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VIOLENCE IMPLICIT IN *HIJAB* SUPPRESSION LAWS IN UZBEKISTAN, TAJIKISTAN, AND FRANCE UNDER THE CEDAW FRAMEWORK

Jordan Elizabeth Pahl[†]

Abstract: This Comment examines three instances of laws banning *hijab*, the headscarf worn by many Muslim women. These laws, as enacted in Soviet Uzbekistan, France, and Tajikistan provide justifications for violence against women on a number of levels and, as such, violate the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The stigmatization of Muslim women these laws perpetuate result in women's lack of access to work and education as guaranteed by CEDAW, and also act as a catalyst for violence against women who violate these laws. This paper argues that *hijab* suppression laws violate CEDAW on a number of levels; not only do these laws result in Muslim women's disparate access to education and work, but also have the effect of justifying and perpetuating violence against women.

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I. INTRODUCTION

The three countries examined in this Comment each enacted laws and policies banning the *hijab*, the headscarf worn by many Muslim women. While one may be forgiven for thinking these kinds of policies rose to prominence after the attacks on September 11, 2001, a quick dive into the historical record suggests otherwise; not only is singling out Muslim women not new, it has been, in fact, quite common historically.¹ This Comment specifically investigates three such instances: the Uzbek Soviet Socialist Republic in the mid-twentieth century, France beginning in the 1980s, and modern-day Tajikistan. Demonstrably different in both text and context, these laws and policies took different shapes, occurred at different times in history, and purported to serve different purposes. But all these laws achieved similar results: the exclusion of women whose religion calls for them to wear

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¹ See generally FRANTZ FANON, *A DYING COLONIALISM* (1965) (describing the efforts of the French to de-veil Algerian women).

headscarves from public life, women forced to choose between their faith and society, and violence against women perceived as Muslim.

A headscarf ban does not neatly fit under the five classically proffered justifications for criminal punishment—“incapacitation, retribution, general deterrence, specific deterrence, and rehabilitation.”² Some of the laws examined here carry a justification relating to public safety and terrorism.³ Some invoke long-standing, deeply held religious or cultural traditions.⁴ All of these anti-*hijab* laws, however, share one consequence: stoking public animosity against Muslim women.⁵ This Comment argues that headscarf bans stigmatize and potentially even stoke violence as a form of discrimination against women.⁶

In seeking to relate discrimination and violence against women, this Comment uses as a legal framework the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). CEDAW was adopted by the United Nations General Assembly in 1979 and has since been ratified by 189 states.⁷ While not included in the original text, the authoritative UN Committee on CEDAW has established that gender-based violence constitutes impermissible discrimination against women.⁸ Of the three instances of *hijab* suppression examined here, both Tajikistan and France

² Robert Blecker, *Haven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified*, 42 STAN. L. REV. 1149, 1150 (1990).

³ *Id.*

⁴ *Id.*; see also Michel Foucault, *Discipline and Punish: The Birth of the Prison*, in ON VIOLENCE 445 (Bruce B. Lawrence & Aisha Karim eds., 2007) (noting that “[t]o find the suitable punishment for a crime is to find the disadvantage whose idea is such that it robs forever the idea of a crime of any attraction.”).

⁵ Blecker, *supra* note 2, at 1150.

⁶ While the following analysis discusses only the consequences of headscarf *bans*, it is important to note that the analysis can be almost perfectly applied to headscarf *requirements* as well. The issue central to this Comment is not actual the headscarf in particular, but rather the use of the coercive power of the state to enforce specific standards of dress and conduct for women in furtherance of specific national identities. See, e.g., Azar Nafisi, *Tales of Subversion*, in RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 257 (Courtney W. Howland, ed., 1999) (discussing the negative impact of Ayatollah Khomeini’s mandate that all women in Iran wear the veil).

⁷ G.A. Res. 34/180, Convention on the Elimination of all Forms of Discrimination Against Women, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW]. In this paper, “CEDAW” and “the Convention” are used interchangeably.

⁸ Comm. on the Elimination of All Forms of Discrimination Against Women (CEDAW), General Recommendation No. 19, 11th Sess., U.N. Doc. CEDAW/C/1992/L.1/Add. 15 (1992) [hereinafter General Recommendation 19].

were parties to CEDAW at the time of the examined policies. While the Uzbek context took place nearly fifty years before the adoption of CEDAW, the Convention's structure provides a useful mechanism for analyzing the policy regardless. This Comment argues that *hijab* suppression laws violate CEDAW on a number of levels; not only do these laws result in Muslim women's disparate access to education⁹ and work,¹⁰ but also have the effect of justifying and perpetuating violence against women.¹¹

II. FRAMEWORKS

In order to argue that *hijab* suppression laws and policies constitute violence and discrimination against Muslim women under relevant international law, a few terms must be defined to establish the parameters of this discussion. The following section defines the types of Islamic dress relevant to the policies analyzed in this Comment, provides a background on the CEDAW and its progeny as an international legal framework for analyzing violence against women, and, finally, attempts to provide a relevant definition of violence itself.

A. *Hijab*

First, the term *hijab* is a broad one, carrying different connotations depending on the region, sect, and individual. The Oxford English Dictionary of Islam defines *hijab* as “[t]raditional Muslim women’s head, face, or body covering, of numerous . . . often referred to as the ‘veil.’”¹² Generally in the West, the term *hijab* colloquially means a scarf tied around a woman’s head, under her chin, concealing all or most of her hair,¹³ although the precise method of tying differs by region.¹⁴ However, for the purposes of this paper,

⁹ CEDAW, *supra* note 7, at art. 10.

¹⁰ CEDAW, *supra* note 7, at art. 11.

¹¹ General Recommendation 19, *supra* note 8.

¹² *Hijab*, OXFORD DICTIONARY OF ISLAM (John L. Esposito ed., 2003).

¹³ For explanations of different kinds of headcoverings and their relationships to stigma in the West, see generally Jim A.C. Everett et al., *Covered in Stigma? The Impact of Differing Levels of Islamic Head-Covering on Explicit and Implicit Biases Toward Muslim Women*, 45 J. APPLIED SOC. PSYCHOL. 90 (2015).

¹⁴ See, e.g., FAEGHEH SHIRAZI, *THE VEIL UNVEILED* 8–9 (2001) (noting that “[o]nce the veil is no longer perceived as a mere piece of cloth, a cultural or religious artifact, it quickly takes on semantic dimensions that can be fathomed only if we clearly define the parameters of our discourse Once the veil is assigned a certain meaning, the veil itself acquires the power to dictate certain outcomes—the garment

the word *hijab* is used to refer to Islamic headcoverings for women generally, where, when a more specific garment is referenced—such as the *burqa* or the Central Asian *paranja*—that garment will be identified and defined specifically.¹⁵ Additionally, the section of the paper regarding Tajikistan makes a distinction between *hijab* and traditional Tajik headcoverings, in which the scarf is tied under the back of the head rather than under the chin.¹⁶

B. The Convention on the Elimination of All Forms of Discrimination against Women

Second, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW” or “the Convention”) provides a legal framework under which this Comment examines women’s dress restrictions and those restrictions’ relationship to violence. CEDAW was adopted by the UN General Assembly in 1979.¹⁷ It defines discrimination against women as follows: “[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁸

Article 17 of the Convention establishes the CEDAW Committee, which, under Article 21, is empowered to “make suggestions and general recommendations based on the examination of reports and information received from the States Parties.”¹⁹ These recommendations allow the committee to suggest how states can implement the treaty, as well as clarifying states’ obligations pursuant to the Convention.²⁰ However, these

becomes a force in and of itself, and this force must be deferred to by many people. When the semantics of the veil are defined, they set a dynamic of the veil in motion that dictates context.”)

¹⁵ See Appendix 1 for a primer on the different kinds of Islamic coverings for women.

¹⁶ See Appendix 2 for a visual distinction between Islamic headcoverings worn by Tajik women with traditional Tajik headcoverings that predate Islam in the region. However, I must note again that these characterizations are broad generalizations, and that customs and preferences vary person-to-person.

¹⁷ See CEDAW, *supra* note 7.

¹⁸ *Id.* at art. 1.

¹⁹ *Id.* at art. 21(1).

²⁰ *General Recommendations*, LSE CENTRE FOR WOMEN, PEACE, AND SECURITY, <http://blogs.lse.ac.uk/vaw/int/cedaw/general-recommendations/>. [Date or last visited].

general recommendations are not legally binding, but rather are “considered authoritative statements on the content of legal duties assumed by states parties.”²¹

Four particular sections of CEDAW are most relevant for the following analysis: Article 10, Article 11, General Recommendation 12, and General Recommendation 19. Articles 10 and 11 of the Convention focus on equality of access. Article 10 requires that states “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”²² Article 11, similarly, mandates that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.”²³ Both provisions continue on to list specific situations in which these considerations are especially important, such as scholarships and grants,²⁴ drop-out rates,²⁵ the right to social security,²⁶ and dismissal on the grounds of pregnancy or maternity leave.²⁷

Ten years after CEDAW’s initial adoption in 1979, the CEDAW Committee adopted General Recommendation 12.²⁸ The original text of CEDAW requires that States submit reports to the Committee regarding their progress with respect to discrimination against women.²⁹ General Recommendation 12 recommended that states include information on steps taken to eradicate violence against women, a topic not explicitly addressed in the original text of CEDAW.³⁰

General Recommendation 19 followed just three years later, in 1992.³¹ Whereas General Recommendation 12 merely suggested that states provide

²¹ *Id.*

²² *Id.* at art. 10.

