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# Iran Denies Education Rights to Bahá'ís

## **Abstract**

The Bahá'í are members of an independent monotheistic religion that originated in the 19<sup>th</sup> century. The Bahá'í faith constitutes the largest religious minority in Iran. Since the revolution of 1979, the Iranian government has sought to systematically deprive the Bahá'í community of their right to post-secondary education through various administrative practices. These actions are part of a larger persecution scheme that has resulted in more than 200 executions and numerous imprisonments since the 1979 revolution. This paper explores the nature of a number of human rights laws that bind Iran to recognize the right of its citizens to education. After providing a cursory glimpse of the problems faced by the Bahá'í students in Iran, the article discusses and evaluates the reaction of a number of United Nations bodies to these violations.

## **Keywords**

bahai, baha'i, Bahá'í, Bahá'ís, Iran, international law, human rights, education, closed doors, United Nations, university, college

## **Cover Page Footnote**

Milad Haghani completed his J.D. at the University of Western Ontario Faculty of Law in the spring of 2012 and is currently an Associate at Arvai Law in London. He completed his undergraduate degree in Psychology at York University in Toronto. Milad wrote an earlier version of this paper as a third-year law student for Professor Carmody's International Law class and is very grateful to Professor Carmody for his guidance and encouragement.

## IRAN DENIES EDUCATION RIGHTS TO BAHÁ'ÍS

MILAD HAGHANI\*

*Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that a son of a mineworker can become the head of the mine, that a child of farm workers can become the president of a great nation.*

-- Nelson Mandela

The right to education has been recognized as a human right under international law and is today protected by many international agreements. States do not have an obligation to provide post-secondary education but, if they do, the state cannot discriminate on the basis of certain prohibited grounds in granting admission. Religion and belief are among these prohibited grounds.

Bahá'ís are members of an independent, monotheistic religion that originated in the nineteenth century. The Bahá'í faith constitutes the largest religious minority in Iran. Since the revolution of 1979, the Iranian government has sought to systematically deprive the Bahá'í community of their right to post-secondary education through various administrative practices. For the last three decades, Bahá'ís have found it virtually impossible to attain higher education in Iran's state-run and private educational institutions. This prohibition has been a significant social and economic impediment for many Bahá'ís. By seeking to destroy the efforts of Bahá'ís to establish their own institutions for post-secondary education, the Iranian government has gone beyond shutting out Bahá'ís from the possibility of obtaining a post-secondary education in existing institutions. These actions are part of a larger persecution scheme that has resulted in more than 200 executions and numerous imprisonments since the 1979 revolution. The international community and various UN human rights agencies have viewed the actions of the Iranian government as a determined and organized campaign to completely block the progress and development of Bahá'ís.<sup>1</sup>

In this article, I will explore the nature of a number of human rights laws that bind Iran to observe the right to education. After providing a cursory glimpse of the

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<sup>1</sup> Bahá'í International Community, *Closed Doors: Iran's Campaign to Deny Higher Education to Bahá'ís*, online: Closed Doors <<http://denial.bahai.org/>> ch 1.

problems faced by the Bahá'í students in Iran, I will discuss and evaluate the reaction of a number of United Nations bodies towards these violations.

## I. DEFINITION OF THE CONCEPT AND SCOPE OF THE RIGHT TO EDUCATION

Education is a fundamental human right that promotes individual freedom. It is essential in the promotion of other rights. The enjoyment of the right to education enhances other rights and freedoms, while its violation jeopardizes them. This right is often described as an “empowerment right.”<sup>2</sup> Jack Donnelly and Rhoda Howard described empowerment rights as those that “provide the individual with control over the course of his or her life, and in particular, control over (not merely protection against) the state.”<sup>3</sup> In other words, education empowers individuals to take control of their lives. Education is also the key to socio-economic development. As the opening quote by Nelson Mandela reflects, the right to education is the necessary means to acquire the knowledge and skills essential to satisfy the needs of individuals and their families. The right to education is also a “cultural right,” as it increases an individual’s opportunity to take part in cultural life. For religious, linguistic, and ethnic minorities, education is the essential means for preserving their cultural identities.<sup>4</sup>

In the words of Ronald Lindahl, “If education is considered a fundamental human right, it is essential to recognize that it is a positive right, not merely a liberty or negative right.”<sup>5</sup> As such, states are obligated to provide the necessary conditions for the enjoyment of the right to education. At the heart of this positive right lies the obligation to make primary, secondary, and higher education available to all citizens. The elimination of illiteracy is a primary function of the right to education in international law. Relevant provisions of the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on the Rights of the Child (CRC) begin by guaranteeing compulsory and free primary education. Nevertheless, states are also obliged to facilitate access to tertiary education without discrimination. Essentially, the right to education encompasses the universal right to access educational institutions without discrimination on the basis of religion or belief.

