

Menschenrechte in der
Islamischen Republik Iran /
Human Rights in the
Islamic Republic of Iran

Herausgegeben von
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Umschlagabbildung:

Teppich aus Iran (von Mohammad Seirafian).
Inscription: Ein Gedicht von Sa'adi (ca. 1184–1292).

Übersetzung aus dem Persischen:

„Die Menschenkinder sind ja alle Brüder,
aus einem Stoff wie eines Leibes Glieder.
Hat Krankheit nur ein einzig Glied erfaßt,
so bleibt den andern weder Ruh noch Rast.
Wenn anderer Schmerz dich nicht im Herzen brennet,
verdienst du nicht, daß man noch Mensch dich nennet!“

Muslih ad-Din Sa'di: Der Rosengarten,
übers. von Karl Heinrich Graf
(Kiepenheuer: Leipzig – Weimar 1982), S. 39.

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The “Baha’i Question” in Iran

Influence of International Law on “Islamic Law”

Christopher Buck

Introduction

Persecution of religious minorities by the Islamic Republic of Iran has been ongoing since shortly after the Revolution of 1979. Of course, persecution of the Baha’is (Iran’s largest non-Muslim religious minority) existed long before the Revolution – being episodic and sporadic in nature – but only became systematic and a matter of state policy after the 1979 Revolution. This continuing oppression, which has long attracted international attention, has a long and well-documented history.¹ The most egregious case among religious minorities is Iran’s relentless persecution of the Baha’is, as anecdotally illustrated by the following account.

On July 9, 2020, Iran News Wire published a story: “15-year-old Baha’i prodigy banned from school”, reporting, in part, that *Adib Vali*, an elite Baha’i student in Karağ near Tehran, was not allowed to register for the tenth grade at Salam School, merely for having disclosed, on a required school form, that he was a Baha’i. This, despite the fact that young *Adib* “has received several first-place medals in international robotics and Artificial Intelligence contests, as well as being the highest scoring student in his grade.” “Even though Baha’i citizens are systematically banned from Universities”, the news story stated matter-of-factly: “they are sometimes banned from lower educational institutions as well.” And further: “Iranian Baha’is are deprived of freedom of religion, which is stated in Article 18 of the Core International Human Rights Treaties.” The article goes on to report further persecution involving members of *Adib’s* family:

“According to the report [by the Human Rights Activists News Agency], Adib’s father, Payam Vali, has also been discriminated against by the regime. His business has been shut down on court orders for 12 years now. His appeals against the shut down to the Supreme Court and other judicial organizations have not been successful. Adib’s uncle, Afshin Vali, was killed at the age of 12

¹ See the selective citation of key academic studies in the bibliography. Thanks to Dr. Anja Pistor-Hatam for inviting and editing this article. Thanks also to Dr. Shabnam Moinipour for reading a pre-publication draft, and for her comments and advice.

by extremists in Hossein Abad village in Alborz province in 1990 because the regime had announced that killing Baha'is was permissible. Adib's father, who was 10 at the time, found the body of his 12-year-old brother thrown inside a well."²

According to a related news story published a few days later, Salām is a school for gifted students, with satellite schools throughout Iran. (Salām's head office is in Tehran.) *Adib's* father, *Payyām Adib*, had an eyeglass lens manufacturing business in the Naẓarābād district of Karağ which has been shut down since 2008 because of his Baha'i beliefs. The article further reports: "The shuttering of Baha'i-owned businesses and the confiscation of their land is routine in Iran", concluding:

"While discrimination against all of Iran's religious minorities is significant and widespread, *the Baha'i religious community in Iran is considered the most severely persecuted in the country*, discriminated against in both law and practice. In addition to exclusion from schools and employment, the shuttering of its businesses and the confiscation of Baha'i-owned land, leaders of the Baha'i community are routinely imprisoned for many years simply for openly practicing their faith and peacefully leading their communities."³

The "Baha'i Question"

This human interest story is just a snapshot in time of a wide-scale problem – often called the "Baha'i question" – in the Islamic Republic of Iran, which is the focus of this chapter and the analysis that follows. Here, the "Baha'i question" refers to a secret government document, now known as the "Baha'i Question" memorandum (dated 25 February 1991, and made public by the United Nations in 1993), which sets forth directives pursuant to oppressive policies established and systematically carried out by the Islamic Republic of Iran, aided and abetted by influential clerics as well: "Baha'i", of course, refers to the "Baha'i Faith", as it is legally and popularly known in the West.

On 28 January 1993, as mentioned above, UN Special Representative, *Reynaldo Galindo Pohl* (d. 2012),⁴ publicly released a formerly secret government document (25 February 1991), now known as the "Baha'i Ques-

² Iran News Wire: "15-year-old Baha'i prodigy banned from school" (9.7.2020).

³ Center for Human Rights in Iran: "Baha'i Youth Expelled from Secondary School for Gifted Students Solely Due to His Faith" (14.7.2020).

⁴ Baha'i International Community: "UN investigator who revealed Iran's 'Baha'i Question' memorandum dies aged 93" (10.1.2012).

tion" memorandum.⁵ The Baha'i International Community (BIC) has published a facsimile and translation of this document: "Drafted by the Supreme Revolutionary Cultural Council and signed by Supreme Leader Ali Khamenei", according to the Baha'i International Community: "the memo establishes a national policy to promote the gradual eradication of the Baha'i community as a viable entity in Iranian society: The government's dealings with [Baha'is] must be in such a way that their progress and development are blocked," says the memo, which was obtained by the UN and released in 1993."⁶ Signed by *Dr. Seyyed Mohammad Golpayegani*, Secretary of the Supreme Revolutionary Cultural Council, and endorsed by *Ayatollah Ali Khamenei*, the "Baha'i Question" memorandum sets forth the following policies, in part:

"Date: 6/12/69 [25 February 1991]

CONFIDENTIAL

Dr. Seyyed Mohammad Golpayegani

Head of the Office of the Esteemed Leader [Khamenei]

SUMMARY OF THE RESULTS OF THE DISCUSSIONS AND
RECOMMENDATION

A. General status of the Baha'is within the country's system

1. They will not be expelled from the country without reason.
2. They will not be arrested, imprisoned, or penalized without reason.
3. The government's dealings with them must be in such a way that their progress and development are blocked.

B. Educational and cultural status

1. They can be enrolled in schools provided they have not identified themselves as Baha'is.
2. Preferably, they should be enrolled in schools which have a strong and imposing religious ideology.
3. They must be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Baha'is.

⁵ [UN] Commission on Human Rights: "Final Report on the situation of human rights in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1992/67 of 4 March 1992" (28.1.1993), 55 (Section 310).

⁶ Baha'i International Community: "The Baha'i Question Revisited: Persecution and Resilience in Iran" (October 2016), 8. An English translation of the 1991 "Baha'i Question" memorandum "outlining the Islamic Republic's plan to block the progress and development of Iranian Baha'is" is provided on 94–95 (facsimile of the original memorandum, 92–93). See also Baha'i International Community: "Supreme Revolutionary Cultural Council's secret memo on dealing with Baha'is."

4. Their political (espionage) activities must be dealt with according to appropriate government laws and policies, and their religious and propaganda activities should be answered by giving them religious and cultural responses, as well as propaganda.
5. Propaganda institutions (such as the Islamic Propaganda Organization) must establish an independent section to counter the propaganda and religious activities of the Baha'is.
6. A plan must be devised to confront and destroy their cultural roots outside the country.

C. Legal and social status

1. Permit them a modest livelihood as is available to the general population.
2. To the extent that it does not encourage them to be Baha'is, it is permissible to provide them the means for ordinary living in accordance with the general rights given to every Iranian citizen, such as ration booklets, passports, burial certificates, work permits, etc.
3. Deny them employment if they identify themselves as Baha'is.
4. Deny them any position of influence, such as in the educational sector, etc.

