both of these missions and the consequences of these omissions constitute gaps in protections and remedies for women of faith facing intersectional violence and discrimination.

#### IV. EXPLORING REMEDIES

Despite the failings of various legal institutions, there is substantial opportunity for reforms within all of the human rights bodies discussed in this Note. These groups and scholars of international human rights—and particularly those who are proponents of intersectional thinking—should apply the theory more consistently by extending it explicitly and frequently to religious women. Specifically, human rights institutions should utilize intersectional language regarding women of faith more frequently, work to increase religious literacy around the world, adopt more intersectional language pertaining to religious women in legal jurisprudence, and increase collaborative efforts between both other human rights bodies and local religious communities. There is substantial room for future scholarship to explore additional remedies and recommendations for advancements in the application of intersectionality to religious women, but these institutional reforms can and should be implemented immediately. This is particularly urgent given the United Nations' own pledge in the 2030 Agenda for Sustainable Development: “that no one will be left behind.”<sup>259</sup>

##### A. *Greater Recognition of Religion as an Identity*

One of the most direct ways that these issues can begin to be addressed is for human rights organizations to embrace intersectional language with regards to women of faith. Although linguistic changes alone will not create immediate change, language can create emphasis and urgency which can lead to local, national, and international change.<sup>260</sup> The UN Office of the High Commissioner, which generates reports pertaining to gender equality, should directly speak to the problems that religious women face and treat religion as a core identity on par with race, sexual orientation, and migrant status.<sup>261</sup> OHCHR provides uniquely valuable practical resources to states and NGOs and supplementing these materials with a fuller intersectional perspective would help it achieve its goals of advancing human rights. The UN Special Rapporteur on Violence against Women should avoid essentializing religion solely as grounds to discriminate against women and instead

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259. G.A. Res. 70/1, at 1 (Sept. 25, 2015).

260. See *supra* notes 128–130 and accompanying text.

261. See *supra* notes 134–191 and accompanying text.

recognize it as an identity central to the lives of millions of women.<sup>262</sup> This would increase SRVAW's institutional legitimacy and could lead to further collaborative efforts between it and other UN bodies. CEDAW should issue a General Recommendation specifically addressing religious women as an intersectional group and highlighting the ways that religious women face increased risk of persecution and discrimination.<sup>263</sup> This could similarly enhance its credibility as an advocate of intersectional human rights. UN Women should increase its recognition of religious identity in official documents and address atrocities like the mass sterilization and forced abortions of religious minorities in China.<sup>264</sup> Furthermore, the UN will review the 2030 Sustainable Development Goals in 2020, and UN Women should address the "omission of religion from the SDGs as an intersectional factor, facing particularly women."<sup>265</sup> The European Court of Human Rights should follow the lead of the HRC and adopt more intersectional language and analysis in its evaluation of overlapping rights to increase the applicability of intersectionality in its jurisprudence—for religious women, and for other intersectional groups.<sup>266</sup>

### B. Increasing Religious Freedom Literacy

SRFORB has made recommendations relating to the 2030 Agenda for Sustainable Development, highlighting the "need to increase religious freedom literacy within the community of development actors (a field in which numerous faith-based groups have traditionally been very active)" because of the intersections of freedom of religion and gender equality, among other intersections.<sup>267</sup> "This approach," the Special Rapporteur notes, "is supported by growing evidence of the links between respect for the right to freedom of religion or belief and prospects for societal harmony, economic prosperity and political stability" which "contradicts narratives that equate societal harmony and peace with restrictive rather than inclusive practices."<sup>268</sup> Religious freedom literacy should include engaging state and non-

262. See *supra* notes 192–197 and accompanying text.

263. See *supra* notes 198–221 and accompanying text.

264. See *supra* notes 222–241 and accompanying text.

265. Symes, *supra* note 227, at 37.

266. See *supra* notes 242–247 and accompanying text.

267. Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *Report*, ¶ 21, U.N. Doc. A/HRC/34/50 (Jan. 17, 2017).

268. *Id.* For evidence indicating that religious freedom contributes to economic and social stability, see Ilan Alon, Shaomin Li & Jun Wu, *An Institutional Perspective on Religious Freedom and Economic Growth*, 10 POL. & RELIGION 689, 694–95 (2017) ("In short, existing research seems to concur that religious freedom promotes economic activity, both directly through institutions and indirectly through religious diversity and religiosity."); Anthony Gill & John M. Owen IV, *Religious Liberty and Economic Prosperity: Four Lessons from the Past*, 37 CATO J. 115, 131 (2017) ("[H]istory also provides evidence that religious tolerance and freedom enhances social well-being in many other realms, including long-term economic growth and democratic governance."); Yang Shijian & Zhao Dan, *Summary of Academic Seminar on Religious Freedom and Ethnic Harmony*, 7 CHINESE L. & RELIGION MONITOR 38, 46–49 (2011) ("[O]nly when the state treats religious groups in a more tolerant, more understanding and respectful manner can vari-

state actors, as well as other human rights bodies, regarding the importance of religious freedom for a thriving society.