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<sup>2</sup> See e.g., Klaus Dieter Bieter, *The Protection of the Right to Education by International Law* (Leiden: Matrinus Nijhoff Publishers, 2006) at 28. See also Fons Coomans, “Clarifying the Core Elements of the Right to Education” in Fons Coomans et al, eds, *The Right to Complain about Economic, Social and Cultural Rights* (Utrecht: Netherlands Institute of Human Rights, 1995) 18 SIM Special 11.

<sup>3</sup> J. Donnelly and R. E. Howard, “Assessing National Human Rights Performance: A Theoretical Framework” (1988) 10 Hum. Rts. Q. 215.

<sup>4</sup> Bieter, *supra* note 2 at 91.

<sup>5</sup> R. Lindahl, “The Right to Education in a Globalized World” (2006) 10 Journal of Studies in International Education 12 at 7.

Below, the content and scope of the right to education is discussed in the context of three primary international instruments: UDHR, ICESCR, and the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention against Discrimination in Education (CADE).

### **A. Universal Declaration of Human Rights**

The first internationally agreed upon definition of the right to education was formulated in Article 26 of the UDHR. Article 26 provides the following:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stage. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.<sup>6</sup>

As a Resolution of the General Assembly, the UDHR is not binding. Rather, it is described as a declaration with moral authority. The UDHR is considered the contemporary foundation of human rights codification and the primary source of internationally recognized human rights standards.<sup>7</sup> Many international binding instruments such as the ICESCR are heavily influenced by the UDHR. Further, it is widely held by scholars that the UDHR is considered customary international law and is thus binding upon all states.<sup>8</sup>

Article 26(1) of the UDHR requires states to attend positively to the realization of the right to education. When read in conjunction with Article 22, which entitles everyone to “realization, through national effort and international co-operation . . . of the economic, social and cultural rights,”<sup>9</sup> the positive nature of the states’ obligation becomes clear. In other words, countries must devote national resources, or obtain them

<sup>6</sup> Universal Declaration of Human Rights, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71 [UDHR].

<sup>7</sup> See e.g., Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law” (1995) 25 Ga J Int’l & Comp L 287 at 322. See also Sital Kalantry, Jocelyn E Getgen & Steven Arrigg Koh, “Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR” (2010) 32:2 Hum Rts Q 253 at 263.

<sup>8</sup> See e.g., Hannum, *supra* note 9 at 322; Anthony D’Amato, “Human Rights as Part of Customary International Law: A Plea for Change of Paradigms” (1995) 25 Ga J Int’l & Comp L 47 at 50; Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991) at 237-38.

<sup>9</sup> UDHR, *supra* note 6.

from international sources, to meet this end.<sup>10</sup> This responsibility requires states to provide compulsory and free elementary level education. However, the obligation to provide free elementary education does not extend to secondary and higher education.

The non-discrimination provision of the UDHR is laid out in Article 2, which places a positive duty on states to draft national laws and regulations that establish equal access to education. This Article further states that “everyone is entitled to all the rights and freedoms set forth in [UDHR], without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>11</sup> As a result, even though there is no guarantee in the UDHR to a freestanding right to secondary or post-secondary education, it is implied that upon provision or regulation of such services to the public, the positive obligation of non-discrimination in granting access is engaged. This duty requires the adoption of non-discriminatory laws to achieve equality in accessing education.<sup>12</sup> According to the “general limitation” provision of the UDHR in Article 29(2), the right to education may be subject “only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”<sup>13</sup>

## **B. UNESCO Convention Against Discrimination in Education**

UNESCO is a specialized agency of the Economic and Social Council (ECOSOC), one of the United Nations’ six principal organs. UNESCO came into being on November 4, 1946. It was established for the purpose of contributing to global “peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.”<sup>14</sup> At the initiative of ECOSOC in 1954, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed Special Rapporteur Charles Ammoun to prepare a report on the issue of discrimination in education. In this report, Ammoun recommended that the basic principles enunciated therein be implemented in an international instrument.<sup>15</sup> Accordingly, in October 1958, the

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<sup>10</sup> Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331. (entered into force 27 January 1980, signed by Iran on 23 May 1969) [Convention].

<sup>11</sup> UDHR, *supra* note 6.

<sup>12</sup> Convention, *supra* note 10 at 93.

<sup>13</sup> UDHR, *supra* note 6.

<sup>14</sup> Constitution of the United Nations Educational, Scientific, and Cultural Organization, UNESCOOR, 16 November 1945, UNTS 1947 No. 52 (1945) 276 at 278 [Constitution].

