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International Human Rights

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I. Introduction

This article highlights important international and national developments in the fields of international human rights and business and human rights in 2019.

II. International Developments

A. REVISED “ZERO DRAFT” U.N. TREATY ON BUSINESS AND HUMAN RIGHTS

The United Nations (UN) Human Rights Council publicly issued a Revised Draft of the UN Treaty on Business and Human Rights (Revised Draft) in July 2019.¹ In October 2019, the Open Ended Intergovernmental Working Group (OEIGWG) on transnational and other business enterprises discussed the Revised Draft during its fifth session in Geneva.² The UN Human Rights Council created the OEIGWG in 2014 by resolution and mandated it to create a binding instrument that regulates the “activities of transnational corporations and other business enterprises.”³ Since its creation in 2014, the OEIGWG has met annually to develop such a treaty.

The Revised Draft is the second substantive draft of the treaty; the first was the preliminary 2018 “Zero Draft.”⁴ In producing the Revised Draft, the OEIGWG considered proposed changes made during interventions at

* The Committee Editor is Professor Constance Z. Wagner, Saint Louis University School of Law. Corinne Lewis, Partner, Lex Justi, wrote Section II.A. Daniel L. Appelman, Partner, M&H, LLP, wrote Section II.B. Tschika McBean, Human Rights Officer for Baha’is of the United States, wrote Section III.A. Jaclyn Fortini Laing, Principal Attorney, Fortini Laing Law, wrote Section III.B. Shekinah Apedo, J.D. 2019, Western Michigan University Cooley Law School, wrote Section III.C.

1. Human Rights Council, Revised Draft, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (July 16, 2019) [hereinafter Revised Draft].

2. Emilio Rafael Izquierdo Miño (Chair-Rapporteur), *Report on the Fifth Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, ¶ 2, U.N. Doc. A/HRC/43/55 (Jan. 9, 2020).

3. Human Rights Council Res. 26/9, U.N. Doc. A/HRC/Res/26/9, ¶ 1 (June 26, 2014).

4. See generally Human Rights Council, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporation and Other Business Enterprises (July 16, 2018) [hereinafter Zero Draft].

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the OEIGWG's fourth session in October 2018, more than forty written submissions, and input from bilateral and multi-stakeholder consultations conducted by the OEIGWG.⁵ While the OEIGWG still has considerable work to do on the draft treaty, the wording of the Revised Draft has been considerably refined, the structure clarified, and the content elaborated and rendered more consistent with the UN Guiding Principles (UNGPs).⁶ Significantly, the treaty's scope now clearly covers "all business activities," not just those of a "transnational character," thereby also including businesses whose activities are not cross-border, but are limited to a particular State.⁷ The scope of the treaty also refers to "all human rights."⁸ But participants criticized this language during the OEIGWG session as overly broad and vague, making it subject to different interpretations by various States.⁹ Consequently, this language may need revision.

Regarding the substantive provisions, Section II of the Revised Draft is clearly oriented toward ensuring protection of current and future victims of human rights violations committed by businesses. Specifically, Article Four "Rights of Victims" contains substantive and procedural protections for victims.¹⁰ It also provides measures that States must take to ensure these rights.¹¹ The drafters added provisions requiring States to provide legal assistance to victims¹² and protect individuals and groups that defend human rights.¹³ The provisions also allow States to reverse the burden of proof when necessary to protect victims.¹⁴ While some nongovernmental organizations advocated that this latter addition should be obligatory, other delegations expressed concern that it contravenes the presumption of innocence and due process protections.¹⁵

The drafter's intent to strengthen victims' rights and ensure they have a remedy was also evident by the inclusion of a provision requiring States to take measures so statutes of limitations do not apply to the most serious

5. Emilio Rafael Izquierdo Miño (Chair-Rapporteur), *Draft Report on the Fifth Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, ¶ 7, U.N. Doc. A/HRC/43/XX (Jan. 2020).

6. See Carlos Lopez, *The Revised Draft of a Treaty on Business and Human Rights: A Big Leap Forward*, OPINIOJURIS (Aug. 15, 2019), <http://opiniojuris.org/2019/08/15/the-revised-draft-of-a-treaty-on-business-and-human-rights-a-big-leap-forward/>.

7. See Revised Draft, *supra* note 1, art. 3.1. The 2014 UN Human Rights Council resolution that mandated the OIWG to create a binding instrument, contains a footnote that notes that the reference to "other business enterprises" means those of "a transnational character in their operational activities, and does not apply to local businesses" registered under domestic law; H.R.C. Res. 26/9, *supra* note 3, at 1 n.1.

8. Revised Draft, *supra* note 1, art. 3.3.

9. Miño, *supra* note 5, ¶ 43.

10. See Revised Draft, *supra* note 1, arts. 4.1–8.

11. See *id.* at arts. 4.9–15.

12. See *id.* at arts. 4.12–13.

13. See *id.* at arts. 4.9, 4.15.

14. See *id.* at art. 4.16.

15. See Miño, *supra* note 5, ¶ 58.

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international human rights crimes.¹⁶ With respect to other crimes, States are required to modify their statutes of limitation to allow “a reasonable period of time for the investigation and prosecution of the violation.”¹⁷ Similarly, the Revised Draft provides that courts may consider applying the substantive law of another State where the act or omission occurred or the victims or perpetrator is domiciled.¹⁸

Looking forward, Articles Five “Prevention” and Six “Legal Liability” remain in need of further development and clarification. As currently drafted, there is a concern that a business may be held liable for failing to prevent human rights abuses by its subsidiaries or for abuses by entities in their supply chain,¹⁹ thus effectively “piercing the corporate veil.”