### C. *Adoption of Intersectionality in Legal Doctrine*

Numerous human rights treaties, regional agreements, and even state constitutions include a multiplicity of rights and identities which necessarily interact with each other. The Human Rights Council, for example, has affirmed that “all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing,”<sup>269</sup> and the Vienna Declaration and Programme of Action echoes this understanding.<sup>270</sup> Some scholars have further described international human rights law as a “forum” in which “human rights ideas interact with each other” and where groups find consensus.<sup>271</sup> That interplay should be further extended into comments and jurisprudence of various international human rights law institutions as it was in the *Yaker* case.

The interaction of different facets of human identity—which is what an intersectional approach to the law could address—often concerns situations where people face increased risk of disparate impact by belonging to those intersecting identities. This is most clearly seen through situations of Muslim women who are restricted from engaging in critical aspects of personal expression because of “burqa bans,” as well as through the Chinese government’s Muslim concentration camps which expose religious women to particularly higher incidents of government-endorsed rape and forced abortion.

Human rights courts, including the HRC itself, should follow the pattern of *Yaker* in the application of intersectionality to the vindication of rights. The HRC expressly acknowledged the religiophobic basis of the face covering ban at issue in *Yaker*, noting that “the blanket ban on the full-face veil introduced by the Act appears to be based on the assumption that the full veil is inherently discriminatory and that women who wear it are forced to do so.”<sup>272</sup> This “infringes the freedom to express one’s religion or belief,” the HRC concluded, and “has a disproportionate impact on the members of specific religions and on girls.”<sup>273</sup> Where applicable, courts should draw on

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ous ethnic groups live in harmony. . . . [Religious belief] is an important force that promotes social harmony.”).

269. Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/37/L.36 (Mar. 19, 2018).

270. U.N. General Assembly, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) (“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”).

271. Keun-Gwan Lee, *From Monadic Sovereignty to Civitas Maxima: A Critical Perspective on the (Lack of) Interfaces between International Human Rights Law and National Constitutions in East Asia*, 5 NAT’L TAIWAN U. L. REV. 155, 173 (2010) (“[I]nternational human rights law provides a forum or arena where various human rights ideas interact with each other and reach a communicatively rational calibration.”).

272. Human Rights Council, Communication No. 2747/2016, *supra* note 252, at 8.15.

273. *Id.*

both legal guarantees of freedom from gender-based discrimination and religious freedom as responses to violations such as these.

#### D. *Increased Collaboration Between International Agencies*

An important step to narrow this gap in the human rights framework is for organizations at all levels to cooperate frequently and intentionally with matters pertaining to women of faith.<sup>274</sup> Greater collaboration should include not merely working together with other human rights institutions to address instances of intersectional discrimination and violence against religious women but also the adoption of standardized terminology and focal points when relevant.

Existing inter-agency cooperation opportunities abound. In her 25 Years Report, Dubravka Simonovic, Special Rapporteur on Violence Against Women, remarked that in 2018 CEDAW invited SRVAW to cooperate in the creation of General Recommendation 35 “in which they recognized the common objectives and mutually reinforcing nature of both independent mandates to protect and promote the rights of women and girls from gender-based violence.”<sup>275</sup> This collaboration was “the first example of such formal collaboration between a treaty body and a special procedure mandate holder.”<sup>276</sup> Although this report contained no mentions of either religion or intersectionality, it exemplifies an opportunity for synergistic cooperation between groups which may focus on different aspects of related human rights issues. Given the amount of intersectional language that SRFORB has outputted in recent years, collaboration between CEDAW and SRFORB to create a new General Recommendation addressing the intersectional aspect of gendered religious persecution would be an important step toward a fuller intersectional approach to human rights. Groups that create General Recommendations (or analogous documents) or documentation regarding frameworks and guidance for how to address human rights issues—such as CEDAW and OHCHR—could collaborate on General Recommendations and guidance recommendations. This would allow the committees “to fully explore intersectional human rights abuses, and they would provide guidance to State governments in reporting on intersectional abuses under each of the relevant treaties.”<sup>277</sup>

#### E. *Increased Collaboration with and Engagement of Religious Groups*

Collaboration can not only occur between human rights bodies but also between those institutions and locally-based advocacy groups—especially re-

274. *Id.* ¶ 67.

275. Dubravka Simonovic (Special Rapporteur on Violence Against Women), *Report*, U.N. Doc A/HRC/41/42 (June 20, 2019).

276. *Id.* ¶ 38.