²³ *Id.* at art. 11.

²⁴ *Id.* at art. 10(d).

²⁵ *Id.* at 10(f).

²⁶ *Id.* at 11(1)(e).

²⁷ *Id.* at 11(2)(a).

²⁸ Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), General Recommendation No. 12, 11th Sess., U.N. Doc. A/44/38 (1989) [hereinafter General Recommendation 12].

²⁹ CEDAW, *supra* note 7, at art. 18(1)(b).

³⁰ General Recommendation 12, *supra* note 28, at 1–4.

³¹ General Recommendation 19, *supra* note 8.

more information on the issue of violence against women, General Recommendation 19 specifically establishes that gender-based violence in fact constitutes a form of discrimination against women under the Convention.³² The Recommendation specified that the definition of gender-based violence “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”³³ The Recommendation clarifies that, while the Convention specifically applies to violence committed by public authorities, the Convention also requires states to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise,” and, therefore, holds states “responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”³⁴ Recommendation 19 examines several articles of the original text of CEDAW through a lens of violence, articulating how female subordination,³⁵ discrimination in employment,³⁶ and family relationships³⁷ may have implications of violence against women. In summary, Recommendation 19 made states at least partially responsible for the acts of private parties.

Following the adoption of General Recommendations 12 and 19, the U.N. General Assembly approved the Declaration on the Elimination of Violence Against Women (“DEVAW”) in December 1993.³⁸ DEVAW, as discussed in the following section, provided a broader definition of gender-based violence than CEDAW, and “imposed a clear, all-encompassing ‘due

³² General Recommendation 12, *supra* note 28, at 6. *See also* Rhonda Copelon, *Recognizing the Egrious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 367 n.4 (1994) (noting that General Recommendation 19 “was necessary to address the failure of the Convention on the Elimination of All Forms of Discrimination Against Women to mention gender violence.”).

³³ *Id.*

³⁴ General Recommendation 19, *supra* note 8, at 8–9.

³⁵ *Id.* at 11.

³⁶ *Id.* at 17.

³⁷ *Id.* at 23.

³⁸ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) [*hereinafter* DEVAW].

diligence' requirement" that "effectively eliminated the public/private distinction in terms of state responsibility."³⁹

While CEDAW provides a useful framework for analyzing laws restricting Muslim women's dress, in reality the Convention has almost no teeth.⁴⁰ Article 29(1) requires that disputes between states regarding CEDAW must be submitted to arbitration, and may be sent to the International Court of Justice if the states cannot reach an agreement.⁴¹ However, Article 29(2) allows for states to "declare that it does not consider itself bound" by 29.1.⁴² Almost sixty countries retain some sort of reservation with the Convention,⁴³ and, of those, nearly forty have opted out of 29.1.⁴⁴ Regardless, CEDAW took great strides to move the conversation regarding international women's rights forward, but it is difficult to quantify the impact CEDAW and other state efforts to reduce violence against women have actually achieved.⁴⁵ There is still much to be done in the arena, especially as those rights relate to religion and religious expression.⁴⁶

³⁹ Mary Pat Treuthart, "No Woman, No Cry" - *Ending the War on Women Worldwide and the International Violence Against Women Act (I-Vawa)*, 33 B.U. INT'L L.J. 73, 88 (2015) (providing an extensive overview of the international law mechanisms employed to address violence against women).

⁴⁰ Notwithstanding the opt-out provisions of the treaty, as a general and historical matter, political scientist Chandra Muzaffar notes that "[t]he UN, it is apparent, has been able to coax and cajole, even persuade and pressurize human rights transgressions. But it is in no position to transform the circumstances and structures that are responsible for the transgressions." *Human Rights and the New World Order*, in ON VIOLENCE 319 (Bruce B. Lawrence & Aisha Karim eds., 2007).

⁴¹ CEDAW, *supra* note 7, at art. 21(1).

⁴² CEDAW, *supra* note 7.

⁴³ The Vienna Convention on the Law of Treaties defines a reservation as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State..." Vienna Convention on the Law of Treaties, art. 2.1(d), [*opened for signature* May 23, 1969] 1155 U.N.T.S. 331.

⁴⁴ Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/SP/2006/2.

⁴⁵ Neil A. Englehart, *Cedaw and Gender Violence: An Empirical Assessment*, 2014 MICH. ST. L. REV. 265, 270 (2014) (noting that empirical obstacles to making a determination on this question are substantial, including that "[c]ross-national data is likely to be confounded by differing definitions of violence against women used in different jurisdictions and by differences in rates of reporting that are linked to cultural stigmas, trust in police and other government institutions, and a host of other factors.").

⁴⁶ Bahia G. Tahzib-Lie, *Women's Equal Right to Freedom of Religion or Belief: An Important But Neglected Subject*, in RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 117 (Courtney W. Howland, ed., 1999) (recommending further study both inside and outside of the U.N. into "the following three subject areas: first, the discrimination against women attributable specifically to their status as women

C. Violence

Finally, in order to engage in an analysis of anti-*hijab* policies and their relationship to violence, parameters for the term “violence” must be established. For the purposes of this Comment, two general sources of definition are relevant: law and philosophy.

As mentioned in the previous section, while CEDAW General Recommendation 12 and 19 addressed gender-based violence, neither provided a particularly comprehensive definition of the term. General Recommendation 12 simply provides that violence against women in everyday life might include “sexual violence, abuses in the family, sexual harassment at the work place etc.”⁴⁷ General Recommendation 19, however, provides a more sweeping definition of violence: “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”⁴⁸ The most comprehensive definition of gender-based violence from the international law standpoint came three years after General Recommendation 19, with the adoption by the United Nations of DEVAW.⁴⁹ Article 2 of DEVAW defines violence against women as including but not limited to:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to

within religions and beliefs; second, the types of coercion that impair women’s inner freedom of religion or belief (*forum internum*); and third, the types of restrictions existing on women’s outer freedom of religion or belief (*forum externum*).”) For further discussion on the background of CEDAW and its impact on violence against women, see Kate Rose-Sender, *Emerging from the Shadows: Violence Against Women and the Women’s Convention*, in *THE WOMEN’S CONVENTION TURNED 30 453* (Ingrid Westendorp ed., 2012), see also Christine Chinkin, *Violence Against Women*, in *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 443* (Marsha A. Freeman, Christine Chinkin, & Beate Rudolf eds., 2012).

⁴⁷ General Recommendation 12, *supra* note 28, at 1.

⁴⁸ General Recommendation 19, *supra* note 8, at 6.

⁴⁹ DEVAW, *supra* note 38.

women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.⁵⁰

One significant distinction between the General Recommendations' definitions and that of DEVAW is the use of the phrase "deprivation of liberty" in General Recommendation 19. Whereas DEVAW focuses on physical, sexual, and psychological violence, General Recommendation 19 suggests that the act of depriving a woman of her liberty may cause suffering sufficient to constitute gender-based violence. However, DEVAW explicitly includes "intimidation at work" and "violence related to exploitation" in its definition.⁵¹

How pervasive is the idea that an action taken by a state without an explicit element of force or violence can, in fact, constitute violence? In international law, the concept rarely appears,⁵² but in the disciplines of

⁵⁰ *Id.*

⁵¹ DEVAW, *supra* note 38.

⁵² As an extreme example, Hannah Arendt quotes from the judgment against Nazi leader Adolf Eichmann for the proposition that "*the degree of responsibility increases as we draw further away from the man who uses the fatal instrument with his own hands.*" Hannah Arendt, *From Eichmann in Jerusalem: A Report on the Banality of Evil* 91, 97, in *VIOLENCE IN WAR AND PEACE: AN ANTHOLOGY* (Nancy Scheper-Hughes & Phillippe Bourgois eds., 2004) (emphasis in original, internal quotations omitted). It is important to note, however, that the idea that otherwise non-violent state polices that *lead* to violence by state or non-state actors is different than the international law principles aimed at preventing superior state actors from evading liability for violent crimes simply because they did not themselves pull the trigger. One such principle exemplifying the latter is command responsibility, dictating essentially that wartime commanders have a duty to control their subordinates in order to prevent the commission of war crimes. Stuart E. Hendin, *Command Responsibility and Superior Orders in the Twentieth Century: A Century of Evolution*, 10 *MURDOCH U. ELEC. J.L.* (2003) (describing the complete modern history of command responsibility, noting that "[t]he concept of command responsibility is now based on the clear inference that those who occupy the position of superior, in a superior-subordinate relationship, are, or may be deemed to have; (a) the knowledge of the criminal actions of the subordinates, (b) the authority to deal with the criminal actions of the subordinates; and (c) the power to deal, by with punishment or prevention with the criminal acts of

philosophy, anthropology, and peace and conflict studies, it is quite pervasive. Violence “can never be understood solely in terms of its physicality—force, assaults, or the infliction of pain—alone. Violence also includes assaults on the personhood, dignity, sense of worth or value of the victim.”⁵³

Critically for this Comment’s analysis, Norwegian sociologist and peace scholar Johan Galtung asserts that three types of violence exist—direct, structural, and cultural—and form a “violence triangle,” in which any one of these forms of violence can and likely will seep into and influence the others.⁵⁴ Direct violence, most intuitively, is an act or threat of actual physical violence against another.⁵⁵ Structural violence, in comparison, “describes social structures—economic, political, legal, religious, and cultural—that stop individuals, groups, and societies from reaching their full potential.”⁵⁶ This kind of violence “inform[s] the study of the social machinery of oppression” and is “exerted systematically—that is, indirectly—by everyone who belongs to a certain social order.”⁵⁷ Specifically, genocide, epidemic diseases, and human rights violations suffered by those marginalized into poverty based on gender, race, or any other category used as a justification for discrimination constitute forms of structural violence.⁵⁸ Cultural violence refers to “those aspects of culture, the symbolic sphere of our existence - exemplified by

subordinates.”). The former, however, suggests that policies without an element of direct violence by the state or state actors can have violent effects, fairly traceable to that law or policy.