Additionally, a new provision providing for “criminal, civil, or administrative liability” for “criminal offences” engendered extensive debate.²⁰ The offenses listed include: crimes defined in the Rome Statute for the ICC, torture, enforced disappearance, extrajudicial execution, forced labor, use of child soldiers, forced eviction, slavery, forced displacement, human trafficking, and sexual and gender-based violence.²¹ While some delegates suggested leaving the list open-ended, others proposed adding additional crimes, and a third set requested deletion of the provision in its entirety as many of the crimes were “defined by reference to instruments that their States had not accepted.”²² Additionally, the Revised Draft retains references to civil and criminal liability of natural or legal persons, thus raising concern about the potential liability of directors and shareholders.²³

The Revised Draft removed the Zero Draft’s requirement that States adopt provisions providing for the exercise of universal jurisdiction under domestic law for criminal liability.²⁴ In the Revised Draft jurisdictional links are defined on the basis of territorial jurisdiction and active and passive nationality jurisdiction,²⁵ thereby evidencing a general acceptance of extraterritorial jurisdiction. But attendees raised concerns during the OEIGWG session that this provision could result in suits in multiple jurisdictions as well as forum shopping.²⁶

16. See Revised Draft, *supra* note 1, art. 8.1.

17. See *id.* at art. 8.2.

18. See *id.* at art. 7.1.

19. Lavanga V. Wijekoon, Michael G. Congiu & Stefan J. Marculewicz, *United Nations Takes Another Step in Developing a Treaty on Business and Human Rights*, LITTLER (Nov. 5, 2019), https://www.littler.com/publication-press/publication/united-nations-takes-another-step-developing-treaty-business-and-human?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original.

20. See Revised Draft, *supra* note 1, art. 6.7.

21. *Id.*

22. Miño, *supra* note 5, ¶ 76.

23. See Revised Draft, *supra* note 1, arts. 6.6, 6.9.

24. Zero Draft, *supra* note 4, art. 10.11.

25. See Revised Draft, *supra* note 1, art. 7.1.

26. Miño, *supra* note 5, ¶ 79.

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The Revised Draft also provides for an oversight “Committee” in Article Thirteen that, like other treaty bodies, would make general comments and recommendations and provide concluding observations and recommendations on reports submitted by State Parties.²⁷ But, as currently drafted, the Committee will not hear individual complaints, which many civil society organizations insisted is an essential component.²⁸ Article Thirteen also provides for a “Conference of State parties” and an international fund for victims.²⁹

The final provisions of the treaty concerning implementation, entry into force, reservations, amendments and other matters, Articles Fourteen through Twenty-Two, were not significantly discussed at the 2018 session of the OEIGWG.³⁰ Consequently, few changes were made to these provisions in the Revised Draft.

Representatives from approximately ninety States participated in the October 2019 OEIGWG session.³¹ Upon the formation of the OEIGWG in 2014, the United States announced it would not participate in the discussion of the treaty as it finds the treaty efforts undermine the implementation of the UNGPs.³² Australia, Canada, Japan, Norway, and South Korea were also not in attendance.³³ The European Union (EU) and a number of EU member States continued to move toward more active participation, most likely due to the fact that their primary objection, the limitation of the treaty to transnational corporations, has been removed.³⁴ The EU asked clarifying questions while Spain, France, and Belgium substantively engaged with the text of the Revised Draft through comments.³⁵ The EU delegate also announced that the incoming EU

27. Revised Draft, *supra* note 1, arts. 13.1, 13.4.

28. See Miño, *supra* note 5, ¶ 94.

29. Revised Draft, *supra* note 1, art. 13.1(c).

30. Miño, *supra* note 5, ¶ 97.

31. *Negotiations of a legally binding instrument on business and human rights continue at the United Nations*, INT’L INST. FOR SUSTAINABLE DEV. (Dec. 21, 2018), <https://www.iisd.org/itn/2018/12/21/negotiations-of-a-legally-binding-instrument-on-business-and-human-rights-continue-at-the-united-nations/>.

32. The United States issued a written statement that provided that the “treaty process continues to detract from the valuable foundation laid by the UN Guiding Principles” and that it “remains opposed to the treaty process and the manner in which it has been pursued. . . . The international community has spoken clearly on this topic, emphasizing the need for the voluntary, multi-stakeholder, and consensus-based approach developed through the UNGPs.” U.S. MISSION TO INTERNATIONAL ORGANIZATIONS IN GENEVA, *THE UNITED STATES GOVERNMENT’S CONTINUED OPPOSITION TO THE BUSINESS AND HUMAN RIGHTS TREATY PROCESS* (Oct. 16, 2019).