Wishing you divine confirmations,

Secretary of the Supreme Revolutionary Cultural Council

Dr. Seyyed Mohammad Golpaygani

[Signature].⁷⁷

On 4 November 2019, the U.S. Commission on International Religious Freedom (USCIRF, an independent, bipartisan U.S. federal commission) issued an official press release, welcoming the announcement that the United States Treasury has sanctioned *Mohammad Mohammadi Golpāyegāni* (the author of the notorious “Baha’i Question” secret memorandum, cited above), for directing “the regime’s systematic blocking of social and economic progress of the Baha’i community, a religious minority group in Iran. This includes expelling members of the Baha’i faith from universities and denying them employment.” The USCIRF press release notes the wider, potentially global significance of this landmark sanctioning event:

“This is the first time the Treasury Department has sanctioned an individual specifically for his role in orchestrating the persecution of Baha’is in Iran. Today’s designation of Mohammed Golpayegani for his role in directing the eradication of Baha’is is a clear signal that the United States will act with the full array of tools at its disposal against officials responsible for violating reli-

⁷⁷ Baha’i International Community: “The Baha’i Question Revisited: Persecution and Resilience in Iran” (October 2016), 94–95.

gious freedom, said USCIRF Chair Tony Perkins: ‘The message of today’s designations is clear: America will act when foreign officials commit severe religious freedom abuses.’ ‘Iran’s Baha’i community has long been the target of systematic, ongoing, and egregious violations by Iran’s government’, said USCIRF Vice Chair Gayle Manchin: ‘USCIRF welcomes today’s news as a significant step toward accountability for religious minorities persecuted by governments around the world.’⁸

Here, this “significant step toward accountability for religious minorities persecuted by governments around the world” gives added importance, as a matter of U.S. public policy, to holding governments accountable for religious persecution, not just in Iran, but anywhere else in the world as well. Significant instances of the violation of rights of other religious minorities should also be considered as part of the broader issue of religious minority rights in Iran.

A case-in-point: The Plight of the Baha’is in Iran

The Islamic Republic of Iran is a democracy within an Islamic theocracy, i. e. an experimental hybrid of authoritarian and majoritarian elements. Article 6 of the Constitution of the Islamic Republic of Iran provides: “In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution.”⁹ Article 177 (the final provision of the Constitution), moreover, refers to “the democratic character of the government.”¹⁰ Just how “democratic” present-day Iran may be is hotly contested and certainly open to interpretation. That said, by taking the Constitution at its word, then it is possible – indeed desirable – to speak of democratic reform, including adopting measures to further safeguard the rights of religious minorities.

Democracy and human rights are obviously implicated here. The litmus test of any democracy is its treatment of minorities, according to Baha’i philosopher, *Alain Locke* (1885–1954):

“Constitutional guarantees, legal and civil rights, political machinery of democratic action and control are, of course, the skeleton foundation of democ-

⁸ U.S. Commission on International Religious Freedom (USCIRF), Press Release: “USCIRF Supports Sanctions on Iranian Official Responsible for Baha’i Persecution” (4 .11.2019).

⁹ *The Constitution of Islamic Republic of Iran*, Article 6.

¹⁰ *The Constitution of Islamic Republic of Iran*, Article 177.

racy, but you and I know that attitudes are the flesh and blood of democracy, and that without their vital reinforcement democracy is really moribund or dead. That is my reason for thinking that in any democracy, ours included, the crucial issue, the test touchstone of democracy is minority status, minority protection, minority rights.”¹¹

The rights of religious minorities, however, constitute an ongoing and unresolved problem in international law, generally speaking, according to *Nazila Ghanea*:

“It was religious minorities who spearheaded minority rights concerns onto the regional and, later, international level. It was the effort to protect religious minorities that led to the aborted attempt for recognition of minority rights at the League of Nations and that later slowly percolated through to United Nations (UN) human rights norms and mechanisms. Nevertheless, though minority rights eventually – after some decades of uncertainty – gained currency in the UN, persons belonging to religious minorities never came to be re-integrated into the concept of minorities. Religious minorities are formally covered in human rights protections offered by minority rights – these being in addition to human rights standards that apply to all, regardless of these categories. However, ... they are largely excluded from its mechanisms and procedures.”¹²

A case-in-point is the plight of the Baha’is in Iran. The Baha’i Faith is the youngest of the independent world religions.¹³ There are other renewals of religion, to be sure, but these tend to be classed as NRMs (i.e.: “New Religious Movements”) that remain within the orbits of their respective parent religions. Baha’i history begins on May 22, 1844, with the declaration of the Bāb (1819–1850), the herald of Bahā’ullāh (1817–1892).¹⁴ Both are considered to be the co-founders of the Baha’i Faith. Although the roots of the Baha’i religion are in Shi’i Islam, Baha’is are not professing Muslims, having a new and distinct confessional identity as adherents of the Baha’i Faith, which is established in virtually every country worldwide, except for the Vatican City State and the Democratic People’s Republic of Korea. Given its relatively recent appearance on the horizon of modern history, the Baha’i Faith is considered by statisticians to be the second most widely diffused religion of the world, next to Christianity. That said, the number of adherents is quite modest at pre-

¹¹ Alain Locke: “The Preservation of the Democratic Ideal” (1938), 1–2, Alain Locke Papers, Moorland-Spingarn Research Center, Howard University (MSRC), Box 164–124, Folder 15, qtd. in Buck (2005), 285.

¹² Ghanea (2012), 57–79.

¹³ An excellent academic primer is Smith (2008). See also the most recent introduction: Buck (2021, released on 27.11.2020).

¹⁴ For a Cambridge scholar’s personal impressions of Bahā’ullāh, see Buck and Ioannesyan (2018).

sent, with an estimated seven million believers. Baha’i teachings are based on the paradigm of world unity, from family relations to international relations.¹⁵

The Baha’i faith-community is said to be the largest non-Muslim religious minority in Iran, with the frequently cited figure of 300,000, although the Baha’i population is probably well in excess of that figure. The focus of this chapter therefore is the problem of religious minority rights in the Islamic Republic of Iran, with special emphasis on the Baha’i faith-community, the rights of which are *systematically* targeted by the current regime, in contrast with the rights of other religious minorities which, more or less, are *incidentally* violated. (The systematic aspect of state persecution of the Baha’i faith-community is, actually, a consequence of both the earlier mentioned “Baha’i Question” and the visibility of Baha’i engagements (practicing their religion) to improve their society.) Whether human rights violations are perpetrated systematically or incidentally makes little or no difference as to the victims themselves. Yet this distinction is useful in theoretical and practical analyses, since incidental violations, in theory, can typically be addressed, if not redressed, through some kind of legal recourse, although this is rarely effective in practice within the Islamic Republic itself.

The rights of all minorities are important, and should be advocated for universally, with equal vigor. Yet focusing especially on the most peculiar and egregious situation can help exemplify and thereby typify certain social dynamics and legal principles applicable within the wider social context. This, in turn, implicates a legal problematic, both domestically and internationally, in which serious tensions exist between Iranian Islamic law and international law. Since the present writer is a practicing attorney as well as an independent scholar, offering a relevant legal analysis is a primary objective and contribution of this chapter.

The Islamic Republic of Iran, ever since its inception after the Revolution of 1979, is constituted under Islamic law, as constructed and construed within the specifically Shiite legal framework. The Iranian Constitution’s preamble proclaims that “the mission of the Constitution” is “to create conditions conducive to the development of man in accordance with the noble and universal values of Islam” and that “the aim of government is to foster the growth of man in such a way that he progresses towards the establishment of a Divine order (in accordance with the Qur’anic catchphrase, ‘And toward God is the journeying’ [Q.3:28]”. The preamble is equally clear about its Constitution’s global ambitions,

¹⁵ See e.g. Buck (2015).

in that the Constitution itself “provides the necessary basis for ensuring the continuation of the Revolution at home and abroad”, such that one of the goals of Iran’s military and Revolutionary Guards paramilitary (“An Ideological Army”) is “fulfilling the ideological mission of jihad in God’s way; that is, extending the sovereignty of God’s law throughout the world.” The Constitution, which cites Qur’anic verses fourteen times, makes clear that its mission and mandate is to privilege, prioritize and promote Islam, whereby “Islamic” values are enforced at home and exported abroad, pursuant to its expansionist ideology.