⁵³ Nancy Scheper-Hughes & Phillipe Bourgois, *Introduction: Making Sense of Violence*, in *VIOLENCE IN WAR AND PEACE: AN ANTHOLOGY* 1, 1 (Nancy Scheper-Hughes & Phillipe Bourgois, eds., 2004). See also Berta Esperanza Hernandez-Truyol, *Sex, Culture, and Rights: A Re/conceptualization of Violence for the Twenty-First Century*, 60 *ALB. L. REV.* 607, 608 (1997) (arguing that violence against women “is more comprehensive, expansive and extensive than the everyday variety of ‘A hit B’—be it with sex, a fist, a bat or a gun; be it at war, at home, at work or in the streets.”).

⁵⁴ Johan Galtung, *Cultural Violence*, 27 *J. PEACE RES.* 291, 291 (1990). See Appendix 3 for a visual representation of this concept.

⁵⁵ For the purposes of this paper, to avoid monotony, the terms “direct violence” and “physical violence” are used interchangeably to refer to the same concept. See Asher Kaufman, *Thinking Beyond Direct Violence*, 46 *INT’L J. OF MIDDLE EAST STUD.* 2, 441 (2014) (citing Galtung for the proposition that “direct violence is physically manifested, it is related to a discernible event, and it has to involve a perpetrator and a purpose.”).

⁵⁶ Paul Farmer, et al., *Structural Violence and Clinical Medicine*, 10 *PLOS MED.* e449, e449.

⁵⁷ Paul Farmer, *An Anthropology of Structural Violence*, 24 *CURRENT ANTHROPOLOGY* 305, 307 (2004).

⁵⁸ *Id.* See also Scheper-Hughes, *supra* note 53, at 2 (noting that “[t]he everyday violence of infant mortality, slow starvation, disease, despair, and humiliation that destroys socially marginalized humans with even greater frequency are usually invisible or misrecognized.” (emphasis in original)).

religion and ideology, language and art, empirical science and formal science (logic, mathematics) - that can be used to justify or legitimize direct or structural violence.”⁵⁹

Cultural violence often provides the excuse necessary for structural and direct violence to take place, by providing one faction of society with a reasoned excuse for despising or fearing one another. Galtung offers by way of explanation that:

[Cultural and structural violence] will tend to become a self-fulfilling prophecy: people become debased by being exploited, and they are exploited because they are seen as debased, dehumanized. When Other is not only dehumanized but has been successfully converted into an ‘it’, deprived of humanhood, the stage is set for any type of direct violence, which is then blamed on the victim. This is then reinforced by the category of the ‘dangerous it’, the ‘vermin’, or ‘bacteria’ (as Hitler described the Jews); the ‘class enemy’ (as Stalin described the ‘kulaks’) . . . Extermination becomes a psychologically possible duty.⁶⁰

Galtung further cautions that “[c]ultural violence makes direct and structural violence look, even feel, right—or at least not wrong.”⁶¹ Frequently, “violence is not deviant behavior, not disapproved of, but to the contrary is defined as virtuous action in the service of generally applauded conventional social, economic, and political norm”⁶² and “[e]veryday violence encompasses the implicit, legitimate, and routinized forms of violence inherent in particular social, economic, and political formations.”⁶³ This type of violence constitutes a kind of “invisible genocide” perpetrated against youth and the poor, who are “perceived as ‘dangerous’ [by] . . . adults who feel murderous toward them and who sometimes act on those sentiments.”⁶⁴ In short, this Comment relies

⁵⁹ Galtung, *supra* note 54.

⁶⁰ *Id.* at 298.

⁶¹ *Id.* at 291.

⁶² Scheper-Hughes, *supra* note 53, at 5.

⁶³ *Id.* at 21.

⁶⁴ Nancy Scheper-Hughes, *Small Wars and Invisible Genocides*, 43 *SOCIAL SCIENCE & MEDICINE* 889, 892 (1996). In this article, Scheper-Hughes also notes that “[r]ecognizing the everyday violence and invisible genocides practiced, unblinkingly, against the class of dangerous and endangered youths—those young

on the following definitions: “cultural violence” refers to rhetoric which seek to dehumanize a group of people, “structural violence” refers to the actual policies, and “direct violence” refers to the actual use of physical force.⁶⁵

Finally, it is important to note the ways in which the combination of structural and cultural violence have often been used as a way to exert colonial power over conquered peoples: “Laws and legal norms . . . [created] codes for behavior against which colonized individuals could be measured and, if all went well (from the standpoint of colonial authorities), even inculcating these norms among their colonial subjects to such an extent that no massive police force would be required.”⁶⁶ Often, “the protection of women (today the ‘third-world woman’) becomes a signifier for the establishment of a *good* society . . . which must . . . transgress mere legality, or equity of legal policy [T]he process also [allows] the redefinition as a crime of what had been tolerated, known, or adulated as ritual.”⁶⁷ In these colonial cases, aspects of culture previously confined to the private sphere suddenly jump to the public.⁶⁸ This idea that certain women are to be “saved” entrenches colonial powers as “the establisher of the good society . . . marked by the espousal of the woman as

people perceived as too old to be children and too young to be citizens—is a necessary first step in improving the current and abysmal state of the world’s children.” *Id.* at 899.

⁶⁵ While these categories have been adopted as methods of analysis by some scholars, there is no evidence that suggests these definitions have been or will be adopted into the framework of international law. See, e.g., Yxta Maya Murray, *Detroit Looks Toward A Massive, Unconstitutional Blight Condemnation: The Optics of Eminent Domain in Motor City*, 23 GEO. J. ON POVERTY L. & POL’Y 395, 423 (2016) (categorizing the official and judicial perspectives that serve as predicates to takings as forms of violence using Galtung’s theory), chronicles the interplay of direct, structural, and cultural violence in the pre-Civil Rights Era South through the life and death of James Scales; see also Andrew P. Cohen, *The Lynching of James Scales: How the F.B.I., the DOJ, and State Authorities “Whitewashed” Racial Violence In Bledsoe County, Tennessee*, 19 TEX. J. C.L. & C.R. 285, 288 (2014) (“chronicl[ing] the interplay of direct, structural, and cultural violence in the pre-Civil Rights Era South through the life and death of James Scales” via Galtung’s framework), Rosemary J. Coombe, *The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy*, 6 CANADIAN J.L. & JURIS. 249, 269 (1993) (providing as examples of cultural violence perpetrated against Native peoples in Canada “the seizure of land, government suppression of Indian religious practice, the prohibition on the speaking of Indian languages in residential schools . . . the withholding from a generation of children of their very identity as First Nations people, and a related legacy of sexual abuse.”).

⁶⁶ Douglas Northrop, *Subaltern Dialogues: Subversion and Resistance in Soviet Uzbek Family Law*, 60 SLAVIC REV. 115, 118 (2001).

⁶⁷ Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in CAN THE SUBALTERN SPEAK?: REFLECTIONS ON THE HISTORY OF AN IDEA 21, 50–51 (Rosalind Morris ed., 2010) (describing the attempts of the British to eradicate widow-burning practices in India during the colonial period).

⁶⁸ *Id.* at 51.

an *object* of protection from her own kind.”⁶⁹ Colonial powers’ use of laws regulating cultural behavior purporting to protect women often assumes that the colonized women need protecting from men of their own culture, while redefining a “ritual . . . not . . . as patriarchy but as a *crime*,”⁷⁰ thereby rendering female victims criminals. As noted post-colonial theorist Gayatri Spivak describes, “Between patriarchy and imperialism, subject-constitution and object-formation, the figure of the woman disappears, not into a pristine nothingness, but into a violent shuttling which is the displaced figuration of the ‘third-world woman’ caught between tradition and modernization, culturalism and development.”⁷¹ Under these theories, the goal of protecting women from the violence of their own colonized culture becomes a sufficient justification for the restriction of those women’s freedoms.

III. CASE STUDIES: APPLICATION OF THE FRAMEWORKS TO DRESS RESTRICTIONS ON MUSLIM WOMEN IN UZBEKISTAN, FRANCE, AND TAJIKISTAN

This section of the Comment provides brief descriptions of the laws and policies in each of the three countries analyzed. Then, those laws and policies are analyzed through the frameworks of CEDAW and the relevant definitions of violence as provided in the previous section.

A. *Background of Laws Analyzed*

1. *Uzbekistan*

Hijab suppression in Soviet Uzbekistan in the 1920s originated in the Uzbekistan Communist Party and the Women’s Division of the Communist Party in Moscow.⁷² The strategy behind the campaign was straightforward: “‘sovietize’ Central Asia by destroying traditional systems of belief and behavior to evoke a national identity.”⁷³ The Soviets⁷⁴ saw Islam as “a major

⁶⁹ *Id.* at 52.

⁷⁰ *Id.* at 56 (emphasis in original).

⁷¹ *Id.* at 61.