33. Miño, *supra* note 5 at 20.

34. See Mariëtte van Huijstee & Lydia de Leeuw, *Re-cap: negotiations over the revised draft of a binding treaty on business and human rights*, CTR. FOR RES. ON MULTINATIONAL CORPS. (SOMO) (Oct. 24, 2019), <https://www.somo.nl/re-cap-negotiations-over-the-revised-draft-of-a-binding-treaty-on-business-and-human-rights/>.

35. *Id.*

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Commission intends to begin work on a form of due diligence legislation to cover supply chains.

States and relevant stakeholders were required to provide “concrete textual suggestions” on the Revised Draft by 30 November, 2019.³⁶ The OEIGWG is scheduled to issue a compilation of these textual suggestions at the end of December 2019 along with the report of the OEIGWG session.³⁷ Consequently, OEIGWG will prepare and circulate a revised draft of the treaty by June 2020 and then host additional sessions to discuss the newly revised draft of the treaty.³⁸

B. INTERNATIONAL CRIMINAL COURT CLAIMS OF CRIMES AGAINST HUMANITY BY THE MYANMAR MILITARY INVOLVING THE ROHINGYA MINORITY

For many years, the UN Security Council failed to refer officials of Myanmar’s government to the International Criminal Court to account for their persecution of that country’s Rohingya ethnic and religious minority.³⁹ Myanmar is not a party to the Rome Statute,⁴⁰ which would otherwise give the Court’s Prosecutor jurisdiction to investigate the persecution.⁴¹ In last year’s *Year in Review*, we discussed an innovative interpretation of the Court’s jurisdiction that could give the Prosecutor authority to investigate and, if warranted, prosecute the perpetrators.⁴² The Court’s Pre-Trial Chamber I concluded that, notwithstanding that Myanmar is not a State Party to the Statute and despite the lack of a Security Council referral, the Court does have jurisdiction under Article 12(2)(a) of the Statute because at least a portion of a crime perpetrated by Myanmar officials and referenced in the Statute, i.e., crimes against humanity by means of deportation, occurred within the territory of a State Party, i.e., Bangladesh.⁴³

36. Miño, *supra* note 5, at 17.

37. *Id.* at 17–18.

38. *Id.* at 18.

39. See, e.g., Param-Preet Singh, *The West Wouldn’t Hold Myanmar Accountable For Ethnic Cleansing. Now, A Small African Nation Is Stepping In*, NEWSWEEK (Nov. 18, 2019), <https://www.newsweek.com/myanmar-rohingya-gambia-international-criminal-law-ethnic-cleansing-1472473> (“The Security Council has been unwilling to meet regularly to address this crisis, let alone refer Myanmar to the ICC, a necessary step since Myanmar isn’t a member of the court. An ICC referral remains critical so that all grave crimes against the Rohingya—as well as those committed against ethnic minorities in Kachin and Shan states, where many of the military’s brutal tactics have mirrored those in Rakhine State—could be addressed.”).

40. Depositary, Status of Treaties, Chapter XVIII, Penal Matters, 10. Rome Statute of the International Criminal Court, U.N.T.C. 1, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-10.en.pdf>.

41. Rome Statute of the International Criminal Court art. 12(2), July 17, 1998 U.N.T.S. 90.

42. See Shekinah Apedo et al., *International Human Rights*, 53 YEAR IN REV. (ABA) 401, 408–09 (2019).

43. See Request Under Regulation 46(3) of the Regulations of the Court, No. ICC-RoC46(3)-01/18, Decision on the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, ¶ 72 (Sept. 6, 2018), https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF.

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Three subsequent legal events have occurred that bring Myanmar and its officials closer to accountability for the atrocities they perpetrated, and continue to perpetrate, against the Rohingya. On November 14, 2019, the Court's Pre-Trial Chamber III authorized the Prosecutor to begin an investigation.⁴⁴ In so doing, that Chamber accepted the theory of jurisdiction first announced by Chamber I and provided a justification for that theory in greater detail than had the previous Chamber.⁴⁵ Specifically, the judges expanded the permitted scope of the Prosecutor's investigation beyond crimes against humanity to include other crimes under the jurisdiction of the Court, including genocide, aggression and war crimes, assuming at least one element of each of those additional crimes occurred in part of the territory of a State Party, such as Bangladesh.⁴⁶ Myanmar challenges this novel theory and the Court's jurisdiction.⁴⁷

On November 13, several human rights groups filed a criminal case in an Argentinian court against Aung San Suu Kyi and other Myanmar officials, alleging that they committed genocide and crimes against humanity by persecuting the Rohingya.⁴⁸ The suit alleged jurisdiction under Argentina's universal jurisdiction law.⁴⁹ The Argentine government will have decided by the end of 2019 whether it will permit the case to proceed.⁵⁰

Additionally, on November 11, the government of the Republic of The Gambia filed a lawsuit at the United Nations' International Court of Justice (ICJ) accusing the government of Myanmar of genocide.⁵¹ Both Myanmar

Article 5 of the Rome Statute gives the ICC jurisdiction over acts constituting crimes against humanity in addition to war crimes, genocide and crimes of aggression. *See* Rome Statute of the International Criminal Court, *supra* note 41, art. 5.

44. Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ¶ 124 (Nov. 14, 2019), https://www.icc-cpi.int/CourtRecords/CR2019_06955.pdf.

45. *See id.* ¶¶ 54–62.

46. *Id.* ¶ 126.