The Iranian principle and practice of a democratic “Republic” is secondary and subordinate to Islamic criteria, as defined by Iranian constitutional, criminal, and even civil law. Notwithstanding the Constitution’s ostensible recognition of universal human rights, the overarching, and ultimate hallmark and benchmark of rights under the Constitution is captured and constrained by “Islamic criteria”, to wit: “All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria” (Article 4). The phrase, “Islamic criteria”, occurs fourteen times throughout the Constitution. All such “Islamic criteria” are subject to clerical interpretation, as Article 4 further mandates: “This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the *fuqaha*’ [Islamic scholars] of the Guardian Council are judges in this matter”.¹⁶

Universal norms are circumscribed by Islamic constraints, such that “The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law” (Article 22). and “No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases provided by law” (Article 33). All judges are thus “obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam” (Article 170). These exceptions prove the general rule that universal human rights, to which the Iranian Constitution gives lip-service, are swallowed up by “Islamic criteria” that trump and triumph over all other considerations, including those of international law.

Consequently, a wide range of constitutional provisions are required to be “in conformity with Islamic criteria” or not “detrimental to the principles of Islam” – including, *inter alia*, human rights and equal protection of the law (Article 20); freedom of the press – allowed “except

¹⁶ *The Constitution of Islamic Republic of Iran*, Article 4.

when it is detrimental to the fundamental principles of Islam” in which “the details of this exception will be specified by law” (Article 24); formation of political and professional associations (Article 26); public gatherings (Article 27); the right to choose an occupation (Article 28); ownership rights and confiscation of property (Article 49); definition of political offenses (Article 168), and “the freedom of expression and dissemination of thoughts” in Iranian radio and television (Article 175).¹⁷

Religious Minorities in the Islamic Republic of Iran

While this peculiar Iranian version of Islamic law ostensibly accommodates religious minorities in principle, it does so only selectively, not universally in actual practice. In other words, only recognized religious minorities are protected under Islamic law. Members of the Baha’i Faith – Iran’s largest non-Muslim religious minority, as previously stated – are excluded from constitutional safeguards. By design, this exclusion is *systemic*, thereby allowing *systematic* religious persecution of the Baha’i minority to be carried out pursuant to government public policy, thereby giving rise to arbitrary and capricious application of the law to numerous and wide-ranging cases of deprivation of what the international community would see as the otherwise universal and inalienable human rights of those Baha’is adversely affected under the so-called “Islamic” system of jurisprudence.

Seldom do human rights violations make the headlines. Yet headlines offer selective, anecdotal evidence that can prove useful in framing human rights issues. For instance, on 1 February 2020, *The Telegraph* reported news of an ominous change: “Iran uses national ID card for fresh discrimination against Baha’i: Iran removes the Baha’i faith from the list of recognised religions.”¹⁸ This headline is somewhat misleading, since Baha’is have never been on Iran’s “list of recognised religions”. Instead, the “other religions” option has been removed from application forms for the Iranian national ID card. A more accurate news report on this

¹⁷ The analysis here follows that of Horowitz: “A Detailed Analysis of Iran’s Constitution” (12.10.2010).

¹⁸ Ensor: “Iran uses national ID card for fresh discrimination against Baha’i: Iran removes the Baha’i faith from the list of recognised religions”, *The Telegraph* (1.2.2020). Reference courtesy of Steven Kolins (30.10.2020). See also Iran Press Watch: “Iran Uses National ID Card for Fresh Discrimination Against Baha’i” (9.2.2020), <http://iranpresswatch.org/post/20757/iran-uses-national-id-card-fresh-discrimination-bahai/>.

recent development is provided by Radio Free Europe/Radio Liberty.¹⁹ (The current status on this matter, however, is not clear.) On 8 January 2020, the *International Policy Digest* ran an op-ed opining on possible adverse effects of U.S. sanctions on the Baha'is and other beleaguered minorities in Iran.²⁰ Previously, on 24 July 2018, *Forbes* magazine published a story on the plight of the Baha'is in Iran.²¹ On 30 January 2018, *Bloomberg Opinion* featured an op-ed: "Opinion: Iran's Secret Shunning of a Minority Faith. The Baha'i have been excluded from basic civic functions like pensions and education. They're publishing the proof". The article states, in part:

"Usually the Iranian regime's assault on its people's dignity is measured in its political prisoners, its laws mandating modest dress for women, its prosecutions of gays and its stage-managed elections. An under-reported aspect of this story, though, is the state's treatment of the Baha'i, a small monotheistic faith that was founded in Iran in the 19th century and that honors Buddha, Moses, Jesus and Muhammad. In Iran, this minority faces systemic discrimination reminiscent of Nazi Germany's Nuremberg laws or China's treatment of the Falun Gong.

Its followers are denied government services, pensions and representation in the government. In every sense they are second-class citizens. And yet their fate is rarely discussed in the context of Iran's freedom movement.

This will hopefully change soon. Earlier this month, the Baha'i International Community established a new internet archive of official documents, news articles, audio recordings and other primary sources that document Iran's decades-long campaign against followers of the religion. State-sponsored discrimination against the Baha'i was a feature of the Iranian government under Shah Reza Pahlavi. But the persecution intensified under the Islamic Republic that unseated him in 1979. One letter from the archive shows how a Baha'i citizen's property was denied a connection to fresh water supply because of his faith. Others show lenient sentences meted out for Iranians convicted of heinous crimes against Baha'i citizens."²²

These sample stories are representative of similar articles and op-eds that have been published over the past four decades, from time to time. Other sources provide further information and documentation as well. In Persian and in English, the *Human Rights Activists News Agency* (HRANA) publishes numerous reports on human rights violations in Iran.²³ In English, *Iran Press Watch* reports on persecution of Iranian

¹⁹ Radio Free Europe/Radio Liberty: "Iran Imposes Discriminatory Forms For New National ID Cards" (27.1.2020).

²⁰ Miller (8.1.2020). Reference courtesy of Steven Kolins (30.10.2020).

²¹ Ochab (24.6.2018). Reference courtesy of Steven Kolins (30.10.2020).

²² Lake (30.1.2018). Reference courtesy of Steven Kolins (30.10.2020).

²³ Human Rights Activists News Agency (HRANA).

Baha’is on a regular basis.²⁴ The reports are too numerous to represent here, and so any citations are necessarily selective. Major newspapers, from time to time, carry reports, albeit infrequently. A simple keyword search of “Protestant” on the *Center for Human Rights in Iran* website illustrates the persecution endured by another religious minority in Iran, in which the headlines themselves offer a fair representation:

“Christian Property in Iran to Be Taken Over by Supreme Leader’s Organization” (March 29, 2018): “Protestant Church Property Confiscated in Iran by Khamenei-Supervised Organization” (Dec. 19, 2016): “Former Assyrian Church Leader and Two Christian Converts Arrested” (January 7, 2015): “Accused of Waging ‘Soft War,’ Christian Pastor Beaten in Iran’s Evin Prison” (April 23, 2013): “Christian Converts Face Criminalization of their Faith in Iran” (January 16, 2013): “Cartoon 10: ‘Recognized Religion,’ Unrecognized Believers” (June 29, 2012): “Protestant Church Shutdown Sparks Fears of Closing Closure Spree” (June 8, 2012): “Iranian Christian Journalist Discusses Government Campaign to Target Protestants” (Dec. 23, 2011).²⁵

On 21 January 2020, the *Jerusalem Post* published a story about Iran’s continuing persecution of Christians in general.²⁶ In its 2020 annual report, the U.S. Commission on International Religious Freedom (USCIRF) decried Iran’s violations of religious minority rights: “In 2019, religious freedom conditions in Iran remained egregiously poor”, the USCIRF reported in April, 2020, noting also that “[a]s in years past, the government responded to calls for reform by systematically cracking down on religious minorities”, offering the following evidence, in part:

“USCIRF documented a particular uptick in the persecution of Baha’is and local government officials who supported them in 2019. Iran’s government blamed Baha’is—without evidence—for widespread popular protests, accusing the community of collaboration with Israel, where the Baha’i World Centre is located. Iran’s government also continued to promote hatred against Baha’is and other religious minorities on traditional and social media channels. In July, Twitter banned several official Iranian media accounts for incitement against Baha’is in Iran.