<sup>15</sup> Yves Daudet & Pierre Michel Eismann, *Commentary on the Convention Against Discrimination in Education*, (Paris: United Nations Educational, Scientific and Cultural Organization, 2005) at 7.

UNESCO General Conference adopted a Resolution<sup>16</sup> whereby this institution was entrusted with the task of seeking member states' comments and establishing a covenant addressing discrimination in education. UNESCO adopted CADE on December 14, 1960, and it entered into force on May 22, 1962.

CADE was adopted on the basis of the UDHR's principles of non-discrimination and the universal right to education. The primary purpose was to prohibit discrimination in education and to promote the equality of opportunity and treatment for all persons in this field.<sup>17</sup> Iran expressed its consent to be bound by this agreement when it accepted CADE on July 17, 1968. Iran entered the convention into force on October 17, 1968.<sup>18</sup> Importantly, Iran did not qualify its ratification of CADE, nor did Iran deposit any reservations at the time of its acceptance in 1968. Accordingly, all provisions of the Convention legally bind Iran.

As per Article 1 of CADE, a definition of discrimination includes the following:

[A]ny distinction, exclusion, limitation or preference which, being based on ... religion ... has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard...<sup>19</sup>

Article 3 of the Convention requires that states implement legislative frameworks that ensure the presence of non-discriminatory policies and practices in the admission process to educational institutions. The obligations of state parties include the discontinuance of any administrative practices or instructions that involve discrimination. Article 4 of the convention obliges states to develop national policies that promote the equality of opportunity and treatment in education. Article 4 specifically requires states to make tertiary education accessible to all citizens on the basis of individual capacity.<sup>20</sup> Article 5(1)(b) guarantees the right of parents to establish and adopt alternative institutions for the education of their children, concomitant with their religious beliefs, so long as these institutions conform to the minimum standards

<sup>16</sup> *Records of the General Conference*, UNESCO Res 1.34, UNESCOOR, 10th Sess, (1958) 10 at 17.

<sup>17</sup> Hector Gros Espiell, *Significance of the Convention against Discrimination in Education* (1960), (Paris: United Nations Educational, Scientific and Cultural Organization, 2005) at 4.

<sup>18</sup> UNESCO, *Informal Information Meeting on the preparation of reports on the implementation of the Convention and Recommendation against Discrimination in Education: Convention Against Discrimination in Education (1960) Status of ratification by regions as of 31 December 2004 Reference Document*, UNESCOOR, 2005, ED-2005/WS/39 1 at 4.

<sup>19</sup> *Convention Against Discrimination in Education*, 14 December 1960, 429 UNTS 93 at 96, UKTS 1962 No 44 [Convention cited to UNTS].

<sup>20</sup> *Ibid* at 98.

set out by authorities.<sup>21</sup> Article 2 of the convention excludes the establishment of religious educational institutions from the definition of discrimination, so long as participation in those institutions is optional.<sup>22</sup>

Approximately thirty-five per cent of UNESCO's budget is currently spent on educational programs; education constitutes the main focus of this organization.<sup>23</sup> The principle of non-discrimination in the access to education forms an integral part of UNESCO's mission. According to Article I.2(b) of its constitution, UNESCO was established to advance "the ideal of equality of educational opportunity without regard to race, sex or any distinctions, economic or social."<sup>24</sup> As the only UN agency with a mandate in higher education, UNESCO has subsequently organized a number of conferences on this subject. Article 6 of the convention specifically requires state parties to follow the recommendations adopted by UNESCO conferences.<sup>25</sup> Therefore, though not legally binding, these recommendations are considered to be soft law.<sup>26</sup>

The UNESCO 1998 World Conference on Higher Education took place in Paris on October 5–9, 1998. Representatives from 180 countries, including Iran, attended the conference. The final report stated that "higher education shall be equally accessible to all on the basis of merit, in keeping with Article 26.1 of the UDHR. As a result, no discrimination can be accepted in granting access to higher education on grounds of race, gender, language, religion or economic, cultural or social distinctions, or physical disabilities."<sup>27</sup> Furthermore, participating states were encouraged to establish legislative and political frameworks that would act to reform education and facilitate its accessibility. States were also instructed to implement measures that would disallow discrimination based upon prohibited grounds, such as religion. Two subsequent conferences, one convened in 2003 and the other in 2009, also emphasized the need for the elimination of discrimination in the accessibility of university education.<sup>28</sup>

### C. The International Covenant on Economic, Social, and Cultural Rights

The ICESCR was adopted December 16, 1966, to provide greater content, expression, and effect to the economic, social, and cultural rights in the UDHR. Following many years of drafting debates, the ICESCR entered into force on January 3, 1976, and has since provided the most comprehensive protection of the right to

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<sup>21</sup> *Ibid* at 100.