⁷² MARIANNE KAMP, *THE NEW WOMEN IN UZBEKISTAN* 150 (2006).

⁷³ SHIRAZI, *supra* note 14, at 147.

⁷⁴ The term “Soviet” as used in this section refers to members of the Communist Party and the Soviet government generally who implemented official policies in the various Soviet Socialist Republics, such as

binding force among the people of Central Asia and [standing] in the way of its ‘sovietization.’”⁷⁵ The official campaign against the *hijab* began on International Women’s Day, March 8, 1927, and was called the *hujum*.⁷⁶

Prior to the Russian Revolution in 1917, religious and regional leaders in Central Asia exercised a great deal of control over matters of family law.⁷⁷ After the Revolution, however, the new central government increasingly intervened into family law matters.⁷⁸ In the Soviet Union, marriage and family relations were meant to be “free and voluntary,” but were not entirely private: “The Soviet family . . . is a natural foundation of social development, and promotes communist upbringing and mutual assistance in everyday life. It is a vital factor in the development and consolidation of socialist society, in the advance of the Soviet state to communism.”⁷⁹ Because the Soviets saw the family unit as critical to the promulgation of communism, and because the woman’s role was tied to the family unit, the Soviets focused significant efforts on what they considered “women’s liberation.”⁸⁰ The Soviets were determined that women—in family and public life—should not fall into traditional, subservient roles, but rather be working members of society.⁸¹ As such, they sought to eliminate traditional practices they thought inhibited women’s entrance into Soviet society and communism.⁸² These laws and policies were “portrayed . . . as self-evidently progressive and humane—as no more than the expression of modern common sense . . . New Soviet laws were needed to protect Uzbek women and children from the patriarchal oppression that dominated their everyday lives.”⁸³

Uzbekistan. This usage is distinct from other common usages of the term, which might refer to any citizen of the Soviet Union.

⁷⁵ SHIRAZI, *supra* note 14 **Error! Bookmark not defined.**, at 147.

⁷⁶ Shoshana Keller, *Trapped Between State and Society: Women’s Liberation and Islam in Soviet Uzbekistan, 1926-1941*, 10 J. WOMEN’S HISTORY 20, 24 (1998). *See also* ADEEB KHALID, *ISLAM AFTER COMMUNISM: RELIGION AND POLITICS IN CENTRAL ASIA* 75 (U.C. Press 1999).

⁷⁷ KAMP, *supra* note 72.

⁷⁸ *See* Northrop, *supra* note 66, at 118.

⁷⁹ FUNDAMENTALS OF SOVIET LAW 358–62 (P.S. Romashkin ed., Yuri Sdobnikov trans., 1961).

⁸⁰ *See* Northrop, *supra* note 66, at 115.

⁸¹ *See id.* at 116.

⁸² *See id.*

⁸³ *Id.* at 118–19.

For example, some Republics, such as Uzbekistan and Georgia, criminalized the coercion of women into marriage.⁸⁴ Across the Soviet Union, the marriageable age was raised to eighteen for both men and women, with some exceptions.⁸⁵ This contrasted with traditional practices across the country, where marriageable age for women in some regions was as young as thirteen.⁸⁶ Regardless of the merits of these new family laws, the Soviet standards for family life varied significantly from traditional Central Asian practices, and mechanisms for ensuring compliance with and even awareness of the new laws proved challenging to implement: “The gradually introduced Soviet laws contradicting Sharia, such as the law banning polygyny, had been widely ignored; most people were unaware of new laws, and even when they became aware of them, there was no enforcement.”⁸⁷ Soviets characterized Central Asian women as “secluded” and their traditions “backwards.”⁸⁸ Against this backdrop, members of the Communist Party determined that “mass, public unveilings would be the Party’s instrument for breaking down seclusion and drawing Uzbek women into public life.”⁸⁹

2. France

Unlike the relatively new secularism imposed in Soviet Uzbekistan, France’s history of secularism dates back centuries. However, its history of *hijab* suppression within its own borders began only in 1989,⁹⁰ with an incident known as the “Headscarf Affair.”⁹¹ In September of that year, a headmaster in a suburb of Paris expelled three Muslim women for wearing headscarves.⁹² The decision of the headmaster was overturned less than a

⁸⁴ FUNDAMENTALS OF SOVIET LAW, *supra* note 79, at 366–67.

⁸⁵ *Id.* at 367.

⁸⁶ *Id.*

⁸⁷ KAMP, *supra* note 72, at 150–51.

⁸⁸ *See Id.* at 162–63.

⁸⁹ *Id.* at 165.

⁹⁰ The French imposed *hijab* suppression in their colonies, notably Algeria. *See* FANON, *supra* note 1. *See also* SHIRAZI, *supra* note 14 **Error! Bookmark not defined.**, at 148 (noting that “Moscow’s strategy of unveiling Uzbeki women in order to gain greater control over Uzbekistan has many parallels with France’s strategy of unveiling Algerian women in order to conquer Algeria. Both the French and the Soviets equated the veil with Islam and Islam with women’s oppression.”).

⁹¹ Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743, 754 (2006).

⁹² Reuven Ziegler, *The French “Headscarves Ban”:* *Intolerance or Necessity?*, 40 J. MARSHALL L. REV. 235, 238 (2006).

week later, but the incident sparked immediate interest and, in the following nine years, the French press wrote over 1,200 articles on the controversy.⁹³ The enforcement in the various headscarf cases in public schools was so inconsistent that, at one point, the Education Ministry hired a mediator to work full-time on headscarf cases.⁹⁴ Currently, it is estimated that between 7% and 9% of the French population identify as Muslim—making it the second most widely-practiced religion in the country, behind only Christianity at 63–66%.⁹⁵ At a population of around 67 million,⁹⁶ between 4.5 and 6 million Muslims call France home, the largest population of Muslims in Western Europe.⁹⁷

The law examined was enacted in 2004 in response to piecemeal enforcement of policies that occasionally allowed schools to ban headcoverings, and banned all “conspicuous religious symbols” in schools.⁹⁸ The law reads as follows: “In public elementary, middle and high schools, the wearing of signs or clothing which conspicuously manifest students’ religious affiliations is prohibited.”⁹⁹ Additionally, the law conveniently describes what does and does not count as conspicuous: “The clothing and religious signs prohibited are conspicuous signs such as a large cross, a veil, or a skullcap. Not regarded as signs indicating religious affiliation are discreet signs, which can be, for example, medallions, small crosses, stars of David, hands of Fatima, or small Korans.”¹⁰⁰

⁹³ *Id.* at 238. *See also* Wing, *supra* note 91.

⁹⁴ Wing, *supra* note 91, at 756.

⁹⁵ France, CIA WORLDFACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html>. (last updated May 9, 2019) (Christian (overwhelmingly Roman Catholic) 63–66%, Muslim 7–9%, Buddhist 0.5–0.75%, Jewish 0.5–0.75%, other 0.5–1.0%, none 23–28%).

⁹⁶ *Id.*

⁹⁷ Kristen Walder, *France: Human Rights, Religious Freedoms & a Secular Society?*, 12 BUFF. WOMEN’S L. J. 11, 12 (2004).

⁹⁸ Loi 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics [Law 2004-228 of March 15, 2004 concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garb which show religious affiliation in public primary and secondary schools], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [Official Gazette of France], Mar. 17, 2004, p. 5190 [*hereinafter* French law]. *See also* Wing, *supra* note 91, at 756.

⁹⁹ French Law, *supra* note 98.

¹⁰⁰ JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* 11 (2007).

While the text of the law facially applies to all belief systems, its application reflects that the quintessential French principles of secularism are not uniformly applied across religious groups.¹⁰¹ While facially neutral, it is well-established that this law in particular sought specifically to eradicate the *hijab* in schools:

While the official purpose of the new law is to preserve the strict separation of church and state, to maintain the religious neutrality of public schools, and to uphold the long tradition of *laïcité*, the real purpose of the law is to prevent Muslim girls from wearing headscarves to school. The discussions among French politicians and the media, and the events leading up to the time when the law was enacted, reveal that the primary motivation behind the new law was the elimination of the Muslim *hijab* from public schools. Religious symbols like Christian crosses and Jewish yarmulkes were generally well-tolerated in French public schools until the increase of young Muslim girls wearing the *hijab* suddenly made religious garb a major national controversy. The new French law has a disproportionately negative effect on Muslim students and is an unfortunate reaction against France's Muslim minority population.¹⁰²

As far back as 1789, French law established that religion may be freely exercised, but not to a degree that would interfere with other rights: "No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law."¹⁰³ In 1905, the law on the Separation of the Churches and State established France as a secular state, a principle in French called *laïcité*,

¹⁰¹ Suzanne Daley & Alissa J. Rubin, *French Muslims Say Veil Bans Give Cover to Bias*, N.Y. TIMES (May 26, 2015), <https://www.nytimes.com/2015/05/27/world/europe/muslim-frenchwomen-struggle-with-discrimination-as-bans-on-veils-expand.html>.

¹⁰² Stefanie Walterick, *The Prohibition of Muslim Headscarves from French Public Schools and Controversies Surrounding the Hijab in the Western World*, 20 TEMP. INT'L & COMP. L.J. 251, 278 (2006).