Persecution of Religious Minorities

In March, several Sufis were convicted on spurious national security charges and sentenced to prison, lashings, internal exile, and social media bans. At the end of 2019, scores of Sufis remained incarcerated at Fashafuyeh and Qarchak prisons. Several were denied medical care. Dr. Tabandeh, spiritual leader of the Nematollahi Gonbadi Sufi community, began a hunger strike in Nov.

²⁴ Iran Press Watch: Documenting the Persecution of the Baha’i Community in Iran.

²⁵ Center for Human Rights in Iran, keyword search of “Protestant.”

²⁶ Edmunds: “Iran continues to persecute Christians in violation of international law”, *Jerusalem Post* (21.1.2020).

2019. He was hospitalized, denied access to his doctors and advisors, and after severe medical malpractice, died in December.

[...]

Iran's nearly 300,000 Christians include traditional Armenian and Assyrian/Chaldean churches and newer Protestant and evangelical communities. Iran continued to target Christian converts from Islam; in July 2019, for example, the Intelligence Ministry arrested eight Christian converts in Bushehr and sent them to solitary confinement. In May, Intelligence Minister Mahmoud Alavi announced efforts to 'counter the advocates of Christianity' and his ministry summoned people in Hamdan who showed interest in the faith. [...]

In November, the president of the Zoroastrian Association of Yazd Province criticized hiring discrimination against Zoroastrians, restrictions on religious observance, and extralegal activity regarding Zoroastrian-held land.

Iran and Anti-Semitism

At a USCIRF hearing on anti-Semitism on January 8, 2020, U.S. Special Envoy to Monitor and Combat Anti-Semitism Elan Carr stated that Iran is the 'world's chief trafficker in anti-Semitism' and that 'anti-Semitism isn't ancillary to the ideology of the Islamic Republic of Iran. It is a central foundational component of the ideology of that regime, and we have to be clear about it, and we have to confront it and call it out for what it is.'²⁷

The foregoing excerpt was quoted, at some length, to frame the problem of "a particular uptick in the persecution of Baha'is" – aided and abetted by government efforts to "promote hatred against Baha'is and other religious minorities on traditional and social media channels" – along with "Christian converts from Islam", oppressing Zoroastrians, and perpetuating anti-Semitism, which has been a hallmark of the Islamic Republic's ideology and narrative. These findings are corroborated by the "Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran", Javaid Rehman" (21 July 2020), which states, in pertinent part:

"F. Situation of minorities

50. The Special Rapporteur remains deeply concerned at the continued discrimination against ethnic and religious minorities. Changes to the national identity card application process reportedly hinder minority religious groups from gaining access to several essential services. The application form previously listed "other" as a religious option. In January 2020, the National Organization for Civil Registration reported that this option had been removed, meaning individuals could only choose from the four officially recognized religions. The removal of 'other' raised fears that non-recognized religious groups, such as Baha'is, Christian converts,

²⁷ U.S. Commission on International Religious Freedom (USCIRF), "Iran," *Annual Report 2018* (April 2020), 24–25. https://www.uscifr.gov/sites/default/files/Iran_2.pdf. Accessed 30.10.2020.

Yarsanis, Sabeen-Mandaeans and non-believers, would be unable to obtain a national identity card, which is necessary to gain access to government and banking services. The Government stated that non-recognized religious minorities could apply for the national identity card without being obliged or forced to mention their religion. The Government only accepted or partially accepted 9 of 25 recommendations concerning religious freedom during its universal periodic review.

51. The situation of Baha'is remains a matter of serious concern, including reported restrictions on the right to education and the arbitrary closing of Baha'i-owned businesses. In 2019, at least 59 Baha'is were reportedly arrested because of their beliefs."²⁸

This grave situation, as represented above, is contested, controverted and/or otherwise countenanced by the Iranian regime itself in its official counter-narratives. On Friday, 1 December 2017, FARS News Agency reported that *La'ya' Gomeidi*, Iranian Vice President for Legal Affairs, addressed the UN High-Level Meeting of the Non-Aligned Movement (NAM) on Human Rights & Cultural Diversity, offering the Islamic Republic of Iran as a model "for the promotion of human rights through mutual respect for cultural diversity, history, traditions, values and the beliefs of all nations and individuals and by enhancement of tolerance nationally and internationally", explaining Iran's "legal diversity" framework as follows:

"Article 12 of Iran Constitution declares the official religion of the Country (i. e. Islam and Specifically Shi'a school of thought) and then continues: 'Other Islamic schools of thought, such as the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are fully respected and their followers are free to perform their own religious practices, religious education, and personal matters.' [...] In Article 13, the Constitution goes further and recognizes other Iranian religious minorities i. e. Zoroastrians, Jews, and Christians ... In addition, Article 14 of the Iran Constitution recognizes a general rule for all non-Muslims and declares: 'The government of the Islamic Republic of Iran and Muslims are required to treat the non-Muslim individuals with good conduct, in fairness and Islamic justice, and must respect their human rights [...]' These three consecutive Articles of the Constitution demonstrate the recognition of cultural diversity in Iran and among Iranian nationals, including religious diversity as one of the elements of the culture, and reflect it in the legal system of Iran and where I refer to 'legal diversity', indeed I refer to such accepted tolerance and variety in the legal system."²⁹

²⁸ United Nations, "Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman" (21.7.2020).

²⁹ FARS News Agency: "Iran Calls for Respecting Cultural Diversity by World Countries" (1.12.2017).

Does this claim of Iran's respect for religious diversity withstand scrutiny? In principle, current Iranian law is governed by the 1979 Constitution of the Islamic Republic of Iran (adopted: 24 October 1979; effective: 3 December 1979; amended: 28 July 1989), which has established an Islamic theocracy. Under Chapter I: "General Principles" (Articles 1 to 14), Article 13 recognizes Zoroastrians, Jews, and Christians as "the only recognized religious minorities", thereby deliberately excluding the Baha'is, to wit:

"Article 13

Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education."³⁰

Some residual protections for Baha'is, in theory, may be invoked under Article 14 of Iran's Constitution, which enjoins "the government of the Islamic Republic of Iran and all Muslims", in their contacts with non-Muslims, to "respect their human rights":

"Article 14

In accordance with the sacred verse ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran."³¹

Lately Iranian leaders steer clear of describing the Baha'i religion as an Islamic sect (which is not the case, anyway) and refrain from referring to the Baha'i Faith as a "religion" at all – or at least as a recognized religion. Moreover, in order to avoid any reference to the Baha'i Faith as a sect of Islam or as a recognized religion, Iranian leaders, more recently, speak of the Baha'i religion, *inter alia*, as a perfidious "cult". Cast in such light, Baha'is would fall outside the pale of Article 14, and not be afforded even those minimal protections. To make matters worse, the regime accuses Baha'is of violating Article 14's condition that they refrain from "engaging in conspiracy or activity against Islam and the Islamic Republic of Iran" – which, in fact, Baha'is scrupulously avoid.³²

³⁰ *The Constitution of Islamic Republic of Iran*, Article 13.

³¹ *Ibid.*, Article 14.

³² See Baha'i International Community (United Nations Office): "The compliance of the Islamic Republic of Iran with the International Covenant on Civil and Political Rights as concerns the situation of the Baha'is" (Dec. 2010).