277. Bond, *supra* note 68, at 164.

ligious feminist groups and religious leaders. Direct engagement with religious groups has been described as “an essential component of ‘cultural sensitivity.’”<sup>278</sup> Beyond that, it is a practical way for high-level institutions to both promote positive change *and* to learn from the work of those more involved with religious issues.

Many religious feminist groups, such as Side by Side (self-described as a “faith movement for gender justice”),<sup>279</sup> Sisters in Islam,<sup>280</sup> and others are working to reassert the equality of women in various religious contexts around the world.<sup>281</sup> Islamic feminists have been instrumental in achieving reforms in areas of economic equality, family law, and education,<sup>282</sup> and international organizations like the United Nations Development Fund for Women (UNIFEM) have successfully engaged in grassroots coalition building in Liberia to “mobiliz[e] . . . Christian, Muslim, and Indigenous women” to better empower them through economic and human rights awareness.<sup>283</sup> This is consistent with calls for grassroots and domestic-level reform in conjunction with international reform.<sup>284</sup>

Likewise, collaboration with religious leaders is also an important way that international human rights groups can engage with religious communities and promote greater intersectional awareness, both for themselves and for the communities with which they engage. As Country Director Alvaro Rodriguez of the United Nations Development Programme stated, “[r]eligious leaders have a vital role to play to educate the public about the messages of Islam that protect the rights of women.”<sup>285</sup>

To their credit, many of the UN bodies discussed in Part III do occasionally encourage states to reach out to religious leaders in order to reduce discrimination and violence against women.<sup>286</sup> Although it is possible that these recommendations are merely extensions of the many negative references toward religion (based on a desire to *change* religious communities), it is an undeniable fact that some religious communities and individuals do perpetuate discrimination and violence against women. Thus, recommendations that states engage with religious communities does not have to be

278. VOLKER HEINS, KAI KODDENBROCK & CHRISTINE UNRAU, HUMANITARIANISM AND CHALLENGES OF COOPERATION 141 (2016) (citations omitted).

279. SIDE BY SIDE, <https://perma.cc/9XEE-BWV8> (last visited Feb. 10, 2020).

280. SISTERS IN ISLAM, <https://perma.cc/2ZG8-7Z2Z> (last visited Feb. 10, 2020).

281. See generally VAN DER GAAG, *supra* note 53; Rayburn, Natale & Linzer, *supra* note 41.

282. Eleanor Pontoriero, *On Multiple Belonging: Promoting Cultural Change and Gender Equality*, E-PROCEEDINGS OF 2ND INTERNATIONAL CONFERENCE ON MANAGEMENT AND MUAMALAH 248, 254 (ICoMM 2015 Organizing Committee, eds., 2015); see also *Sisters in Islam in the Media*, SISTERS IN ISLAM, [HTTPS://PERMA.CC/S4WB-N4TV](https://perma.cc/S4WB-N4TV) (last visited Feb 10, 2020).

283. Eleanor Pontoriero, *On Multiple Belonging: Engaging Human Rights from a Buddhist-Christian, and Feminist Liberative Praxis*, 39 BUDDHIST-CHRISTIAN STUD. 181, 188–89 (2019).

284. See Symes, *supra* note 227, at 30–34.

285. Kumar Tiku & Anusha Ahmadi, “Religious Leaders’ Support Key to Ensuring Rights For” Women, United Nations Development Programme (Dec. 2, 2013), <https://perma.cc/T6PR-WW6W>.

286. See *supra* notes 173, 183, 189, 210, and 235 for examples of recommendations for this kind of collaboration.

interpreted in strictly negative terms. Nevertheless, as discussed throughout this Note, secular foreign affairs perspectives often neglect to account for the way religion affects women's lives and dismiss it as purely oppressive. This neglect parallels the way secular feminism sometimes treats those with religious identities.<sup>287</sup> It is crucial, therefore, that largely secular groups like the UN neither view religious feminist activism as attempting to fix something that is inherently oppressive, nor treat engagement with religious leaders as a response to a hostile system, but rather treat both as ways to find optimal harmony between two distinct but critical human identities that are not inherently opposed.

## V. POTENTIAL CRITICISMS AND RESPONSES

As mentioned briefly in Part I, intersectionality has been criticized in a number of ways.<sup>288</sup> Two such criticisms are that intersectionality is merely a feminist “buzzword”<sup>289</sup> and that it is devoid of any coherent universal meaning.<sup>290</sup>

As evidenced by the sometimes perfunctory or unclear mentions of the term in the UN,<sup>291</sup> intersectionality is certainly a term prone to misuse. That is less of a problem with intersectionality and more an issue with its supposed adherents. This Note's exhortation for scholars and legal institutions to adopt and apply intersectional language must necessarily be read in the context of *why* that language matters and must be paired with policy efforts that go beyond merely paying lip service to the theory.<sup>292</sup> Merely inserting references to intersectionality into reports and recommendations is not enough; human rights advocates must back those documents with genuine efforts toward evaluation of and greater collaboration with religious women.