47. *See, e.g., Myanmar rejects ICC probe into alleged crimes against Rohingya*, AL JAZEERA (Nov. 15, 2019), <https://www.aljazeera.com/news/2019/11/myanmar-rejects-icc-probe-alleged-crimes-rohingya-191115180754984.html>.

48. *See, e.g., Tyler Gillett, Aung San Suu Kyi Named In Criminal Complaint Of Genocide Against Myanmar's Rohingya*, JURIST (Nov. 15, 2019), <https://www.jurist.org/news/2019/11/aung-san-suu-kyi-named-in-criminal-complaint-of-genocide-against-myanmars-rohingya/>.

49. Law 26200, or the International Criminal Court Statute Implementation Law (ICC Statute), passed on 13 December 2006, grants jurisdiction to the Argentinian Federal Courts to try crimes of the competence of the ICC (Article 5). *See* Law No. 26200, Dec. 13, 2006, B.O. (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123921/norma.htm>.

50. *See* Joshua Carroll, *Lawsuit: Aung San Suu Kyi 'committed crimes' against Rohingya*, AL JAZEERA (Nov. 14, 2019), <https://www.aljazeera.com/news/2019/11/lawsuit-aung-san-suu-kyi-committed-crimes-rohingya-191114171314827.html>.

51. *See, e.g., Owen Bowcott, Gambia Files Rohingya Genocide Case Against Myanmar At UN Court*, GUARDIAN (Nov. 11, 2019), <https://www.theguardian.com/world/2019/nov/11/gambia-rohingya-genocide-myanmar-un-court>.

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and The Gambia have ratified the UN Genocide Convention, which gives the ICJ jurisdiction over violations of that treaty.⁵² Unlike the ICC investigation and the Argentinian case, the ICJ does not hear criminal cases nor cases brought against individuals; but it does hear disputes between governments.⁵³ The Gambia's brief seeks cessation of Myanmar's genocidal acts, prosecution and punishment of those responsible, reparations and interim provisional measures designed to protect evidence and to prevent further acts of harm.⁵⁴ Aung San Suu Kyi is prepared to lead a delegation to The Hague to respond to the lawsuit.⁵⁵

It is likely no coincidence that the three legal actions described above, each in different fora, each based on different theories of jurisdiction, occurred within days of one another. Preliminary as they are, collectively they serve to re-focus the world's attention on the atrocities committed by the Myanmar military and to give its victims some hope for justice and accountability.

III. National Developments

A. PERSECUTION OF RELIGIOUS MINORITIES IN ISLAMIC REPUBLIC OF IRAN

Since 539 BCE, religious freedom has been identified as a human right indispensable to governing societies in which multiple religious identities exist.⁵⁶ This human right is under attack in some countries. Currently, Iran's parliament is reviewing legislation that, if passed, will effectively expose Iranian nationals and groups in Iran whose views or beliefs diverge from those of the Iranian government to criminal prosecution.⁵⁷ The proposed legislation entitled, "Bill for Penalization of the Perverse Sects," adds two supplementary articles — recurrent articles 499 and 500—to

52. Convention on the Prevention and Punishment of the Crime of Genocide, art. IX, Dec. 9, 1948, 78 U.N.T.S. 277; see Depositary, Status of Treaties, Chapter IV, Human Rights, 1. Convention on the Prevention and Punishment of the Crime of Genocide, 1 – 2, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-1.en.pdf>.

53. *Genocide case against Myanmar to be heard at highest U.N. court*, REUTERS (Dec. 5, 2019), <https://www.reuters.com/article/us-myanmar-rohingya-world-court-factbox/factbox-genocide-case-against-myanmar-to-be-heard-at-highest-u-n-court-idUSKBN1YA02B>.

54. Owen Bowcott & Rebecca Ratcliffe, *UN's top court orders Myanmar to protect Rohingya from genocide*, GUARDIAN (Jan. 23, 2020), <https://www.theguardian.com/world/2020/jan/23/international-court-to-rule-on-rohingya-genocide-safeguards>.

55. See, e.g., Shoon Naing & Thu Aung, *Suu Kyi To Contest Rohingya Genocide Case At World Court*, REUTERS (Nov. 20, 2019), <https://www.reuters.com/article/us-myanmar-rohingya/suu-kyi-to-contest-rohingya-genocide-case-at-world-court-idUSKBN1XU1WR>.

56. *First Declaration of Human Rights 29 October 539 BCE*, HIST. CHANNEL (Nov. 21, 2019), <https://www.historychannel.com.au/this-day-in-history/first-declaration-of-human-rights/>.

57. Moin Khazaeli, *Proposed Bill "Penalization of the Perverse Sects:" The Islamic Consultative Assembly's Leap to Legalize Investigation of Beliefs*, IRAN PRESS WATCH (Oct. 9, 2019), <http://iranpresswatch.org/post/20482/proposed-bill-penalization-perverse-sects-islamic-consultative-assemblys-leap-legalize-investigation-beliefs/>.