Iran's persecution of its religious minorities, especially the Baha'is, is an ongoing problem, well known in international circles. Ever since the Islamic Republic of Iran was established after the 1979 Revolution some 40 years ago, oppression of the beleaguered Baha'i community has been unrelenting. Iran's persecution of Baha'is has a long and well-documented history that predates the current regime, as documented by *Fereydan Vahman*, professor emeritus at the University of Copenhagen, who notes:

"It has been an enormous challenge to convey such a history merely through episodes and epochs, neatly divided and categorized for the reader in a coherent, analytical fashion. The problem has not been a dearth of facts. On the contrary, the evidence of widespread cruelty is overwhelming. The problem has been how to express the reality of this inhumanity for those who suffered it, often for generations. No pen can adequately describe the lasting wounds for those whose families have been shattered, homes looted, and loved ones imprisoned, tortured, or hanged. The deeper meaning of these unspeakable atrocities, exacerbated by calumny and denial, is best expressed by recognizing that it can never be adequately captured in words."³³

Persecution of Baha'is in the IRI

During the first few years after the 1979 Revolution in Iran, more than 200 Baha'is were killed or executed, with hundreds more imprisoned (many of whom were subjected to torture during their interrogations), and thousands more Baha'is who lost their jobs, and their pensions, with other Baha'is being denied their access to higher education or summarily expelled from their respective universities, as well as being subjected to public incitement to hatred as a result of anti-Baha'i propaganda widely published in the government-led news media.

What is the primary motive behind Iran's systematic persecution of the Baha'is of Iran? According to *Mina Yazdani*:

"This article [...] focuses on the Islamic Republic's treatment of Baha'is since 1991, the year a secret memorandum regarding 'the Baha'i Question' redefined the government's previous policy of 'overt' suppression to one that would be henceforth 'covert.' It demonstrates that the government, having learned from its experiences in the 1980s, has, since the early 1990s, carefully orchestrated and pursued plans to suppress the Baha'i community in all areas of life, in ways that have deliberately sought to generate the least amount of international outrage and sympathy as possible. It proposes that the real yet

³³ Vahman (1979), 277–278 ("Postscript"). See also Amanat (2008).

hidden root of the brutal treatment of Baha'is is the insecurity and threat the theocratic government and its clerical leadership feel about the spread of the rational, outward-looking, world-embracing and highly ethical ethos of the Baha'i Faith."³⁴

Here, Baha'is are perceived as a direct threat to Islamic clerical power and primacy in Iran. According to *Anja Pistor-Hatam*, Iranian anti-Baha'i prejudices have the following root causes, due to profound misunderstandings:

"As already pointed out, the official line of arguments in the Islamic Republic is that Baha'is are not part of a religious group and, if individuals are prosecuted, this is not due to their beliefs but according to their being traitors to the national religion of the Islamic Republic and because they are accused of being spies for Israel. Now, in this case as in others, the official discourse does not seem to be consistent but seems to depend on political imperatives, be they internal or external – this being a key characteristic of ideologies. At the same time, a number of sometimes completely inconsistent arguments is brought forward against the Baha'is. [...] Three main lines of argument have to be distinguished: first, the Baha'i Faith is not considered a religion or religious sect at all but is accused of being a political oriented group (*ferqeh, maslak*) instead that was established by despotic Iranian regimes and imperialist powers. Second, the Baha'i Faith is deemed a religious sect created in order to destroy Shiite Islam. By analogy to Zionism, Baha'ism is said to have been initiated by colonial powers to cause intellectual, political and economic crises. Or else, although imperialists are not depicted as being behind the invention of Baha'ism, this "ideology" is supposed to please them, nonetheless. Third, although colonialists are accused of trying to destroy Muslim unity by creating sects (*ferqeh-sazi*), the Baha'i Faith is definitely seen as a religious concept worth analysing – and is proven theologically wrong, of course. As can be seen, all three lines of argument relate to conspiracy theories that imply the existence of powerful foreign agents making use of or creating (religious or political) sects in the Islamic world and especially Iran in order to destroy Muslim unity and power."³⁵

For balance and counterpoint in her analysis, *Pistor-Hatam* then summarizes the official Baha'i responses to these trumped-up conspiracy theories:

"As early as 1979 the National Spiritual Assembly of the Baha'is of Iran responded to the allegations brought forward against them: The Baha'i community had not been a political supporter of the previous regime. On the con-

³⁴ Yazdani (2019). For the immediate historical background and context of the Islamic Republic of Iran's systematic persecution of the Baha'is, see Yazdani (2012), 593 (Abstract) ("supports the thesis that the Islamist movement in Iran that climaxed with the Islamic Revolution of 1979 defined itself primarily as a movement against Baha'is as the country's internal 'Other'").

³⁵ Pistor-Hatam (2017), 7.

trary, they had publicly refused to join the one-party system due to their religious principles. Baha’is venerated Muhammad as a prophet and they accepted the Qur’an as a divine revelation. They could therefore not be regarded as anti-Islamic, even if they revered the founder of their own religion. The headquarters of the Baha’i Faith were founded in Haifa and Akka more than 80 years before the state of Israel was established. Thus, Baha’is could not be accused of Zionism. Baha’is were forbidden to engage in ‘any partisan political activity’, and had to be loyal to their respective governments. Consequently, they would not engage in ‘conspiracies’ against Iran. There was no response to this statement from the government.”³⁶

According to statistics compiled by the Baha’i International Community, since 2005, some 1006 Baha’is have been arrested, with dozens of Baha’is currently in prison in Iran. In 2017, at least 84 arrests of Baha’is were documented, with 81 in 2016, and 56 in 2015 – evidence that Iran’s state-sponsored persecution of Baha’is is ongoing and unrelenting. With over 26,000 pieces of anti-Baha’i propaganda disseminated in the Iranian media, the irony is that the anti-Baha’i campaign has, in fact, intensified ever since President *Hassan Rouhani* came to power in August 2013, despite his promises to improve the human rights situation in Iran. At least 52 incidents of arson attacks on Baha’i properties has been documented, for which no one has been arrested, with some 60 incidents of vandalism, desecration and/or destruction of Baha’i cemeteries recorded.³⁷ These statistics only intimate what Iranian Baha’is must routinely face, when anti-Baha’i antipathy and policies are a fact of daily life and experience.

On 26 March 2018, Iran’s Supreme Leader, *Ayatollah Ali Khamenei*, issued the following decree concerning association and dealing with Baha’is, to wit: “*Association and dealing with Baha’is*: Q. What is the judgment about association and dealings with a Baha’i? A. You should avoid any association and dealings with this perverse and misguided sect.”³⁸ The BIC elsewhere notes “Other forms of Persecution” that include “the monitoring of their bank accounts, movements, and activities; the denial of pensions or rightful inheritances; the intimidation of Muslims who associate with Baha’is; the denial of access to publishing or copying facilities for Baha’i literature; and the unlawful confiscation or destruction of Baha’i properties, including Baha’i holy places.”³⁹

³⁶ Ibid., 8–9.

³⁷ Baha’i International Community: “Situation of Baha’is in Iran.”

³⁸ Baha’i International Community: “The Baha’is of Iran – A Persecuted Community”, 14.

³⁹ Baha’i International Community: “Situation of Baha’is in Iran.”