¹⁰³ DÉCLARATION DES DROITS DE L'HOMME ET DES CITOYENS [DECLARATION OF THE RIGHTS OF MAN AND OF CITIZENS] (1789), art. 10.

roughly translated as “secularity.”¹⁰⁴ This principle is enshrined—although not as extensively defined—in the French Constitution, which states that: “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.”¹⁰⁵

Culturally, this concept is pervasive: “The French consider religion to be a private matter, not to be expressed in public. The basic premise is that the protection granted to other rights is better served when the state retains its secular identity.”¹⁰⁶ To the French, separation of church and state means protecting citizens from the influence of religion, instead of preserving an individual’s right to practice:

Although the concept of *laïcité* defies a precise definition, it embodies the constitutional principle of the State’s neutrality. . . . *Laïcité* strictly calls for a state that is free from an official or exclusive religion; however, this freedom is commonly understood in France as an absence of religious expression in the public sphere. . . . It is often said by Frenchmen that *laïcité* allows religion only in the private sphere.¹⁰⁷

In seeking to hide religious differences from public life, this version of *laïcité* promotes a homogenous identity, in which “there is no possibility of a hyphenated ethnic/national identity—one either belongs to a group or to the nation. . . . [E]quality is achieved, in French political theory, by making one’s social, religious, ethnic, and other origins irrelevant in the public sphere; it is an abstract individual that one becomes a French citizen.”¹⁰⁸ By preventing

¹⁰⁴ Loi du 9 décembre 1905 concernant la séparation des Églises et de l’État [Law of December 9, 1905 on the Separation of the Churches and the State], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [Official Gazette of France], Dec. 11, 1905, p. 7205.

¹⁰⁵ 1958 CONST. ART. 1 (FR.).

¹⁰⁶ Ziegler, *supra* note 92, at 238.

¹⁰⁷ Blandine Chelini-Pont, *Religion in the Public Sphere: Challenges and Opportunities*, 2005 B.Y.U. L. REV. 611, 612–13 (2005). See also Arthur Kutoroff, *First Amendment Versus Laïcité: Religious Exemptions, Religious Freedom, and Public Neutrality*, 48 CORNELL INT’L L.J. 247, 278 (2015) (noting that “the recent headscarf controversies in France illustrate a preference for public neutrality toward religion over religious freedom”).

¹⁰⁸ JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* 11–13 (2007). Scott goes on to note:

other identities—religious, ethnic, or otherwise—from making claims on a French citizen’s identity, they become exclusively French, and are less susceptible to “dangerous,” non-French ideas.¹⁰⁹ Therefore, any religious proclivities are shunted into the private sphere, so as not to “impose” on others: “*Laïcité* means the separation of church and state through the state’s protection of individuals from the claims of religion. . . . To be acceptable, religion must be a private matter; it must not be displayed ‘conspicuously’ in public places, especially in schools, the place where the inculcation of republican ideals began.”¹¹⁰

This principle is not uniformly applied by the French across various religious beliefs. For example, former French President Nicolas Sarkozy “referr[ed] to France as ‘the eldest daughter of the [Catholic] Church’ and stat[ed] that ‘the roots of France are essentially Christian,’” directly in conflict with the French tradition of omitting religion from the public space.¹¹¹ Later, he endorsed the country’s proposed *burqa* ban, introduced in 2009, characterizing the *burqa* as a “‘sign of subversion and debasement.’”¹¹²

3. *Tajikistan*

The history of *hijab* suppression in Tajikistan is a long and complicated one, culminating only recently in August 2017 with the formal passage of a law restricting Muslim women’s dress. Of the three states examined in this

France insists on assimilation to a singular culture, the embrace of a shared language, history, and political ideology . . . that guarantee[s] all individuals equal protection by the state against the claims of religion and any other group demands. French universalism insists that sameness is the basis for equality . . . positing the sameness of all individuals, a sameness that is achieved not simply by swearing allegiance to the nation but by assimilating to the norms of its culture.

Id.

¹⁰⁹ This strategy has been employed by the French government since the 1980s. See Karina Piser, *A New Plan to Create an ‘Islam of France,’* THE ATLANTIC (Mar. 29, 2018), <https://www.theatlantic.com/international/archive/2018/03/islam-france-macron/556604/> (noting that “the goal [of the government] has been to create an Islam that both conforms to national values, notably secularism, and is immune to the radical interpretations that have gained a footing in certain parts of the Muslim world.”).

¹¹⁰ SCOTT, *supra* note 108, at 15.

¹¹¹ Peter B. Beita, *French President’s religious mixing rules critics*, CHRISTIAN TODAY (Jan. 23, 2008, 1:04 PM), <https://www.christiantoday.com/article/french.presidents.religious.mixing.rules.critics/16423.htm>

¹¹² Angelique Chrisafis, *Nicolas Sarkozy Says Islamic Veils Are Not Welcome in France*, THE GUARDIAN (June 22, 2009, 2:35 PM), <https://www.theguardian.com/world/2009/jun/22/islamic-veils-sarkozy-speech-france>.

Comment, only Tajikistan had an Islamic Party represented in its government at the time of the law in question's enactment.¹¹³ The law in this case is distinct from the two other laws examined in this paper: the Tajik law does not, in fact, technically prevent women from wearing Islamic headcoverings. Rather, this law restricts women from wearing headcoverings that do not conform specifically to historic Tajik traditions.¹¹⁴ While the Tajik law does not seek—expressly or impliedly—to eradicate Islam, it seeks to create a national identity that excludes foreign influences, manifested in a restriction on certain kinds of *hijab* deemed “un-Tajik.”¹¹⁵

Secular leaders of Tajikistan have long worried about the “overspill of what it sees as unwelcome traditions from neighbouring Afghanistan.”¹¹⁶ Al Jazeera reports that police in the country have shaved the beards of 13,000 people, and “closed more than 160 shops selling traditional Muslim clothing [in 2015] as part of the country’s fight against what it calls ‘foreign’ influences” and to curb radicalism.¹¹⁷ Similarly, in 2015, Tajik President Emomalii Rahmon “was upset by the appearance of several women dressed in long black robes traditionally worn by women in Islamic countries further south and west of Tajikistan.”¹¹⁸ As another example, in 2011, President

¹¹³ For reasons described above, by virtue of the aggressively communist and therefore secular policies of the Soviet Union, the illegality and resulting secret nature of religion foreclosed Muslims from enjoying any sort of religious representation in government, with the exception of a special governing body for Islamic activities in the Central Asian republics. Regarding France, the Democratic Union of French Muslims sought candidacy in the 2017 French elections, but failed to receive the requisite 500 “sponsorships” (in which candidates for president must obtain signatures of elected officials) to be included in the election. *Democratic Union for French Muslims Receives Only Three Sponsorships*, EURO-ISLAM.INFO (Mar. 24, 2017), <http://www.euro-islam.info/2017/03/24/democratic-union-french-muslims-receives-three-sponsorships/>.

¹¹⁴ See Appendix 2 for a visual representation.

¹¹⁵ Harriet Agerholm, *Tajikistan Passes Law ‘To Stop Muslim Women Wearing Hijabs’*, THE INDEPENDENT (Sept. 1, 2017), <https://www.independent.co.uk/news/world/asia/tajikistan-muslim-hijabs-stop-women-law-headscarfs-central-asia-islam-a7923886.html>.

¹¹⁶ Sally Peck, *Tajikistan Bans Miniskirts and Headscarves*, THE TELEGRAPH (Apr. 18, 2007), <https://www.telegraph.co.uk/news/worldnews/1549005/Tajikistan-bans-miniskirts-and-head-scarves.html> (discussing an earlier ban on the *hijab* specifically in public schools, citing the education minister saying, “If religion means more to you than studies, you should study at a religious school.”). See also *Tajikistan Shaves 13,000 Beards in ‘Radicalism’ Battle*, AL JAZEERA (Jan. 21, 2016), <https://www.aljazeera.com/news/2016/01/tajikistan-shaves-13000-men-beards-radicalism-160120133352747.html>.

¹¹⁷ AL JAZEERA, *supra* note 116.

¹¹⁸ Bruce Pannier, *Central Asia’s Controversial Fashion Statements*, RADIOFREEEUROPE (Apr. 1, 2015), <https://www.rferl.org/a/central-asia-fashion-islamic-risque-western-national-mentality/26932437.html> (noting also that governments of other Central Asian countries are undertaking

Rahmon expressed disdain for people who gave their children Arabic, rather than traditional Tajik names, suggesting that parents “leaf through historical works like *Shahnameh* or classic Tajik works where you will find many adequate, good, beautiful names.”¹¹⁹ At the same time the president made these statements, a law in the Tajik parliament could give authorities a veto over children’s names, which some worried would result in an effective ban on Muslim names.¹²⁰ That law ultimately passed.¹²¹

In August 2017, the Tajik government adopted changes to its preexisting law regulating “traditions, celebrations, and rituals.”¹²² These policies claim to help Tajik citizens “[avoid] waste and excess,” and included limitations on when marriages and funerals may occur, the performance of circumcision, and even what foods could be served at traditional events.¹²³ These policies purport “to protect the interests of the population” by forcing them to save money.¹²⁴ The amendments also impose a duty to notify the relevant state department of a wedding or funeral, and to conduct it in the manner required by this law.¹²⁵ Members of the military can be dismissed if

similar policies). *See also* MVD Tadjikistana usilit bor'bu s "chuzhdym" stilem odezhdy, RADIO OZODI (Mar. 29, 2015), <https://rus.ozodi.org/a/26926210.html> (reporting on the Tajik Interior Ministry’s crackdown on “alien” styles of dress).