<sup>22</sup> *Ibid* at 96.

<sup>23</sup> United Nations, *A Guide to Information at the United Nations* (New York: United Nations, 1995) at 78-79.

<sup>24</sup> Constitution, *supra* note 14 at 280.

<sup>25</sup> *Ibid* at 286.

<sup>26</sup> Bieter, *supra* note 2 at 234.

<sup>27</sup> *World Conference on Higher Education - World Declaration on Higher Education for the Twenty-first Century: Vision and Action*, UNESCOOR, 1998, ED-98/CONF.202/CLD.49.

<sup>28</sup> *Final report of the Meeting of Higher Education Partners (World Conference on Higher Education +5)*, UNESCOOR, 2004, ED-2004/WS/19; *2009 World Conference on Higher Education: The New Dynamics of Higher Education and Research for Societal Change and Development*, UNESCOOR, 2009, ED-2009/CONF.402/2



education in comparison with other UN instruments.<sup>29</sup> The covenant commits its member states to respect the economic, social, and cultural rights of individuals in their countries. Iran signed the ICESCR on April 4, 1968, and ratified it on June 24, 1975; it entered into force on January 3, 1976.<sup>30</sup> Although this covenant, as well as CADE, were both signed and ratified by Iran prior to the 1979 revolution, it is a given that these documents remain binding on successive governments.

Article 13 of the ICESCR is considered to be the most important expression of the right to education in an international agreement.<sup>31</sup> It reads as follows:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The State Parties to the present Covenant recognize that, with a view to achieving the full realization of [the right to education],
  - (a) Primary education shall be compulsory and available free to all;
  - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally *available* and *accessible* to all by every appropriate means, and in particular by the progressive introduction of free education;
  - (c) Higher education shall be made equally accessible to all, on the basis of capacity, be every appropriate means, and in particular by the progressive introduction of free education . . .
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article

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<sup>29</sup> *Implementation of the International Covenant on Economic, Social and Cultural Rights General Comment No 13 The Right to Education* (Article 13 of the Covenant), UNCESCROR, 21st Sess, E/C.12/1999/10 (1999) [Implementation]; *UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social, and Cultural Rights: A comparative analysis*, UNESCOOR, ED-2006/WS/28 (2006) at 10, n 7.; Beiter, *supra* note 2 at 94.

<sup>30</sup> *States Parties to the International Covenant on Economic, Social and Cultural Rights and Status of the Submission of Reports in Accordance with the Programme Established by the Economic and Social Council in Resolution 1988/4 and Rule 58 of the Rules of Procedure of the Committee*, UNESCOR, 27th Sess, Annex, E/C.12/2001/14, (2001) 5.

<sup>31</sup> Convention, *supra* note 10 at 99.

and to the requirement that the education given in such institution shall conform to such minimum standards as may be laid down by the State.<sup>32</sup>

The obligations of each state, with regard to the expectations for educational systems, are set out in Article 13(2) of the ICESCR. “Availability” and “accessibility” are important terms in defining state obligations.<sup>33</sup> The “general availability” of education refers to a state’s duty to make the physical means of education, such as schools, teachers, and teaching materials, available to all. The principle of “general accessibility” calls for the elimination of all barriers that would unfairly impede an individual’s chance of admission.<sup>34</sup>

The education provisions of the ICESCR must be read in conjunction with the non-discrimination provisions enunciated in Articles 2(2) and 3. Articles 2(2) and 3 provide the following:

2(2). The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised 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.

3. The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.<sup>35</sup>

Accordingly, accessibility to education must be promoted by the state, which in turn can be accomplished through the removal of obstacles such as discrimination. This interpretation is further supported by Article 13(2)(c), which requires tertiary education to be “equally accessible to all.”

The ICESCR also imposes a positive duty on the signatory states to ensure that secondary education is available and accessible to all applicants on the basis of capacity. Therefore, if an individual possesses the skills to attain higher education he or she should be allowed to attend an appropriate institution. Additionally, Article 13(4) elaborates on Article 26(3) of the UDHR, which protects the freedom of individuals to establish their own educational institutions, so long as they conform to the minimum standards set out by the state and Article 13(2). As such, Article 13(4) of ICESCR embodies the *freedom* dimension of the right to education. The rights protected by the ICESCR are subject to the “general limitation” provision of Article 4. However, the

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<sup>32</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 UNTS 3, UKTS 1977 No 6 5 at 9 [Covenant].

<sup>33</sup> *Ibid* at 9.