Negative media reports about how a country mistreats a minority may motivate a government to try its best to avoid, deny or downplay, or otherwise minimize such adverse exposure. So it comes as no surprise that Iran's ongoing persecution of the Baha'is, the nation's largest non-Muslim religious minority, is not headline news. As *Shabnam Moinipour* rightly points out, Iran's systematic policy of oppressing its Baha'i citizens is "designed in such a way to draw as little international attention as possible".⁴⁰ The Baha'i International Community corroborates this observation:

"After nearly four decades, the systematic oppression of Baha'is continues with increasing sophistication. Since 1979, the government of Iran has made it official policy to discriminate against and persecute its Baha'i citizens – an oppression that has evoked condemnation from the international community, activists, and, increasingly, ordinary citizens inside Iran. In response, the government has shifted its tactics from outright arrests and imprisonments to less blatant forms of persecution, such as economic, educational, and cultural discrimination, in an attempt to conceal its ongoing efforts to destroy the Baha'i community as a viable entity."⁴¹

That said: "outright arrests and imprisonments" continue unabated, as documented and updated by *Iran Press Watch*.⁴² In October 2019, *Scott Weiner*, policy analyst for the *United States Commission on International Religious Freedom* (USCIRF), notes how some fairly recent events in Iran may have had an indirect impact on the situation regarding Iran's Baha'i community:

"Since Dec. 2017, a wave of protest activity in Iran has put pressure on the government to deliver economic, social, and political reforms. Simultaneously, the United States' maximum pressure campaign has put additional stress on Iran's leadership. In response to this domestic and international pressure, Iran has increased its persecution of minority religious communities. Although this persecution has impacted several groups, it has targeted the Baha'i community with particular fervor."⁴³

International censure is ongoing, despite Iran's efforts to deflect attention away from its systematic persecution of its Baha'i citizens. So long as Iran persists on its pernicious anti-Baha'i policy, bad press will follow. Consider, for instance, the findings of *Javaid Rehman* who serves as the Special Rapporteur on the situation of human rights in the Islamic Re-

⁴⁰ Moinipour (2018), 179.

⁴¹ Baha'i International Community: "Executive Summary", in "The Baha'i Question Revisited", 1.

⁴² Iran Press Watch: "Arrests."

⁴³ Weiner (2019).

public of Iran.⁴⁴ In his report, Rehman takes Iran to task for its unacceptable treatment of its “non-recognized minorities”:

“34. The absence of constitutional and legal recognition for non-recognized minorities entails denials of fundamental human rights for their followers. Left outside the national legal framework, unrecognized minority religious groups such as Baha’is, Christian converts, Sufis, including the Gonabadi order, Yarsanis and the Sabean-Mandaeans, are the targets of discriminatory legislation and practices.”⁴⁵

Later, on 14 November 2019, the Third Committee of the United Nations General Assembly adopted a resolution expressing “serious concern” over Iran’s continuing repression of religious minorities, including the Baha’is.⁴⁶ The six-page resolution, written 30 October 2019, states, in part, as follows:

“20. *Expresses serious concern* about ongoing severe limitations and increasing restrictions on the right to freedom of thought, conscience, religion or belief, restrictions on the establishment of places of worship, undue restrictions on burials carried out in accordance with religious tenets, attacks against places of worship and burial and other human rights violations, including but not limited to harassment, intimidation, persecution, arbitrary arrests and detention, and incitement to hatred that leads to violence against persons belonging to recognized and unrecognized religious minorities, including Christians, Gonabadi Dervishes, Jews, Sufi Muslims, Sunni Muslims, Yarsanis, Zoroastrians and members of the Baha’i faith and their defenders in the Islamic Republic of Iran, and calls upon the Government of the Islamic Republic of Iran to cease monitoring individuals on account of their religious identity, to release all religious practitioners imprisoned for their membership in or activities on behalf of a recognized or unrecognized minority religious group and to ensure that everyone has the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of their choice, in accordance with its obligations under the International Covenant on Civil and Political Rights[.]”⁴⁷

⁴⁴ United Nations Human Rights, Office of the High Commissioner (OHCHR): “Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.”

⁴⁵ Rehman (2019).

⁴⁶ Baha’i World News Service: “UN to Iran: End human rights violations against Baha’is” (14.11.2019).

⁴⁷ United Nations, Third Committee of the General Assembly: “Situation of human rights in the Islamic Republic of Iran” (Paragraph 20). Drafted 30.10.2019; adopted by the Committee on 14.11.2019.

The instant Third Committee resolution was confirmed during the plenary session of the General Assembly in December 2019.⁴⁸ So the Baha'is are not alone. Yet, of all of Iran's unrecognized religious minorities, Iran's discrimination against the Baha'is is the most egregious, especially due to Iran's past and present policy of systematic discrimination. In its 2018 annual report, *U.S. Commission on International Religious Freedom* (USCIRF) noted:

"Baha'is are therefore the most severely persecuted religious minority in Iran, not recognized by the state, and denied their political, economic, cultural, and religious rights. While President Rouhani promised during his 2013 election campaign to end religious discrimination, the amount of anti-Baha'i propaganda aired on official channels has grown steadily. Since 2014, an estimated 26,000 pieces of anti-Baha'i media have run on official or semi-official channels. Over the past 10 years, more than 1,000 Baha'is have been arbitrarily arrested."⁴⁹

At the time of this writing (November 2020), Iran's systematic persecution of its Baha'i citizens has continued apace, ostensibly unabated. In January 2019, the Baha'i International Community (BIC) published a UN memorandum: "The Baha'is of Iran – A Persecuted Community", which analyzes Iran's state-sponsored oppression of its beleaguered Baha'is in five major areas of concern: "I. Home Raids, Unlawful Arrests, Arbitrary Detentions, and Violations of Due Process"; "II. Economic Persecution"; "III. Denial of the Right to Education" ("A. Access to Higher Education"; and "B. Harassment of schoolchildren"); "IV. Denial of Cultural Rights, including Desecration and Destruction of Baha'i Cemeteries and Violations of Burial Rights"; and "V. Incitement to Hatred".⁵⁰ On December 5, 2019, the USCIRF "condemned the mass arrests of Baha'is in Iran".⁵¹

Nazila Ghanea has proposed a twofold typology for analyzing religious discrimination, in her 2015 paper: "Driving while Baha'i: A Typol-

⁴⁸ Baha'i World News Service: "UN to Iran: End human rights violations against Baha'is" (14.11.2019). This resolution – led by Canada and co-sponsored by 45 Member States – was adopted by a vote of 81 to 30, with 70 abstentions. See: Baha'i International Community: "UN General Assembly calls on Iran to end human rights violations" (18.12.2019). The resolution (UN document A/C.3/74/L.27) is available online.

⁴⁹ U.S. Commission on International Religious Freedom (USCIRF) (April 2018), 46–47.

⁵⁰ Baha'i International Community: "The Baha'is of Iran – A Persecuted Community."

⁵¹ U.S. Commission on International Religious Freedom (USCIRF): "U.S. Commission On Religious Freedom Condemns Arrests Of Baha'is In Iran" (Iran Press Watch, Dec. 5, 2019).

ogy of Religious Discrimination”.⁵² Pointing out that religious discrimination involves both ideology, as a basis for public policy, and actions pursuant to such policy, Ghanea’s proposed typology is as follows:

“Religious discrimination’ can therefore describe both the targets of discrimination and the rationale given for discrimination against others, for example through coercive religious regulations, imposition of laws, and restrictions imposed on others on grounds of the perpetrator’s religion or belief. It targets both those who are discriminated due to their (actual or perceived) religion or belief affiliation and those who become victims of discrimination due to the coerced religious positions of the perpetrator. The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief defines the latter – ‘intolerance and discrimination based on religion or belief’ – as: [A]ny distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.⁵³ Discrimination that flows from the perpetrator’s religion or belief is usually referred to as ‘discrimination or violence in the name of religion’⁵⁴ in order to clearly distinguish it from discrimination based on the religion or belief of the victim. The two strands can, of course, overlap in cases where the perpetrator’s religion or belief is used to allegedly justify violations against targeted subjects due to their religion or belief affiliation. This is the case in relation to the Baha’is in Iran. The discrimination is targeted against them on grounds of the religion of the Baha’i victims. The discrimination is also perpetuated in the name of the state religion and takes place in a state that subjects many to discrimination and violence, violating numerous rights. Freedom of opinion and expression, freedom of assembly and association, the right to life, the prohibition of torture, minority rights and participation in public life are just a few of the rights violated.”⁵⁵

From a non-Muslim perspective, the “Baha’i question” is ill-posed. There should be no question whatsoever as to religious minority rights, or indeed as to the rights of any minority which abides lawfully and peacefully. The “Baha’i question” really only arises within a specifically Muslim context. The issue is whether or not a religion, with significant post-Islamic claims to divine revelation, should be accorded recognition and rights, considering the fact that a fundamental Islamic doctrine is that the

⁵² Ghanea (2015). See also Cameron and Ghanea (2018).