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Chapter 1 of the Book of *Tazirat*⁵⁸ of the Islamic Penal Code.⁵⁹ On its face, the goal of the legislation is to stop the perversion and alteration of the Islamic society.⁶⁰ As a theocratic society, Iran perceives any religious ideology that counters or conflicts with the sacred Sharia laws—as outlined in *Ja'fari* jurisprudence (Twelver Juridical school of Shia Islam)—as threats to its national security.⁶¹ With church and state intimately connected, any perceived threat to the common religious ideology is also a threat to the nation.⁶²

Although Iran has a history of cracking down on divergent views, by charging victims (religious or secular) with vague offenses, such as “threatening national security” or “propaganda against the regime,” the proposed legislation would codify practices that are considered violations of international law.⁶³ In 1976, Iran ratified the International Covenant on Civil and Political Rights (ICCPR)⁶⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁵ without reservation.⁶⁶ Therefore, Iran assented to the obligation of ensuring that all Iranian citizens could exercise the rights enumerated in the ICESCR “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶⁷

With regard to the proposed legislation, a major concern is that article 499 would treat the conduct of extremist groups such as Daesh (ISIS) and Al-Qaeda, the religious practices of unrecognized religious minority groups, and beliefs or thoughts expressed by Iranian citizens that differ from the

58. *Tazir*, OXFORD ISLAMIC STUD. (last visited Nov. 21, 2019), <http://www.oxfordislamicstudies.com/article/opr/t125/e2363>.

59. KHANEH-E MELLAT NEWS AGENCY OF THE ISLAMIC CONSULTATIVE ASSEMBLY, *Norouzi on the Agenda of the Judicial Committee of the Parliament : Punishments for the Perverse Sects were Determined*, (July 28, 2019), https://www.parliran.ir/majles/fa/Content/_/شدمشخص-ضالهمفروق-مجازات (Persian).

60. *Id.*

61. Ewelina U. Ochab, *In Iran, Religious Minority Children Are to Stay Silent If They Want to Study*, FORBES (Oct. 8, 2019, 5:09 P.M.), <https://www.forbes.com/sites/ewelinaochab/2019/10/08/in-iran-religious-minority-children-are-to-stay-silent-if-they-want-to-study/#4e9f41f39a17>; see also U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2019 at 51–55 (2019).

62. See U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, *supra* note 61, at 51.

63. See, e.g., *id.* at 54; Uzay Bulut, *Iran’s ‘Terror Factory’ Targeting Christians*, GATESTONE INST. (May 5, 2019), <https://www.gatestoneinstitute.org/14164/iran-targeting-christians>.

64. See U.N. Office of the High Commissioner for Human Rights, Ratification Status for Iran (Islamic Republic of), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN (last visited Feb. 27, 2020) [hereinafter Ratification Status for Iran]; see generally International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171.

65. See Ratification Status for Iran, *supra* note 64; see generally International Covenant on Economic, Social and Cultural Rights art. 2, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

66. U.N. Office of the High Commissioner for Human Rights, Status of Ratification Interactive Dashboard, <https://indicators.ohchr.org/> (last visited Feb. 25, 2020).

67. International Covenant on Economic, Social and Cultural Rights, *supra* note 65, art. 2.

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ideology of Iran as the same offenses.⁶⁸ Moreover, the practices of these inherently different groups would be criminalized under the same umbrella of laws.⁶⁹ Many argue it is incomprehensible that the practice and ideologies of extremist groups, such as ISIS, who rape women and children and pillage and destroy villages and holy sites, would be considered legally comparable to the practices and ideologies of religious minority groups or those of an Iranian national who simply expresses a different opinion or belief.⁷⁰

Assuming this proposed legislation is enacted in Iran, religious freedom in modern-day Persia—the society from which the idea of religious freedom is claimed to have been developed—will be severely threatened as the practices of certain religions are criminalized.⁷¹ Because of the documented history of persecution against the Bahá'í community in Iran, the likely effects of this legislation on the viability of this unrecognized religious minority group warrants special attention.⁷² The tyrannous persecution of the Bahá'í community of Iran has been unjustifiably severe and has garnered significant condemnation from over eighty countries and the United Nations.⁷³ Nevertheless, during the 2019 Universal Periodic Review (UPR), and in many international forums after that, the Iranian government has

68. *The proposed bill for “penalization of perverse sects” is under review by the Judicial and Legal Affairs Committee*, ETEMADONLINE (Sept. 1, 2019), <https://etemadonline.com/content/335641/> (Persian). است - متفاوت - افراد - اعتقادات - در - انحراف - ایجاد - میزان - به - بسته - ضاله - فرق - اعضای - مجازات

69. *Id.*

70. *See, e.g., id.*; Marin Chulov & Kareem Shaheen, *Destroying Great Mosque of Al-Nuri ‘is Isis Declaring Defeat*, GUARDIAN (June 22, 2017), <https://www.theguardian.com/world/2017/jun/21/mosuls-grand-al-nouri-mosque-blown-up-by-isis-fighters>; Yasmine Hafiz, *ISIS Destroys Shiite Mosques And Shrines In Iraq, Dangerously Fracturing Country (PHOTOS)*, HUFFPOST (July 7, 2014), https://www.huffpost.com/entry/isis-destroys-shiite-mosque_n_5564373; *see also* Will Worley, *ISIS Torture, Child Rape and Cannibalism Described by Iraqi MP*, INDEPENDENT (June 27, 2019, 10:45 P.M.), <https://www.independent.co.uk/news/world/middle-east/isis-fed-baby-mother-raped-girl-death-family-iraqi-mp-vian-dakhil-a7811216.html>.