¹¹⁹ Richard Orange, *Tajik President Warns Parents of Dangers of ‘Scary Names’*, THE TELEGRAPH (June 3, 2011), <https://www.telegraph.co.uk/news/worldnews/asia/tajikistan/8554796/Tajik-President-warns-parents-of-dangers-of-scary-names.html>. *See also* David Trilling, *Tajikistan Debates Ban on Arabic Names as Part of Crackdown on Islam*, THE GUARDIAN (May 8, 2015), <https://www.theguardian.com/world/2015/may/08/tajikistan-islam-arabic-names-crackdown> (noting that the secular government of Tajikistan “fears that the country’s disenfranchised and poverty stricken villages are becoming recruiting grounds for militants,” and also noting, ironically, that the President’s own name derives from the Arabic). *See also* Lora Moftah, *Tajikistan Muslim Name Ban: Parliament Considers Forbidding Arabic-Sounding Names Amid Crackdown on Islam*, INT’L BUS. TIMES (May 6, 2015), <https://www.ibtimes.com/tajikistan-muslim-name-ban-parliament-considers-forbidding-arabic-sounding-names-amid-1909880> (clarifying that, “[w]hile the bill would apply only to babies born after it is signed into law, there is also a growing push by parliamentarians to encourage those with Arabic-sounding names to change them to those that are traditionally more Tajik.”).

¹²⁰ Orange, *supra* note 119.

¹²¹ AL JAZEERA, *supra* note 116.

¹²² *Menyayem traditsii i obryady. V Tadjikistane zapretyat zabivat' skot, delat' plov na pominki i obrezaniye ne v bol'nitsakh*, ASIA-PLUS (Aug. 11, 2017), <http://news.tj/ru/node/243372> [*hereinafter* Tajik law].

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

they or their family members are found in violation of any of these policies.¹²⁶ In regards to dress, the law provides that “persons and legal entities are obliged to respect the foundations of national cultures, including the official language and national dress, to protect them against modern negative influences.”¹²⁷

B. *Applying the CEDAW Framework*

Despite the technical lack of enforcement abilities, CEDAW provides a useful framework under which laws like these *hijab* suppression policies can be analyzed. Each of the aforementioned laws, at its core, seeks to create a national narrative that excludes or makes invisible Muslim women. When analyzed under the framework of the Convention, it is clear that, while facially quite different, all three of these laws violate the fundamental goal of CEDAW of eliminating “all acts of discrimination against women by persons, organizations or enterprises.”¹²⁸ All of these laws either explicitly or implicitly condition Muslim women’s access to work and education on their choice of religious garments, and have the effect of incentivizing other groups to engage in violence against Muslim women. The following two sections establish why a *hijab* ban in any of the three forms previously described constitutes gender discrimination based on the Convention.

1. *Disparate Access to Education and Work Under Articles 10 and 11*

Standards that restrict entry into employment and education for women specifically constitute discrimination.¹²⁹ In Tajikistan, since August 2017,

¹²⁶ Avaz Yuldashev, *V zakon ob uporyadochenii dobavili popravki dlya sluzhatshih vnutrennih voisk*, ASIA-PLUS (Mar. 12, 2018), <http://news.tj/news/tajikistan/society/20180312/v-zakon-ob-uporyadochenii-dobavili-popravki-dlya-sluzhatshih-vnutrennih-voisk>.

¹²⁷ *Kommentarii k izmeneniyam i dopolneniyam v Zakon Respubliki Tadjikistan «Ob uporyadochenii traditsiy, torzhestv i obryadov v Respublike Tadjikistan» i drugiye normativnyye pravovyye akty v plane uporyadocheniya traditsiy, torzhestv i obryadov* [Commentary for Changes and Additions to the Law of the Republic of Tajikistan “On the Regulation of Traditions, Celebrations and Rituals in the Republic of Tajikistan” and Other Regulatory Acts in Terms of Regulating Traditions, Celebrations and Ceremonies”], PREZIDENT RESPUBLIKI TAJIKISTAN (Aug. 11, 2017), <http://www.president.tj/ru/node/15926>.

¹²⁸ CEDAW, *supra* note 7.

¹²⁹ At the outset, it is important to note that Soviet Uzbekistan is not discussed much in this section, as education for girls actually increased under Soviet rule during the *hujum*. Keller, *supra* note 76, at 36.

women have worried about losing their jobs as a result of the new law: “After officials dropped by earlier this year and made it clear that she should not wear foreign attire, Manzura says, she stopped wearing the dark-colored hijab that covered her head and clothes for fear she would lose her license to work.”¹³⁰ Women resort to covering up more creatively, ironically wearing what an outside observer might assume was more western-style dress, of the kind the law also purports to restrict.¹³¹ As a relatively new law, its impact is not as well-documented, but if implementation continues on its current trajectory, this impact is likely to be significant.

At the other end of the spectrum, state regulation of veils has been a focal point of French political discourse for several decades. In fact, state officials have been known to deny services to Muslim women, on the erroneous belief that the law actually prohibits headscarves completely.¹³² While these mistaken assumptions might be decried as one-off, uncommon occurrences, in the realm of education and employment, the discrimination is explicit and codified: “Veiled woman—like anyone else wearing obvious signs of religious affiliation—are officially barred from working in the public sector because of the original *laïcité* laws. There is little doubt that, in practice, this restriction has broader impact on Muslim women who cover their heads.”¹³³ Even before the school-law’s enactment, members of the human rights community pointed to the likelihood of its disparate impact on Muslims girls, despite its facial neutrality: “The impact of a ban on visible religious symbols, even though phrased in neutral terms, will fall disproportionately on Muslim girls In practice, the law will leave some Muslim families no choice but to remove girls from the state educational system.”¹³⁴ The fact that this law applied facially to all conspicuous religious symbols does not change the fact that, as implemented and as anticipated before its passage, the policy

Similarly, more women entered into the workforce. *Id.* This was due, however, not to unveilings, but to compulsory education. Soviet Uzbekistan is discussed more in the following section, as women in that circumstance experienced significant direct violence based on the anti-*hijab* policies. *Id.*

¹³⁰ Farangis Najibullah & Charles Recknagel, *As Tajikistan Limits Islam, Does It Risk Destabilization?*, RADIOFREEEUROPE (Dec. 1, 2015), <https://www.rferl.org/a/tajikistan-islam-destabilization-rahmon-secular-/27400692.html>

¹³¹ *Id.*

¹³² SCOTT, *supra* note 108, at 178.

¹³³ Daley & Rubin, *supra* note 109.

¹³⁴ *France: Headscarf Ban Violates Religious Freedom*, HUMAN RIGHTS WATCH (Feb. 27, 2004), <https://www.hrw.org/news/2004/02/26/france-headscarf-ban-violates-religious-freedom>.

constitutes discrimination against Muslim women.¹³⁵ The ban, however, serves a greater purpose than practically requiring women to remove their scarves: “Banning the headscarf or veil is a symbolic gesture; for some European nations it is a way of taking a stand against Islam, declaring entire Muslim populations to be a threat to national integrity and harmony.”¹³⁶ Recalling Farmer’s definition of cultural violence as “inform[ing] the social machinery of oppression”¹³⁷ and “stop[ping] individuals, groups, and societies from reaching their full potential,”¹³⁸ France’s ban of conspicuous religious symbols in schools disproportionately prevents Muslim girls—relative to their religious groups—from reaching their full potential in school.

The French law explicitly applies to primary and high school education. However, in recent years, more French politicians have called for the exclusion of Muslim women from universities, or even a general criminalization of *hijab*:

Mainstream politicians on the right, including former President Nicolas Sarkozy, are calling for veiled women to be barred from universities. Others in Mr. Sarkozy’s party want to see women who cover their faces in public brought up on felony charges. On the left, a small party has pushed for a law stopping veiled women from working in day care centers with government contracts. Even in President François Hollande’s Socialist government, Pascale Boistard, the junior minister for women’s

¹³⁵ See Walterick, *supra* note 102. For example, one French Muslim schoolgirl was sent home because her skirt was “too long,” which the school president thought it was too outwardly religious. Alissa J. Rubin, *French School Deems Teenager’s Skirt an Illegal Display of Religion*, N.Y. TIMES (Apr. 29, 2015), <https://www.nytimes.com/2015/04/30/world/europe/french-school-teenagers-skirt-illegal-display-religion.html>. In the article, Rubin also notes that cases like this are becoming more frequent, and that “[t]he cases often involve skirt length, she said, but schools have also objected to sweaters or to headbands that they say are too broad and are meant to evoke head scarves.” *Id.*

¹³⁶ SCOTT, *supra* note 108, at 3. It is also important to note that, in French public discourse surrounding this issue, headscarves (which typically cover only the hair of the wearer) and veils or *burqas* (which cover the face of the wearer) are conflated. This allows for the convenience rhetoric of “safety”—i.e., how can we trust someone whose face is covered?—to be applied to inappropriate situations—for example, when a schoolgirl chooses to cover only her hair in a headscarf.

¹³⁷ Farmer, *An Anthropology of Structural Violence*, *supra* note 57, at 307.

¹³⁸ Farmer, *Structural Violence and Clinical Medicine*, *supra* note 56.

rights, said in January that she was “not sure that the veil had a place at the university level.”¹³⁹

The drafters of CEDAW understood that access to education and employment were vital for women’s economic security,¹⁴⁰ and, because these policies specifically exclude women from or restrict women’s access to work and education, they constitute a violation of CEDAW.