⁵³ “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN Doc. A/RES/36/55, 25 Nov. 1981, Article 2(2).” (Cited by Ghanea (2015), 57, n. 23.)

⁵⁴ “Special Rapporteur Jahangir refers to this as ‘discrimination and violence in the name of religion or belief (i. e. based on or arrogated to religious tenets of the perpetrator)’. Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief: Asma Jahangir, UN Doc. A/HRC/13/40, 21 Dec. 2009, p. 1.” (Cited by Ghanea (2015), 57, n. 24.)

⁵⁵ Ghanea (2015), 57–58.

Prophet *Muhammad* is considered to be the “Seal of the Prophets” (Qur’an 33:40) and therefore the last of the prophets, according to the received interpretation universally accepted by Muslims today, with few exceptions (one of them being the Ahmadiyya). But sometimes it is morally wrong to be doctrinally “right”. In other words, to persecute a religion, such as the Baha’i Faith (as the religion is legally known in the West), just because it offends a majoritarian doctrinal fundamental within an Islamicate context, is not morally justified from an international human rights perspective, even if arguably there is some pretextual, doctrinal justification from a dogmatic Muslim viewpoint. Here, the famous Qur’anic dictum: “Let there be no compulsion in religion” (Qur’an 2:256, tr. Yusuf Ali), unequivocally stands for freedom of religion. Therefore, on the basis of this clear Qur’anic ethic, religious persecution of the Baha’i faith-community is morally wrong, whether from an international human rights perspective or from an intrinsically Islamic perspective. Of course, this argument does not hold with the current Islamic regime in Iran, nor with the Iranian Muslim clerical order.

That said, what has been framed as the “Baha’i question” in Iran has no easy answers from an Iranian Islamic vantage. For four decades, Baha’is have been oppressed in the Islamic Republic of Iran. As an unrecognized religion, the Baha’i Faith presents a test case as to how international human rights law applies – and can be applied, if at all. International law, although having moral and some legal force, cannot be enforced in Iran. Why does this matter? The significance of the case of the Baha’is is that it presents a moral and legal challenge that invites serious thought and action as to what may be done, and, in so doing, has wider implications for similarly situated minorities, especially religious minorities, both in Iran and elsewhere in the world.

Iran’s persecution of its Baha’i citizens is contrary to Iran’s enlightened self-interest. Making this very point, *Samuel D. Brownback*, Ambassador at Large for International Religious Freedom, Office of International Religious Freedom, U.S. Department of State, stated, on 22 May 2019, the following:

“Every time Iran’s leaders throw Iranians in jail because of their beliefs or shutter businesses because of their owners’ faith, and spout vitriol at vulnerable minorities, they are undermining their own country’s society and economy. How does arbitrarily closing a Baha’i shop – particularly given Iran’s economic woes – do any good for the Iranian people or its markets? How does barring people from getting an education, all because of the religion, enhance the Iranian workforce and prepare Iran to engage in a global economy? There is nothing noble about them leading a great nation into the ground by abusing the very people they are charged with serving. [...] Protecting religious free-

dom is not only the right thing to do; it is also in Iran’s best interest to do. Countries that respect religious freedom tend to be more stable and prosperous than those who do not. [...] We hope the Iranian government will one day choose this path and embrace religious tolerance, respect, and diversity – not only for the good of the world, but also for the good of Iran itself.⁵⁶

International Law and the Persecution of Baha’is in Iran

So, as a practical matter, how does international law apply to the ongoing persecution of Baha’is in Iran? What effect, if any, does international law – in particular, the ICCPR – have on Iranian domestic law, especially as it pertains to religious minority rights? (Iran is party to five “Core International Human Rights Instruments”: ICERD, ICCPR and ICESCR (signed during the time of the Shah, and, after the 1979 Islamic Revolution, the CRC and CRPD, with reservations).⁵⁷ Does the ICCPR demonstratively act as a constraint, by effectively restraining Iran’s violations of those standards in the name of “Islamic” domestic law? Does global public opinion, moreover – with its expressions of moral outrage – further curb and otherwise mitigate the range and extent of Iran’s domestic violations of human rights?

Iran’s intolerance and persecution of its Baha’i minority implicates Islamic law, which often stands in tension with international law, often resulting in a conflict of laws. Which laws take priority depends on the situation. International law, generally speaking, takes precedence over Islamic law, as to external relations.⁵⁸ The Islamic Republic of Iran, after all, is a member state of the United Nations, and thus a signatory of the UN’s Charter. Iran is also a signatory of various international human rights treaties, such as the 1948 *Universal Declaration of Human Rights*, and the 1966 *International Covenant on Civil and Political Rights* (ICCPR). Under both conventional international law and Islamic international law (*siyar*), the obligations to protect human rights, as enshrined in these

⁵⁶ Brownback, Ambassador at Large for International Religious Freedom, Office of International Religious Freedom, U.S. Department of State (22.5.2019).

⁵⁷ See Moinipour (2018); ICERD: International Convention on the Elimination of All Forms of Racial Discrimination (Signed on 8 March 1967 and ratified on 29 August 1968); ICCPR: International Covenant on Civil and Political Rights (Signed on 4 April 1968 and ratified on 24 June 1975); ICESCR: International Covenant on Economic, Social and Cultural Rights (Signed on 4 April 1968 and Ratified on 24 June 1975); CRC: Convention on the Rights of the Child (Signed on 5 September 1991 and Ratified on 13 July 1994); CRPD: Convention on the Rights of Persons with Disabilities (Acceded on 23 October 2009).

⁵⁸ Moschtoghi (2009), 387.

and other international human rights instruments, are binding on Iran. Legal scholar *Ramin Moschtaghi* notes that “there is no doubt that today Islamic states perceive themselves as being principally bound by international law”, as demonstrated by the fact “that all states with a majority Muslim population have decided to join the United Nations”, where even the Islamic Republic of Iran, which has “relied repeatedly on Islamic law to justify breaches of internationally recognized human rights standards”, has nevertheless “demonstrated constantly that in spite of discrepancies between Islamic law and international law, it perceives itself principally bound by the latter.”⁵⁹

As to internal relations, however, problems arise when there is a conflict between the domestic Islamic law of a given state – such as the Islamic Republic of Iran – and international law. Human rights, in theory, have been incorporated into the Iranian legal system, with stated limitations. These limitations make all the difference. In practice, moreover, many of these human rights are not universally respected – and therefore are not routinely enforced – and are all too often violated. This can be seen in various conflicts of law that have yet to be resolved.

International law and Iranian law intersect in Article 9 of the Iranian Civil Code, which provides: “Treaty regulations which have been concluded between Iran and other states according to the Constitution share the force of laws”.⁶⁰ An alternative translation reads: “Terms and regulation [*sic*] in the covenants that have been agreed upon between Iran other countries with accordance of the Constitution are considered laws”. *Moschtaghi* comments that “Iranian law also provides for the possibility to invoke provisions of international treaties before domestic courts”, but that “international treaty provisions rank below the Constitution in the domestic hierarchy”.⁶¹ According to an official statement made by ‘*Abbās Bāgerpūr Ardekānī*, Representative of the Islamic Republic of Iran:

“In Iran, there was a legislative basis for the exercise of universal jurisdiction. ... The Iranian Civil Code provided that treaties concluded between Iran and other States in accordance with the Constitution had the force of domestic law. Thus, all clauses in treaties concerning the right to implement universal jurisdiction, such as article V of the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which Iran was a party,

⁵⁹ *Ibid.*, 407–408.

⁶⁰ Daraeizadeh, Attorney at Law, Iranian Bar Association (2010), 16, n. 59: “Article 9 of the Iranian Civil Code says: ‘terms and regulation in the covenants that have been agreed upon between Iran other countries with accordance of the constitution are considered laws’ .”