The second criticism centers around the multiplicity of situations to which intersectionality can be applied (an observation easily identifiable by a search of the phrase in many scholarly databases) and skepticism toward whether it can function as a coherent platform for action. However, one of intersectionality's key strengths—if used sincerely—is its potential to reduce injustice *because* of its universal applicability.<sup>293</sup> Intersectionality “initiates a process of discovery”<sup>294</sup> that enables researchers to wrestle with

287. Llewellyn & Trzebiatowska, *supra* note 52, at 245.

288. See *supra* note 71.

289. See *supra* note 72. See also HELGE ÅRSHEIM, MAKING RELIGION AND HUMAN RIGHTS AT THE UNITED NATIONS 103 (2018).

290. ÅRSHEIM, *supra* note 289, at 103–104; Ann Garry, *Intersectionality, Metaphors, and the Multiplicity of Gender*, 26 HYPATIA 826, 830 (2011).

291. See generally *supra* Part III.

292. See *supra* note 130 and accompanying text discussing the role of international law as a norm and trend-setting tool.

293. Davis, *supra* note 59, at 72.

294. *Id.* at 79.

difficult questions—such as when and how people’s many identities interact and with what consequences—which are inherently relevant to a more nuanced understanding of human conduct.<sup>295</sup> The fact that these questions create a multiplicity of answers is not a flaw, but an accurate reflection of the highly unique nature of human beings.

It is largely true that intersectionality does not, on its own, prescribe a particular legal remedy or methodology.<sup>296</sup> This is because intersectionality on its own is more about understanding the ways that specific components of reality interact with each other than prescribing a way to improve that reality. Nonetheless, it is still highly useful as a tool of critical analysis. When coupled with practical reforms to better address problems identified through the intersectional discovery process, the use of this analytical framework has the potential to encourage collaboration, promote positive compromise, reduce identity politics, and engender a greater respect for human dignity. Because intersectionality inherently looks at the ways overlapping identities interact, it can serve as the “basis for a mutually beneficial collaboration” between traditionally opposed groups which can lead to the positive cooperative efforts discussed earlier in this section.<sup>297</sup> Likewise, because a truly intersectional approach rejects the idea that one group (religious people) are necessarily at odds with another group (women), intersectionality rejects identity politics<sup>298</sup> and embraces rather than negates personal identities without “essentializing”<sup>299</sup> or elevating one identity over another.<sup>300</sup> This approach should appeal both to proponents of intersectional feminism and to skeptics frustrated by feminism’s inattention toward religion.

## CONCLUSION

Women experience religion—like many aspects of their lives—in distinctive ways. Religious persecution is by no means unique to women, but religious women often suffer persecution in unique ways because of their intersectional identities. As religious freedom becomes increasingly restricted around the world, human rights advocacy will become all the more

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295. See Alice H. Eagly & Wendy Wood, *Janet Taylor Spence: Innovator in the Study of Gender*, 77 *SEX ROLES* 725, 731 (2017).

296. See, e.g., Julia S. Jordan-Zachery, *Am I a Black Woman or a Woman Who Is Black? A Few Thoughts on the Meaning of Intersectionality*, 3 *POL. & GENDER* 254, 258–59 (2007); Ann Phoenix & Pamela Patynama, *Intersectionality*, 13 *EUR. J. OF WOMEN’S STUD.* 187, 189 (2006) (describing how intersectionality inspires methods, as opposed to necessitating them).

297. Davis, *supra* note 59, at 74.

298. See Bond, *supra* note 68, at 185.

299. Gina Miranda Samuels & Farival Ross-Sheriff, *Identity, Oppression, and Power: Feminisms and Intersectionality Theory*, 23 *AFFILIA* 5, 5 (2008).

300. See Hollie Mackey & Elizabeth T. Murakami, *Guiding Frames and Centering Context for Race, Ethnicity Gender, and Difference in Educational Leadership Research*, in *BEYOND MARGINALITY: UNDERSTANDING THE INTERSECTION OF RACE, ETHNICITY, GENDER, AND DIFFERENCE IN EDUCATIONAL LEADERSHIP RESEARCH* 284 (Elizabeth Murakami & Hollie J. Mackey eds., 2019).

vital—especially for women of faith. Thus, international human rights institutions like the United Nations, the European Court of Human Rights, and others must recognize gender *and* religion as intersecting identities that call for distinct responses to human rights violations and react accordingly through affirming language, greater educational efforts, and collaborative action.