71. *See, e.g., As the World Celebrates Bicentenary, Baba'is in Iran Experience Added Pressure*, BAHÁ'Í INT'L CMTY. (Nov. 2, 2019), <https://www.bic.org/news/world-celebrates-bicentenary-bahais-iran-experience-added-pressure>; *Govt Challenges Iran on Treatment of Christians*, CHRISTIAN INST. (Nov. 20, 2019), <https://www.christian.org.uk/news/govt-challenges-iran-on-treatment-of-christians/>.

72. *See generally* THE BAHÁ'Í INT'L CMTY., *THE BAHÁ'Í QUESTION REVISITED: PERSECUTION AND RESILIENCE IN IRAN* (2016), https://www.bic.org/sites/default/files/pdf/thebahaiquestionrevisited_final_160930e.pdf.

73. *See, e.g.,* G.A. Res. 74/70, ¶¶ 13–14, 19–20 (Oct. 30, 2019); *see also* G.A. Res. 73/74, ¶¶ 13, 14, 17–18 (Oct. 31, 2018); *UN Calls on Iran to End Human Rights Violations Against its Largest Non-Muslim Religious Minority, the Baba'is in Iran*, BAHÁ'Í INT'L CMTY. (Nov. 15, 2019), <https://www.bic.org/news/un-calls-iran-end-human-rights-violations-against-its-largest-non-muslim-religious-minority-bahais-iran> [hereinafter, *UN Calls on Iran to End Human Rights Violations*].

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campaigns to portray the policies of Iran as tolerant to minority groups.⁷⁴ Many have condemned the Iranian government's assertions as false.⁷⁵

Iran's intolerance for unrecognized religious minority groups and other minority groups is starkly outlined in the 2019 Universal Periodic Review National Report on the Islamic Republic of Iran, in which the government of Iran describes the Bahá'í Faith as a political sect.⁷⁶ More than four years have elapsed since the 2014 UPR,⁷⁷ but the treatment of recognized and unrecognized religious minority groups and other marginalized communities by the Iranian government has not changed.⁷⁸ Recently, on September 11, 2019, Iran's Minister of Education declared a policy of educational discrimination, which affects even the children of members of unrecognized religious minority groups.⁷⁹

Now, with the consideration of article 499 in the legislature, "the leadership of any sect or organized criminal group" and anyone who lends support to these groups—financial or otherwise—would be subjected to criminal persecution.⁸⁰ As indicated, the terms used in this legislation are so broad and vague that the terms "any sect or organized criminal group" would apply to any group whose ideologies differ or are not recognized by the Iranian government.⁸¹ Moreover, many members of religious groups offer tithes and donations intending to support or contribute to their groups; this legislation would easily criminalize those basic religious practices.⁸² Furthermore, the legislation calls for the confiscation of all assets of any sect or criminal organized group subject to the article.⁸³

74. See U.N. Human Rights Council, National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Res. 16/21: Islamic Republic of Iran, ¶¶ 15, 69, 71, U.N. Doc. A/HRC/WG.6/34/IRN/1 (Aug. 28, 2019) [hereinafter National Rep. on Iran]; see Khazaeli, *supra* note 57; see also Radio Farda, *Iran Vehemently Rejects U.N. Human Rights Report*, RADIO FARDA (Mar. 3, 2019), <https://en.radiofarda.com/a/iran-responds-to-un-rapporteur-on-human-rights-/29800606.html>.

75. See *World Must Condemn Appalling Deterioration of Human Rights in Iran*, AMNESTY INT'L (Nov. 6, 2019), <https://www.amnesty.org/en/latest/news/2019/11/world-must-condemn-appalling-deterioration-of-human-rights-in-iran/>; Khazaeli, *supra* note 57; see also U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *supra* note 61, at 51–55.

76. National Rep. on Iran, *supra* note 74, ¶ 71.

77. U.N. Human Rights Council, Universal Periodic Review - Iran (Islamic Republic Of), <https://www.ohchr.org/EN/HRBodies/UPR/Pages/IRindex.aspx> (last visited Feb. 27, 2020).

78. See generally U.N. Human Rights Council, Compilation on the Islamic Republic of Iran, ¶¶ 13, 35–37, U.N. Doc. A/HRC/WG.6/34/IRN/2 (Aug. 30, 2019).

79. Maryam Dehkordi, *Children of Iran's "Unofficial" Religious Minorities Ordered to Keep Quiet*, IRANWIRE (Sept. 13, 2019), <https://iranwire.com/en/features/6303>; see also, Erfan Sabeti, *Discrimination against Baha'is is a blow to the body of Iran*, BBC (Sep. 15, 2019), https://www.bbc.com/persian/blog-viewpoints-49707382?fbclid=IwAR1HQiIxtvDvLI7yLuipQERoGcjd6YcmzEc-QakbhBEif0oR_oqMpHTZLs (Persian).