2. *Justification and Perpetuation of Violence per General Recommendations 12 and 19*

By examining these issues seemingly unrelated to direct violence through such a lens, General Recommendation 19 allows us to examine theoretically non-violent practices—forms of structural and cultural violence—and their relationship to direct violence against women. If the Committee’s definition of gender-based violence as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”¹⁴¹ stands, the disproportionate impact of ideological backlash to anti-veil laws appears to meet that definition.

Hijab suppression laws justify and perpetuate direct violence in a number of ways. First, when lawmakers use the rhetoric of “safety” and “extremism” to justify these kinds of policies, they perpetuate a fundamentally harmful assumption: Muslim women do not fit into the established or ideal national identity and are, therefore, dangerous.¹⁴² Attacks based on this kind of rhetoric occur even where a woman is lawfully permitted to wear her *hijab* in a given situation.¹⁴³ Second, a woman runs the risk of physical violence in places where she acts in defiance of laws governing her manner of dress—whether her defiance is intentional or unintentional. When direct violence is the result of a systematic attempt to “other” or dehumanize a group, the violence is often blamed on the victim.¹⁴⁴ This concept is noticeably present

¹³⁹ Daley & Rubin, *supra* note 101.

¹⁴⁰ CEDAW, *supra* note 7.

¹⁴¹ *Id.* at 1.

¹⁴² Galtung, *supra* note 54, at 291.

¹⁴³ SCOTT, *supra* note 108, at 178 (discussing instances where women in *hijab* are denied services under the mistaken belief that the *hijab* is actually illegal to wear at all).

¹⁴⁴ Galtung, *supra* note 54, at 298.

here—direct violence asserted against Muslim women is blamed on *their* choice to wear *hijab*, rather than the choice made by the aggressors to engage in direct violence in the first place. These instances of physical violence come from a multitude of sources, from teachers who think a girl should not be veiled,¹⁴⁵ to a police officer grabbing a woman’s scarf off in the street,¹⁴⁶ to attacks from both men who believe women should be veiled and men who believe women should not be veiled.¹⁴⁷ For the purpose of this analysis, violence from ideologically-motivated attacks inspired by inflammatory rhetoric and violence from the actual enforcement of the policy itself—whether by police or vigilantes—are distinct concepts.

Post-*hijab* ban physical violence was widely documented in Soviet Uzbekistan. The rhetoric that veiled women were unempowered, un-Soviet, and “backwards” and the policies of unveiling women even at a significant cost, again, “set [the stage] for . . . direct violence, which is then blamed on the victim.”¹⁴⁸ In this case, the victim is the woman who, whether veiled or unveiled, faced dire consequences for her decision, and ended up blamed either way. It is widely documented that both women who remained veiled and those who unveiled faced significant threats and were simply safer staying at home, although many did not.¹⁴⁹ It is estimated that in 1928, 270 women in Uzbekistan were murdered for unveiling.¹⁵⁰ This focus on the veil by the Soviets as a symbol of liberation failed to acknowledge the realities of the social structure in which they were operating:

The *hujum* produced its own violent backlash. Women who unveiled challenged not just a dress code but the entire social and moral order that stood upon it. Many of them paid for the challenge with their lives. A spate of attacks targeted unveiled women, who were deemed to have brought shame and dishonor on their families, their neighbors, and Islam itself. Many were

¹⁴⁵ SCOTT, *supra* note 108, at 178.

¹⁴⁶ *Tajikistan 2017/2018*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/countries/europe-and-central-asia/tajikistan/report-tajikistan> (last visited Feb. 26, 2019).

¹⁴⁷ Northrup, *supra* note 66, at 125.

¹⁴⁸ Galtung, *supra* note 54, at 298.

¹⁴⁹ Keller, *supra* note 76.

¹⁵⁰ “Ten years later, an article in the journal *Antireligioznik* estimated that 270 Uzbek women had been murdered in 1928 for unveiling.” Keller, *supra* note 76, at 26.

killed, others were raped, and many more wounded in vicious physical attacks.¹⁵¹

This degree of backlash against women, some scholars argue, only abated several years later, but in that time resulted in the loss of thousands of lives, if not more.¹⁵² The Soviets had been warned about the likelihood of this kind of response, but failed to adjust their policies to reflect that likelihood: “The comparatively few indigenous Muslim communists, nearly all male, also generally lobbied for other priorities, often contending (accurately) that an attack on the veil and local forms of family life would backfire against the party.”¹⁵³ However, it is worth noting that while Uzbek men focused their attention on opposing specifically the anti-*hijab* policy, women advocated for the Soviets to pursue other avenues of empowerment for women: “Some of these women favored legal reform to improve the status of Uzbek women, but others supported a focus on economic training, literacy work, and social welfare reform.”¹⁵⁴ Veiled Uzbek women became the “dangerous it,”¹⁵⁵ representing the ills of Islam and religion that communism sought to eradicate. As such, it became appropriate, even necessary to exert direct violence in this situation, in order to “protect” both women and society from the evils of religion.¹⁵⁶ These facts, taken together, suggest that the Soviets may have been able to avoid most physically violent opposition to their policies had they focused substantive aspects of women’s liberation—employment, education, etc.—rather than symbolic representations such as the veil.

Ideologically motivated backlash has been clearly documented in the French context. As the only country where Muslims constituted a minority at the time of the policy in question,¹⁵⁷ Muslim women are more clearly “other” in France than they were in Soviet Uzbekistan or are in Tajikistan, where

¹⁵¹ KHALID, *supra* note 76, at 80.

¹⁵² Keller, *supra* note 76, at 25.

¹⁵³ Northrop, *supra* note 66.

¹⁵⁴ *Id.* at 121.

¹⁵⁵ Galtung, *supra* note 54, at 298.

¹⁵⁶ *Id.* at 291.

¹⁵⁷ As discussed previously, the Muslim population of France is estimated to be between 4.5 and 6 million, out of a total population of 67 million. See Walder, *supra* note 97. The population of Central Asia in the 1920s was approximately 90% Muslim. Lawrence Martin, *The World of Islam in 1923*, 1 FOREIGN AFF. 3, 138–39 (1923). Tajikistan’s population is approximately 97% Muslim. *Tajikistan*, CIA WORLDFACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ti.html>.

Muslims constitute a majority of the population. Direct violence against Muslim women in France has been on the rise since the mid-2000s:

[I]n 2013, 80% of anti-Muslim attacks in France were against women. Women wearing hijab or other visible clothing associated with Islam are particularly singled out for harassment and violence, often by men and increasingly in the aftermath of terrorist attacks in Europe. Against this backdrop of targeting of women in religious garb, any policy that links the burkini¹⁵⁸ with terrorism puts Muslim women further in the crosshairs of Islamophobic violence.¹⁵⁹

In 2015, the *New York Times* interviewed French Muslim women after even more expansions on anti-veil laws.¹⁶⁰ These women could not help but feel that the constant discussion about the way they dress opens them up to significant ideological backlash:

[O]bservant Muslim women in France . . . say the constant talk of new laws has made them targets of abuse, from being spat at to having their veils pulled or being pushed when they walk on the streets. . . . In Toulouse recently, a pregnant mother wearing a head scarf had to be hospitalized after being beaten on the street by a young man who called her a “dirty Muslim.”¹⁶¹

Muslim women in this situation are faced with an impossible choice: unveil, hopefully to avoid physical violence, or exercise bodily autonomy and religious beliefs by remaining veiled. Neither necessarily guarantees a woman’s safety.¹⁶²

¹⁵⁸ “Burkini” is a portmanteau of “burqa” and “bikini,” and colloquially refers to a full-body swim suit, covering a woman’s entire body and the top of her head, as does a hijab. Adam Taylor, *The Surprising Australian Origin Story of the Burkini*, SYDNEY MORNING HERALD (Aug. 19, 2016), <https://www.smh.com.au/lifestyle/fashion/the-surprising-australian-origin-story-of-the-burkini-20160818-gqvdu9.html>.

¹⁵⁹ Jayne Huckerby, *France’s Burkini Bans Put Muslim Women in Danger*, TIME (Aug. 24, 2016), <http://time.com/4463743/frances-burkini-bans/>.

¹⁶⁰ Daley, *supra* note 101.

¹⁶¹ *Id.*

¹⁶² Compare Northrup, *supra* note 66, at 125 (describing an instance where a woman who had recently taken off her scarf was strangled by her husband), with Daley, *supra* note 101.

The rhetoric behind these policies emboldens those who may previously have silently harbored prejudices to act on them. In her book *Politics of the Veil*, Joan Wallach Scott rigorously examines what about the veil seems so vexing to the French:

The veil's disturbing connotation for French observers stemmed from its significance in a system of gender relations they took to be entirely different from their own . . . It is a recognition of the threat sex poses for society and politics. . . . [S]ex poses a tremendous difficulty for the abstract individualism that is the basis for French republicanism: if we are all the same, why has sexual difference been such an obstacle to real equality? . . . Islam's insistence on recognizing the difficulties posed by sexuality revealed more than republicans wanted to see about the limits of their own system.¹⁶³

The choice to wear the veil is, at its core, no different than the choice to wear short skirts, but, for the French, the latter symbolizes liberation, and the former oppression.¹⁶⁴ In this sense, “the tyranny of this fashion was not liberating . . . [and some critics] questioned the superiority of ‘open’ to ‘covered’ ways of dressing: ‘Can our bras, ties, pants, miniskirts, underwear and bathing suits all be so easily arrayed on one side or another of the divide’ between freedom and captivity?”¹⁶⁵ All this is to suggest that the French struggle deeply with any dichotomy between the sexes, understanding any acknowledgement of difference as an affront to their secular, republican system of government.¹⁶⁶

All of these laws, excepting Uzbekistan, are facially neutral in their enforcement. France restricts all “conspicuous religions symbols”¹⁶⁷ and Tajikistan ostensibly restricts all non-traditional clothing.¹⁶⁸ However, in both of these facially neutral cases, the laws are disproportionately enforced against veiled Muslim women, likely because of their conspicuousness.¹⁶⁹ Amnesty

¹⁶³ SCOTT, *supra* note 101, at 154.