⁶¹ *Moschtaghi* (2009), 387.

were considered to be part of Iranian law once they had been adopted and incorporated within the national body of law.”⁶²

The ICCPR is a treaty adopted by the United Nations General Assembly on 16 December 1966, and currently has 173 “Parties” and 74 “Signatories”.⁶³ The ICCPR obliges its parties to promote and safeguard the civil and political rights of individuals. Article 18 provides:

“Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”⁶⁴

Iran has ratified the ICCPR, but “has not allowed for individual petition under any of these treaties”.⁶⁵ Iran signed the ICCPR on 4 April 1968, and ratified it on 24 June 1975,⁶⁶ but has opted out of the “Optional Protocol” to the ICCPR.⁶⁷ This, of course, was prior to the 1979 Revolution and the establishment of the Islamic Republic of Iran. Thus, as regards Iran, the ICCPR, while having legal force under international law, cannot be enforced or otherwise implemented at the present time. Notwithstanding, Iran is held to the standards of the ICCPR. That said, *Moschtaghi* notes that the Islamic Republic of Iran is now “bound in full

⁶² Ardekani (2017), <https://undocs.org/en/A/C.6/72/SR.14>, 6.

⁶³ United Nations Treaty Collection: “Chapter IV, Human Rights, 4. International Covenant on Civil and Political Rights, New York, 16 Dec. 1966.”

⁶⁴ United Nations Human Rights, Office of the High Commissioner, The International Covenant on Civil and Political Rights (ICCPR), Article 18.

⁶⁵ Ghana (2015), 67, n. 69.

⁶⁶ United Nations Human Rights, Office of the High Commissioner (OHCHR): “UN Treaty Body Database.”

⁶⁷ United Nations Treaty Collection: “Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 Dec. 1966.” Note that the United States has opted out as well.

by international human rights treaties ratified before the Revolution of 1979, no matter whether or not the rights established by these treaties are perceived as consistent with Islamic law or not”.⁶⁸ Although the UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981) does not have binding force, the 1981 Declaration has great moral suasion.⁶⁹

Conclusion and Outlook

Iran’s revised “Islamic Penal Code” (IPC) was adopted by Iran’s “Islamic Consultative Assembly” (Majlis) on 21 April 2013.⁷⁰ On that same day, Iran’s “Charter on Citizens’ Rights” (formally known as the Islamic Republic of Iran’s “Law on Respecting the Legitimate Liberties and Protection of Citizens’ Rights”) was adopted.⁷¹ There are some hopeful signs that change may be afoot. For instance, on 31 December 2018, in a landmark ruling, Judge ‘*Ali Badri* – presiding judge of Branch 12 of Alborz Province’s Revolutionary Court of Appeals – acquitted *Lisa Tibanian* (*Lizā Tēbyāniyān*), an Iranian Baha’i woman, of the charge of “propaganda against the regime” under Article 500 of Iran’s Islamic Penal Code, which commands: “Anyone who engages in any type of propaganda against the Islamic Republic of Iran or in support of opposition groups and associations, shall be sentenced to three months to one year of imprisonment”.⁷² According to the text of the verdict, *Judge Badri* held that, under Article 500 of the IPC, proselytizing is a crime only if it is aimed against Iran’s government. Otherwise, the judge opined: “religious proselytizing in a way that cannot be construed as being against the Islamic Republic of Iran and its regime is not a crime.” Punishing a person for proselytizing her faith, moreover, on that same pretext “would even violate citizens’ rights under the Constitution”. *Judge Badri* pointed to the fact that the appellant (defendant), Ms. *Tibanian*, acknowledged, without reservation, the sovereignty of the Islamic Republic of Iran – and this was a key reason for not

⁶⁸ Moschtaghi (2009), 420.

⁶⁹ Davis (2002), 230.

⁷⁰ International Labour Organization (ILO), NATLEX: “The Islamic Penal Code (IPC)”, *Database of national labour, social security and related human rights legislation*.

⁷¹ International Labour Organization (ILO), NATLEX: “Law on Respecting the Legitimate Liberties and Protection of Citizens’ Rights”, *Database of national labour, social security and related human rights legislation*.

⁷² “Islamic Penal Code of the Islamic Republic of Iran – Book Five.” English translation. Iran Human Rights Documentation Center.

finding her guilty, as charged.⁷³ Whether or not such legal reasoning develops into a minor or even major legal trend remains to be seen.

In Iran, Baha’is are persecuted in the name of Islam. This fact alone gives the Islamic Republic of Iran’s principles and practice of Islam a bad name in the court of world opinion. Islam is often presented as the “religion of peace”. This ideal image – and the ideal itself – is compromised, if not flatly contradicted, by Iran’s treatment of its Baha’i citizens, which is the primaty topic of this paper. The fact that Iran’s current ideology and exercise of Islam – to the extent that the Islamic Republic of Iran cannot tolerate Iran’s largest non-Muslim minority and does not accord minority religions with equal rights and protections – may harm the public image of Islam, as to the issue of good governance, or the lack thereof. *Pistor-Hatam* points to Iran’s treatment of the Baha’is as a bellwether trial in the court of public opinion: “The case of the Baha’i Faith clearly is the litmus test regarding the human rights of religious minorities in Iran”.⁷⁴ On the issue of human rights, Iran is clearly doing something wrong.

The “Baha’i question” remains open, with no easy answer (i. e. solution), in terms of effecting any real change within the Islamic Republic of Iran itself. The moral and legal answer, of course, is simple: persecution of the Baha’i Faith in the name of Islam must stop. The more complicated answer has to do with how. Since it appears that no significant change is forthcoming internally, it follows that external pressure is going to have to be a major part of the solution. Nothing short of the force of international pressure can ever hope to mitigate the problem. The Iranian regime must continue to be called to account for its violations of the human rights of its religious minorities, especially those of the Baha’is. Continuing development of international law, including mechanisms for its effective implementation and enforcement, is an evolving process, and is one that should receive significant attention and ongoing consultation. Meanwhile, at the time of this writing, House Resolution 823 (US HRes823, “Condemning the Government of Iran’s state-sponsored persecution of its Baha’i minority and its continued violation of the International Covenants on Human Rights”) passed unanimously (“Agreed to without objection”) on 7 December 2020, while the companion bill, Senate Resolution 578 is under consideration in the 116th U.S. Congress. Both bills criticize and condemn the Iranian regime’s

⁷³ Sabeti (2019), <https://iranwire.com/en/features/5773>, n.p.

⁷⁴ Pistor-Hatam (2019) (unpaginated).

relentless and intensifying persecution of the Baha'is of Iran, and call for more sanctions to be imposed.⁷⁵

At some point, under the intensifying glare of international opinion, the increasing financial pressure of added sanctions, and perhaps the accelerating force of international law, the Islamic Republic of Iran may well decide to act in its own best self-interest by abandoning its current, repressive policies towards religious minorities in Iran, by way of respecting their legitimate rights, thereby gaining some degree of respect and recognition by the international community, instead of continued criticism and condemnation.

The ongoing persecution of Baha'is in Iran – which has attracted international attention – is an unresolved issue, as recent studies (2016–2019) have shown.⁷⁶ For background and foundational purposes, the older literature (2000–2009) should be consulted as well.⁷⁷

⁷⁵ National Spiritual Assembly of the Baha'is of the United States (16.10.2020).

⁷⁶ The academic literature is quite extensive, and can only be selectively cited here, due to space considerations. Of the more recent studies (2016–2019), see e.g.: Yazdani (2019); Cameron and Ghanea (2018); Pistor-Hatam (2017); Zabihi-Moghaddam (2016); and Ghanea (2015).

⁷⁷ The older academic literature (2000–2009) is also quite extensive, and, as in the previous note, can only be selectively cited here as well, due to space considerations. See Afshari (2011); Ghanea (2009); Afshari (2008); Buck (2008); Buck (2005); Momen (2005); Affolter (2005); Ghanea (2003); and Kazemzadeh (2000).