80. See KHANEH-E MELLAT NEWS AGENCY *supra* note 59.

81. *Id.*

82. See generally *id.*

83. *Id.*

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In effect, if this legislation passes, merely practicing one's faith or expressing a view or belief that is different from Iran's theocracy would trigger criminal proceedings that would cause one's property and other assets to be seized. If Iran is to reap the benefits of its diverse population by taking stock of the practices of its ancestral precedents and customs of religious tolerance, referenced by Cyrus the Great,⁸⁴ allowing religious freedom and tolerance is a vital breakthrough.⁸⁵

B. POLITICIZATION OF IMMIGRATION IN EUROPE AND THE UNITED STATES

Immigrants as individuals have long been seen as a thorn in the side of those that reside in and control their destination countries. But in 2019, immigrants proved to be quite lucrative to political leaders of the West as commodities—things to be traded and valued as “currency.”⁸⁶ By ignoring the pesky needs and innate rights of these human figures and in casting aside irksome compassion, their suffering was conveniently used to increase power, fill coffers, and grow political bases.⁸⁷

In both the United States and the European Union (EU), governments have increased border patrols,⁸⁸ and replaced pro-immigration laws with strict legislation intended to deter immigration to wealthier developed countries.⁸⁹ The European Union in particular has provided support to developing countries so that they will stop migrants from entering.⁹⁰ The politicians responsible for these measures point to any diminishment in

84. See *Under Persian Rule*, BBC, https://www.bbc.co.uk/religion/religions/zoroastrian/history/persia_1.shtml (last updated Oct. 2, 2009).

85. Brian J. Grim, Greg Clark, & Robert Edward Snyder, *Is Religious Freedom Good for Business?: A Conceptual and Empirical Analysis*, 10 *INTERDISC. J. RES. ON REL.* 1, 3–5 (2014).

86. See Jens Borchers, *Opinion: Refugees—The New Political Currency*, DW (Feb. 24, 2017), <https://www.dw.com/en/opinion-refugees-the-new-political-currency/a-37666273>.

87. See *id.*

88. See Memorandum from Chief of U.S. Border Patrol Michael J. Fisher to All Personnel, Use of Safe Tactics and Techniques (Mar. 7, 2014) <https://www.cbp.gov/sites/default/files/documents/Use%20of%20Safe%20Tactics%20and%20Techniques.pdf> (“Over the last decade, the U.S. border patrol has benefited exponentially from substantial gains in personnel, technology, and infrastructure.”); see Eur. Comm’n, *Border Crossing*, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/border-crossing_en (last visited Feb. 29, 2020).

89. See, e.g. Soeren Kern, *Italy Adopts Hardline Immigration Law*, GATESTONE INST. (Dec. 7, 2018), <https://www.gatestoneinstitute.org/13392/italy-immigration-law> (“Italy will not sign the United Nations Global Compact for Migration, nor will Italian officials attend a conference in Marrakech, Morocco . . . The Global Compact not only aims to establish migration as a human right, but also to outlaw criticism of migration through hate crimes legislation.”).

90. See Daniel Boffey, *Migrants Detained in Libya for Profit, Leaked EU Report Reveals*, *GUARDIAN* (Nov. 20, 2019), <https://www.theguardian.com/uk-news/2019/nov/20/migrants-detained-in-libya-for-profit-leaked-eu-report-reveals> (“The EU has admitted in a leaked report that it cannot monitor the Libyan coastguard and that the detention of migrants is a ‘profitable business model’ for Libya’s government, with whom it has recently renewed a controversial deal to stem migration to Europe.”).

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migratory numbers as an increase in security and as a political victory.⁹¹ One stark example is the European Union paying the Libyan government to keep migrants within Libyan borders, a call answered with horrendous detention centers in Tripoli and other Libyan cities and towns.⁹² Cases of refusing detainees medical attention and other torture have been covered extensively.⁹³ In June, a military airstrike killed migrants being held in a Tajoura detention facility were killed by a military airstrike.⁹⁴ The Libyan government has refused to respond to calls to evacuate the detention facility, which lies adjacent to legitimate military targets.⁹⁵ Despite the widespread knowledge of these abuses, the European Union has not taken progressive measures to right these wrongs and has publicized the measures as a success.⁹⁶

Additionally, individual countries within the EU have stepped up their anti-immigration policies. Emmanuel Macron, elected for his centrist ideals in France, recently announced measures to deter illegal immigration ahead of municipal elections.⁹⁷ In fact, Macron recently commented to a far-right magazine about immigration: “[m]y goal is to throw out everybody who has no reason to be here.”⁹⁸

In the United States, ahead of the November 2020 presidential election, Donald Trump started delivering on his promises to his anti-immigrant base.⁹⁹ On July 15, 2019, the U.S. Department of Homeland Security announced an interim rule that will prevent individuals from seeking asylum

91. See Ruben Andersson & David Keen, *The West's Obsession with Border Security is Breeding Instability*, FOREIGN POL'Y (Nov. 16, 2019), <https://foreignpolicy.com/2019/11/16/border-security-european-union-instability-illegal-immigration/> (“Once migration has been elevated into an existential threat to the ‘European way of life,’ those on the other side of the EU’s borders will know how to leverage that threat effectively, with destabilizing consequences.”).

92. See Boffey, *supra* note 90.

93. See Sally Hayden, *The U.N. is Leaving Migrants to Die in Libya*, FOREIGN POL'Y (Oct. 10, 2019, 10:11 AM), <https://foreignpolicy.com/2019/10/10/libya-migrants-un-iom-refugees-detention-center-civil-war/>.