<sup>34</sup> Bieter, *supra* note 2 at 96.

<sup>35</sup> Covenant, *supra* note 32 at 6.

limitation must be determined by law, be compatible with the nature of the law being limited, and have as its sole purpose the promotion of the general welfare of the society.<sup>36</sup>

The UN Committee on Economic, Social and Cultural Rights (CESCR) is the body in charge of monitoring the implementation of the ICESCR. The ECOSOC Resolution 1985/17 established the CESCR, a committee of independent experts, on May 28, 1985.<sup>37</sup> The CESCR committee receives the collaboration of a special rapporteur on the right to education, who is appointed by the UN Commission on Human Rights. To interpret the meaning of the right to education, we can also look at the General Comments of the CESCR. Although, the General Comments are not legally binding they serve an important interpretative function in relation to the rights and obligations provided in the ICESCR.

The CESCR declares that the principle of progressive realization, as outlined in Article 2(1) of the ICESCR, does not apply to the right to education.<sup>38</sup> Progressive realization is the principle whereby state parties are permitted to gradually progress towards the realization of economic, social, and cultural rights, according to the subjective standard of maximum available resources.<sup>39</sup> In contrast to the obligation to realize civil and political rights, state parties are not generally required to immediately implement economic, social, and cultural rights. For example, Article 14 of the ICESCR permits a period of two years for state parties to implement free and compulsory primary education.<sup>40</sup> Despite this permissive clause, the CESCR has clarified that states must immediately take steps towards the realization of the right to education.<sup>41</sup> Furthermore, “such steps should be deliberate, concrete, and targeted as clearly as possible.”<sup>42</sup> This obligation requires state parties to implement legislative and judicial measures. Such measures are especially effective when existing legislation violates the covenant. General Comments 13 clearly states that countries must immediately abolish discriminatory policies and practices in relation to access to education.<sup>43</sup> In particular, state parties “must closely monitor education—including all relevant policies, institutions, programmes, spending patterns, and other practices—so as to identify and take measures to redress any de facto discrimination.”<sup>44</sup>

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ESC Res 1985/17, UNESCOR, E/1985/17, (1985) at 15.

<sup>38</sup> *Implementation of the International Covenant on Economic and Social Rights*, UN ESC, 21st Sess., E/C.12/1999/10 (1999) at 31 [Implementation].

<sup>39</sup> *Ibid* at 267.

<sup>40</sup> Covenant, *supra* note 34 at 10.

<sup>41</sup> *Supra* note 38.

<sup>42</sup> *Ibid* at 2.

<sup>43</sup> Implementation, *supra* note 38 at para 31.

<sup>44</sup> *Ibid* at para 37.

With regard to tertiary education, the CESCR has declared that states must immediately take steps towards making higher education accessible to all on the basis of capacity, as articulated by Article 13(2)(c) of the Covenant.<sup>45</sup> It is also noted that states must adopt and implement an educational strategy, which includes indicators to measure progress towards the full realization of the right to education in all levels.<sup>46</sup> The CESCR has adopted a framework originally proposed by former Special Rapporteur Katarina Tomasevki, which included certain indicators to measure states' progress in its implementation of educational strategies. Titled "4-A Right to Education Framework," Tomasevki's proposal outlined four educational indicators: availability, accessibility, acceptability, and adaptability.<sup>47</sup>

Availability refers to the state's obligations to provide an adequate number of teaching facilities. According to the CESCR, accessibility has three components. First, education must be made accessible to all without discrimination. Second, education must be physically accessible to everyone; schools must be established in rural areas as well as in cities. Third, the CESCR has noted that the ICESCR requires state parties to make education economically accessible to everyone. This means that primary education must be free, secondary education should be accessible by "every appropriate means," and higher education made available—progressively free of charge.<sup>48</sup> In addition to accessibility, a third indicator to measure state progress is acceptability, which addresses the substance and form of education. Acceptability requires that the state implement a curriculum that teaches non-discriminatory subject matters. The subjects that are taught in schools must incorporate content that is appropriate to the students' cultural, religious, and social background. Finally, adaptability requires flexibility in education. The CESCR emphasized that education must be able to adapt to the changing needs of communities, and to the diversity of students.

## II.DENIAL OF THE RIGHT TO POST-SECONDARY EDUCATION TO BAHÁ'Í STUDENTS

In the early 1980s, after the establishment of the Islamic regime, policies to deny university education to the Bahá'í community were implemented. In addition, large numbers of Bahá'í students from primary, secondary, and post-secondary schools were expelled for their beliefs. The policy to exclude Bahá'í students from post-secondary institutions remains in effect today. Although primary and secondary level students have been allowed to re-enroll in schools, the discriminatory practices against these

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<sup>45</sup> *Ibid* at para 21-22.