¹⁶⁴ *Id.* at 161.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See French law, *supra* note 98.

¹⁶⁸ See Tajik law, *supra* note 122.

¹⁶⁹ See FANON, *supra* note 1, at 37.

International reported the following incidents the same month that the Tajik President signed the aforementioned law:

[P]olice and local officials approached over 8,000 women who were wearing the Islamic headscarf (hijab) in public places, ordered them to remove it because it was against the law and asked them instead to wear a headscarf tied behind the head in the “traditional Tajik way.” Dozens of women were briefly detained, many had their hijabs forcibly removed. Women wearing western-style dress were not targeted. Government officials claimed that the hijab was a form of “alien culture and tradition” and a sign of “extremism”. Shops selling Islamic clothing were raided by security forces and many were forced to close.¹⁷⁰

Key in this report is the phrase “[w]omen wearing western-style dress were not targeted.”¹⁷¹ *Hijab* here seems a convenient target: it is public, relatively easily definable, and impacts a specific segment of the population. If the country were to implement the law as written and also target “western-style dress,” the reach would likely be much too broad to be implemented, and would require extensive definitions of what constitutes “western-style dress.” Muslim women in this case were targeted because of assumed extremist sympathies, as described in this report from the U.S. Department of State:

[R]eferences to “alien culture and traditions” had become a government euphemism for the wearing of hijabs . . . [The Ministry of Internal Affairs] would detain women in hijabs and would investigate whether their husbands were Salafists,¹⁷² because the Sughd MIA¹⁷³ had determined all Salafist wives

¹⁷⁰ AMNESTY INTERNATIONAL, *supra* note 146.

¹⁷¹ *Id.*

¹⁷² The term “Salafits” is generally used to refer to a group that, most importantly for this analysis, it one that “believes that violent jihad is *fard ‘ayn* (a personal religious duty).” Seth G. Jones, *A Persistent Threat: The Evolution of al Qa’ida and Other Salafī Jihadists*, RAND CORP. (2014), https://www.rand.org/content/dam/rand/pubs/research_reports/RR600/RR637/RAND_RR637.pdf.

¹⁷³ Referring to the Ministry of Internal Affairs for the Sughd region. *Structure*, MINISTRY OF INTERNAL AFFAIRS OF THE REPUBLIC OF TAJIKISTAN, <http://mvd.tj/index.php/en/leadership/structure> (last visited Feb. 26, 2019).

wore hijabs. [P]olice officers had conducted approximately 40 raids since the beginning of the year in bazaars and shopping points and had registered 643 women (i.e., put their names on a list maintained by the government) for wearing the hijab.¹⁷⁴

It is important to note here that headscarf bans are an ineffective tool with which to eradicate extremism: “[I]t is impossible to do away with a social phenomenon of radicalism by avoiding seeing it . . . [B]ans are seen as attacks to one’s identity. They seem to be disproportionate measures to assure the envisioned aims, introducing violence and running the risk to stir more reaction in the long term.”¹⁷⁵ Not only, therefore, are these bans ineffective at achieving their purported goal, but may in fact exacerbate the problem, all the while violating CEDAW in the process.

IV. CONCLUSION

None of the three laws examined here look exactly the same. The Soviets in the 1920s sought to eradicate all religion and impose atheism—it just so happens that in Uzbekistan, Muslim women were among the more identifiably religious. The French from the late 1980s through the 2000s intended not necessarily to eradicate religion, but aimed to keep religion, or Islam specifically, as hidden as possible. Tajikistan—the most recent, with passage in 2017—ostensibly cared very little about the religion of the people it effected; the government sought only to reconstruct a Tajik national identity, free of outside influences.

In their attempts to homogenize their populations and craft a specific national identity, political leaders put Muslim women in danger. By advancing policies relying on harmful rhetoric projecting Muslim women as dangerous representatives of a religion to be feared, states effectively incite others—police and citizens alike—to commit direct violence against women. Restricting women’s access to education and the workforce significantly limits their ability to engage and participate in society. The United Nations, in

¹⁷⁴ U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2016, TAJIKISTAN, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dliid=268944#wrapper>.

¹⁷⁵ Ioanna Tourkochoriti, *The Burka Ban: Divergent Approaches to Freedom of Religion in France and in the U.S.A.*, 20 WM. & MARY BILL RTS. J. 791, 848 (2012).

adopting CEDAW, attempted to curb laws and policies stifling women, and these policies exist in clear defiance of these principles.

Appendix 1

Variations in Islamic dress for women¹⁷⁶

Niqab
A veil covering the head and face, but not the eyes, usually worn with a loose black garment (abaya) that covers from head to feet.



Hijab
A general term meaning 'to cover' or 'veil', most commonly refers to a headscarf that covers the hair and neck, but not the face.



Burka
A veil that covers the entire body and face, with a mesh window or grille across the eyes for a woman to see out of.



Chador
A full-length cloak worn by many Iranian women, typically held closed at the front by the wearer's hands or under their arms.



Dupatta
A long scarf loosely draped across the head and shoulders, common in south Asia and often paired with matching garments.



Appendix 2

Example of Tajik traditional headcovering. On the left is an example of a non-traditional headcovering for a Tajik woman; on the right, the traditional method.¹⁷⁷



¹⁷⁶ Lucy Fahey, *What Are the Differences Between the Burka, Niqab, and Hijab?*, ABC NEWS (AUSTRALIA) (Jan. 13, 2017, 7:51 PM), available at <http://www.abc.net.au/news/2014-10-02/what-are-the-differences-between-the-burka,-niqab-and-hijab/5785816>.

¹⁷⁷ Najibullah, *supra* note 130.

Below is a side view of the traditional Tajik headcovering.

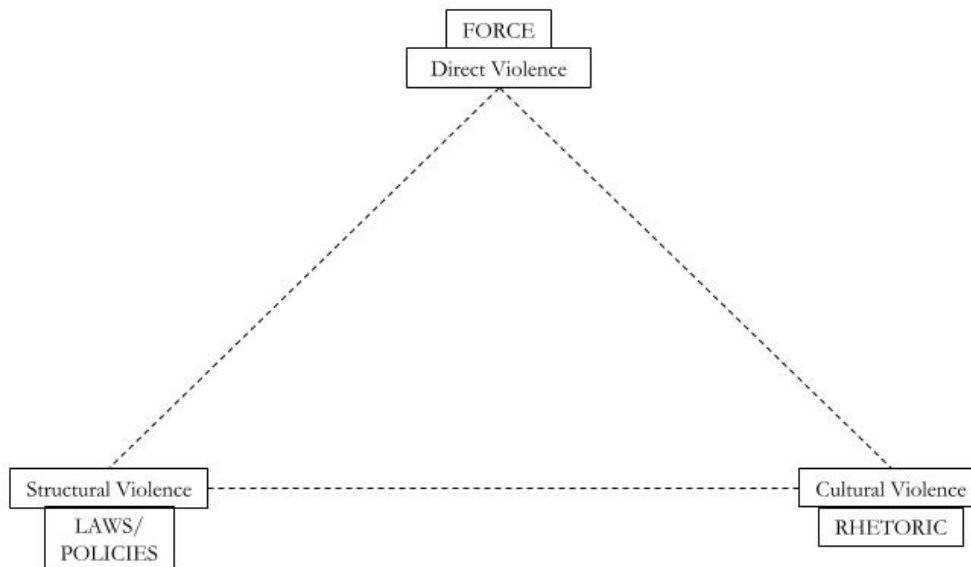


Appendix 3

Table I. A Typology of Violence

	Survival Needs	Well-being Needs	Identity Needs	Freedom Needs
Direct Violence	Killing	Maiming Siege, Sanctions	Desocialization Resocialization	Repression Detention
Structural Violence	Exploitation A	Misery Exploitation B	Secondary Citizen Penetration Segmentation	Expulsion Marginalization Fragmentation

Triangulation of violence¹⁷⁸



¹⁷⁸ Framework as described by Galtung, *supra* note 54, at 291–305.

Appendix 4

	Cultural violence (rhetoric)	Structural violence (laws/policies)	Direct violence (force)
<u>Uzbekistan</u>	Rhetoric of Muslim women as oppressed or not Soviet enough	State-sponsored unveilings	Violence against both veiled and unveiled women
<u>France</u>	Women with <i>hijab</i> described as security concern, threat to French secularity, representation of Islamic extremism	Law forcing schoolgirls to remove <i>hijab</i> while in public schools and in the course of public employment; additionally, laws outlawing the <i>burqa</i>	Physical attacks against Muslims are disproportionately perpetrated against Muslim women, forcible unveilings by police, teachers, etc.
<u>Tajikistan</u>	Veils as a “modern negative influence,” suggestion that women who wear <i>hijab</i> are not respectful of national identity	Policies regulating women’s dress and other Islamic traditions	Detention of veiled women, forcible removal of veils