94. *Libya: Deadly Attack Highlights Disregard for Civilians*, HUM. RTS. WATCH (July 3, 2019), <https://www.hrw.org/news/2019/07/03/libya-deadly-attack-highlights-disregard-civilians>.

95. *Id.*

96. See, e.g., European Union External Action, EU-Libya Relations (Sept. 25, 2019), https://eeas.europa.eu/headquarters/headquarters-homepage_en/19163/EU-Libya%20relations.

97. Norimitsu Onishi, *France Announces Tough New Measures on Immigration*, N.Y. TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/06/world/europe/france-macron-immigration.html>.

98. *Id.*

99. See generally SARAH PIERCE & ANDREW SELEE, IMMIGRATION UNDER TRUMP: A REVIEW OF POLICY SHIFTS IN THE YEAR SINCE THE ELECTION (2017), <https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts>; Reva Siegel & Duncan Hosie, *Trump's Anti-Abortion and Anti-Immigration Policies May Share a Goal*, TIME (Dec. 13, 2019), <https://time.com/5748503/trump-abortion-immigration-replacement-theory/>.

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in the United States if they passed through a border country and did not seek asylum there.¹⁰⁰

These developments are troubling in themselves. What is most troubling, however, is how these abuses and human lives are then commoditized for political gain. The legal community has a responsibility to act against these abuses of power.

C. U.S. ACTIONS PURSUING CORPORATE TRANSPARENCY

The International Labour Organization (ILO) estimates that sixty-one percent of the world's forty million human trafficking victims stem from forced labor.¹⁰¹ Since the 1970s, the United Nations has been working to develop an international legally binding instrument to hold transnational corporations accountable for human rights violations.¹⁰² In the absence of a treaty, governments worldwide have enacted legislation to regulate corporate activity in an attempt to eradicate forced labor, slavery, and trafficking in supply chains.¹⁰³

On September 30, 2019, the United States Customs and Border Protection (CBP) issued five Withhold Release Orders (WRO) against foreign companies producing goods allegedly made by forced or child labor.¹⁰⁴ The suspected companies are headquartered in China, Brazil, Democratic Republic of the Congo, Malaysia, and Zimbabwe and deal in garments, disposable rubber gloves, and mining.¹⁰⁵ In a bipartisan effort to expand corporate transparency, both congressional bodies introduced bills. Members of the U.S. Senate Banking Committee introduced the *Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings* (ILLICIT CASH) Act,¹⁰⁶ to reform anti-money laundering laws and review current financial institution reporting requirements that provide for public comment and a report to Congress. In the House of Representatives, the Corporate Transparency Act of 2019

100. See Press Release, U.S. Dept. of Homeland Security, DHS and DOJ Issue Third-Country Asylum Rule (July 15, 2019), <https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule>.

101. Int'l Lab. Org. [ILO], *Forced Labour, Modern Slavery and Human Trafficking*, <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (last visited Feb. 24, 2020).

102. Thalif Deen, *EU Aims to Scuttle Treaty on Human Rights Abuses*, INTER PRESS SERV. (June 24, 2014), <http://www.ipsnews.net/2014/06/eu-aims-to-scuttle-treaty-on-human-rights-abuses/>.

103. U.N. Office of the High Commissioner of Human Rights, State National Action Plans on Business and Human Rights, <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> (last visited Feb. 24, 2020).

104. See Press Release, U.S. Customs & Border Protection, CBP Issues Detention Orders against Companies Suspected of Using Forced Labor (Oct. 1, 2019), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

105. *Id.*

106. ILLICIT CASH Act, S. 2563, 116th Cong. (2019).

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(H.R. 2513) was passed on October 22, 2019.¹⁰⁷ The bill introduced by Congresswoman Carolyn Maloney (NY-12) would require U.S. companies to provide full disclosure of beneficial owners to prevent anonymity and to prevent shell companies from being used for illicit gain.¹⁰⁸ The bill marks the first time legislation regarding anonymous corporations has passed in either chamber of Congress.¹⁰⁹ Currently, the Corporate Transparency Act awaits Senate review, and the ILLICIT CASH Act was held in committee hearings in December.

No state in the United States requires the identity of beneficial owners; making it easy to set up shell companies. This anonymity enables crime and conceals assets gained from violating human rights. The U.N. Office on Drugs and Crimes estimates that crime generates about \$2 trillion annually.¹¹⁰ As of September 2018, the U.S. Department of Labor identified 148 goods from seventy-six countries made by forced and child labor.¹¹¹ In order to disrupt the proceeds of crime, corporate transparency is imperative to combat the exploitation of legal loopholes.

107. Corporate Transparency Act, H.R. 2513, 116th Cong. (2019).

108. *Id.*

109. Press Release, Global Witness, Historic Bipartisan Bill to End Anonymous Companies Passes U.S. House of Representatives (Oct. 22, 2019), <https://www.globalwitness.org/en/press-releases/historic-bipartisan-bill-end-anonymous-companies-passes-us-house-representatives/>.

110. UNODC, Money-Laundering and Globalization (last visited May 28, 2020).

111. U.S. DEPT. OF LAB., 2018 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (2018).