<sup>46</sup> *Ibid* at para 52.

<sup>47</sup> Katarina Tomasevski, *Human rights obligations in education: The 4-A Scheme* (The Netherlands: Wolf Legal Publishers, 2006).

<sup>48</sup> Implementation, *supra* note 38 at paras 13-14, 20.

younger students continue. Recently, the Bahá'í International Community (an NGO) obtained clear evidence of the Iranian authorities' discriminatory policies. In a directive issued by Iran's Ministry of Education in November 2011, the ministry directed school administrations to identify all Bahá'í children, including those at the pre-school level.<sup>49</sup> Following the identification directive, widespread discriminatory measures were enacted. Bahá'í students in primary, middle, and high schools were subjected to various forms of harassment, vilification, and psychological pressure. Examples of discriminatory measures include expulsion, physical punishment, pressure to convert to Islam, physical isolation in classrooms, and having their beliefs vilified and scorned in front of the class.<sup>50</sup>

Discriminatory policies are only directed against those who identify themselves as Bahá'ís. Members of religions recognized in the Iranian constitution, namely Zoroastrianism, Judaism, and Christianity, have had their right to education respected since the Islamic revolution of 1979.<sup>51</sup> In his 1995 report, UN Special Rapporteur Abdelfattah Amor noted the presence of recognized minority students in Iranian universities, such as the existence of the chair of Armenian Studies at the University of Isfahan.<sup>52</sup> Consequently, it appears that the educational discriminatory policies are only directed against Bahá'ís.

Iranians who wish to enroll in university are currently required to pass an entrance examination, which, along with the entrance examination, is the standard for student admission.<sup>53</sup> The Ministry of Science, Research, and Technology oversees higher education in Iran and is also responsible for administering the entrance examination through the Sanjesh organization, which is the ministry's official academic measurement bureau.<sup>54</sup> Until 2003, the entrance examination required applicants to declare their religion. If an application indicated a religion other than Christianity, Islam, Judaism, or Zoroastrianism, it was automatically denied. One young Iranian Bahá'í explained his experience in the following manner:

In Iran, you have to apply for an examination to go to college [or university]. If you are successful at your exam, you can go to university. There is a place [on the examination form] which asks, 'What is your religion?' It has items just for Islam, Christianity, Judaism, and Zoroastrianism. And all of us [the Bahá'í students], we didn't write anything at that place. On the left side I just wrote

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<sup>49</sup> *Situation of the Baha'is in the Islamic Republic of Iran* UN Human Rights Council. UNHRC, 19th sess. 14 March 2012.

<sup>50</sup> *Rights as concerns the situation of the Bahá'ís*, Baha'í International Community, December 2010 at 15.

<sup>51</sup> *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief*, ECOSOC, 9 February 1996, E/CN.4/1996/95/Add.2 at 43.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Punishing Stars, Systematic Discrimination and Exclusion in Iranian Higher Education*, the International Campaign for Human Rights in Iran, December 2010 at 7.

<sup>54</sup> *Ibid* at 14.

‘Bahá’í.’ So they don’t let us take that examination. They didn’t give us the entrance card to go to the examination hall. So we can’t even take the exam.<sup>55</sup>

The 1979 Constitution of the Islamic Republic of Iran clearly excludes Bahá’ís from official religious recognition. Article 13 of the constitution states that “Iranian Zoroastrians, Jews and Christians are the only recognized minority religious groups who, within the limits of law, are free to perform their religious rites and ceremonies, and in personal status and religious teaching, they may act in conformity with the dictates of their own creed.”<sup>56</sup> This essentially led to the Bahá’ís becoming juridical non-persons.<sup>57</sup> Accordingly, there are provisions of the Iranian constitution that are clearly violated by the denial of post-secondary education to Bahá’ís. For example, Article 23 states that “the investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.”<sup>58</sup> Needless to say, such provisions are open to a wide array of interpretations. Since the 1980s, the Iranian government has instituted a requirement that all Bahá’ís renounce their faith in order to gain admission to Iran’s public and private universities.<sup>59</sup> In a secret directive entitled “The Bahá’í Question,” signed by the Secretary of the Supreme Revolutionary Council, Golpaygani, and by the Supreme Leader Khamenei in 1991, it is clearly stated that “[the Bahá’ís] must be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Bahá’ís.”<sup>60</sup> This memorandum, which was brought to the attention of the UN by Special Rapporteur Amor, sets out the policy that various levels of Iranian government are directed to adopt in dealing with Bahá’ís. In light of this document, it is clear that the intention of the Iranian authorities in denying post-secondary education to Bahá’ís has long been to block the progress and development of their community.

The aforementioned exclusionary process of screening university applications continued until late 2003, when the government officially announced that it would drop the declaration of religious affiliation from the applications.<sup>61</sup> This allowed for 1,000 Bahá’í applicants to take the entry examination in the fall of 2004. As part of the examination, students were asked to choose one of the four recognized religious subjects to be tested on. Most of the Bahá’í students chose Islam, as they had been taught this subject in their primary and secondary schooling, and thus had a solid familiarity with its teachings and principles. In August 2005, however, when the results

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<sup>55</sup> *Written Statement Submitted by the Baha’i International Community, a Non-Governmental Organization in Special Consultative Status*, ECOSOC 55th Sess. 29 January 1999, E/CN.4/1999/NGO/13 at 17.; *Supra* note 1 at ch 1.

<sup>56</sup> Nazila Ghanea, *Human Rights, the UN & the Baha’is in Iran* (Oxford: George Ronald, 2002) at 258.

<sup>57</sup> *Ibid* at 102.

<sup>58</sup> *Ibid* at 260.

<sup>59</sup> Sanei, Faraz, “Barring the Baha’is” Iran Press Watch (April 15, 2010), online: Iran Press Watch <<http://www.iranpresswatch.org>>; *Supra* note 55 at 7.; *Supra* note 51 at 58.

<sup>60</sup> *Supra* note 55 at 7.; *Supra* note 51 at 10.

<sup>61</sup> Bahá’í International Community, *supra* note 1 ch 2.

of the applications were mailed out, this choice was reflected as the students' declared religion.<sup>62</sup>

In response, the Bahá'í community wrote a letter to President Mohammad Khatami, explaining their concerns regarding the incorrect religious declarations. A group of Bahá'í students also complained in person to the Educational Measurement and Evaluation Organization (EMEO).<sup>63</sup> However, the authorities refused to correct the error on the basis that the Bahá'í faith was not among the officially recognized religions in Iran. Shortly after this incident, these same students wrote a letter to the EMEO stating their objection to having been falsely identified as Muslims, as they had been promised that the religious affiliation portion of the entrance examination would be eliminated. The EMEO seemed to sympathize with their objection and allowed these students to fill out a revised registration form that did not contain a column for religious affiliation. Still, the names of only 10 of 800 Bahá'í students who had passed the examination and met the new deadline were published in the September 12, 2004, EMEO bulletin.<sup>64</sup> The ten students whose religious affiliation had been amended refused to register in the universities where they had been admitted out of solidarity with the remaining 790 students. The government repeated this prejudiced practice during the 2005–2006 academic year, identifying as Muslims those students who had chosen Islam as the subject matter of their religion tests.

Recently, the pattern of discrimination against Bahá'ís has manifested itself in another manner. While the Iranian government has removed the identification of religious adherence from the application process, Bahá'í students who are identified prior to their admission are denied entry for arbitrary administrative reasons. The most common method of denying Bahá'í students admission to universities is by marking their applications as incomplete. Students who are admitted to universities and are not identified are often expelled once they are discovered to be Bahá'í.<sup>65</sup> During the 2006–2007 academic year, 480 Bahá'í students passed their entry examinations, yet only 289 were admitted to post-secondary institutions. Of those 289 students, half were later identified in their respective universities as Bahá'ís and were expelled either during the subsequent admission process or after their enrollment.<sup>66</sup> One of the most recent cases is that of Shohreh Rowhani, a top-ranking Bahá'í student in the 2011 national entrance exam, who was turned away on the grounds that her file was incomplete.<sup>67</sup> Rahil

<sup>62</sup> *Oral statement to the 17th session of the UN Human Rights Council*, Bahá'í International Community, 15 June 2011.

<sup>63</sup> Bahá'í International Community, *supra* note 1 ch 2.

<sup>64</sup> *Situation of the Bahá'ís in the Islamic Republic of Iran*, *Oral Statement of the Bahá'í International Community to the 61st Session of the Commission on Human Rights*, Bahá'í International Community, 14 March 2005.

<sup>65</sup> *Supra* note 53 at 14.

<sup>66</sup> *Supra* note 50 at 13.

<sup>67</sup> "Shohreh's story: How Iran violated a top student's right" *Bahá'í World News Service* (September 28, 2011), online: Bahá'í World News Service <<http://www.news.bahai.org>>; *Oral statement to the 18th session of the UN Human Rights Council*, Bahá'í International Community, 23 September 2011.

Mehdizadeh, a student with a similar story, was interviewed by the International Campaign for Human Rights (ICHR) in Iran on July 15, 2010. Mehdizadeh made the following statement:

Every year following the entrance exam, the phrase ‘your file is incomplete’ would appear instead of the exam results. This was exactly the same process faced by all of my Bahá’í friends at the time. Obviously, if there were anything missing from our files, they would not have issued us the ID card necessary for taking the entrance exam in the first place. I took the examination in 2005, 2006, and 2007, but I was not able to enter the university.<sup>68</sup>

Arash Shahsavandi, a Bahá’í student who was initially allowed to enroll in the industrial engineering program at the Polytechnic and Engineering University of Golpaygan, was later expelled on February 2007, after completing one term. He described the process of expulsion as follows:

After several days of going to the university Security Office, the Head of Security told me that, ‘the problem with your file is about religion,’ because I had not picked any of the available four choices. My answer was clear, I did not pick because I did not believe in any of the four religions mentioned on the form. Finally, upon his request, I wrote on the form that I follow the Bahá’í Faith, and after several days, he served a verbal message to me from the University Chancellor, Dr. Akbari, which said because of my belief in the Bahá’í Faith, I will no longer be able to register for classes and study in this university.<sup>69</sup>

The extent and scope of these events across the country is a clear indication of an official governmental policy. Several official documents issued by various Iranian ministries provide further support. Chief among these documents was a letter sent by the Central Security Office of the Ministry of Science to 81 universities in 2006, instructing the institutions to expel Bahá’í students at the time of enrolment or at any stage during their studies.<sup>70</sup> Once a student has been denied entry to a university, he or she has no ability to appeal the decision, as Iran does not have any bodies of appeal for challenging the denial of the right to education. However, there is ample evidence of the university officials, the judiciary, professors, and even the media attempting to reverse

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<sup>68</sup> *Supra* note 53 at 29.

<sup>69</sup> *Supra* note 53 at 29.

<sup>70</sup> “Confidential Iran Memo Exposes Policy to Deny Bahá’í Students University Education” *Bahá’í World News Service* (August 27, 2007), online: Bahá’í World News Service <<http://news.bahai.org/story/575>>; *Supra* note 53.



and draw attention to these discriminatory practices.<sup>71</sup> Despite the sympathy and regret expressed by many individuals, these efforts have not been successful.

### A. The Bahá'í Institute for Higher Education

In an endeavour that was called “an elaborate act of communal self-preservation” by the *New York Times*,<sup>72</sup> Iranian Bahá'ís established their own higher education institute in 1987. Gradually, it evolved into a systematic and organized university program, which became known as the Bahá'í Institute for Higher Education (BIHE). By mid-1998, over 900 students were enrolled in BIHE, with more than 150 academics and instructors teaching ten different subjects.<sup>73</sup> Since then, BIHE mandated itself to meet the educational needs of young Bahá'ís who have been systematically denied the right to higher education. BIHE operates largely through correspondence: classes are held in private homes as well as in small spaces such as laboratories and libraries. The faculty consists primarily of Bahá'í professors who were fired for their beliefs after the 1979 revolution and of volunteer professors from universities abroad. None of BIHE's faculty members are paid for their services; instead, these teachers dedicate their time as a form of community service.<sup>74</sup> The BIHE has produced more than 2,000 graduates since its inception in 1987. Approximately one in ten of those students have since gone abroad to pursue post-graduate studies at one of 60 international universities that recognize BIHE.<sup>75</sup>

Although the Iranian government was aware of BIHE and the scope of its operations, it did not undertake any action against it until 1996, when it confiscated BIHE's materials. Despite this, the government did not move to shut down BIHE until October 1998.<sup>76</sup> In a nation-wide raid in October 1998, 36 BIHE faculty members and staff were arrested, and much of its equipment and records were confiscated.<sup>77</sup> At that time, BIHE offered bachelor's degrees in applied chemistry, biology, dental sciences, pharmacological sciences, civil engineering, computer science, psychology, law, literature, and accounting. Those arrested were pressured to sign a declaration binding them to cease the operations of BIHE; however, they refused to sign and continued their educational efforts.<sup>78</sup> Another raid of three classrooms took place in early 2001, which was followed by one more systematic and organized search on July 19, 2002. On that date, just as the institute was holding its entry examination, members of the Iranian Revolutionary Guard entered three BIHE examination sites in the cities of Shiraz and

<sup>71</sup> *Supra* note 53 at 31-38.

<sup>72</sup> Bahá'í International Community, *supra* note 1 ch 1.

<sup>73</sup> *Ibid.*; *Supra* note 55.

<sup>74</sup> *Supra* note 55 at 13.

<sup>75</sup> Tim Hume, “Iran bans ‘underground university,’ brands it ‘extremist cult’” *CNN* (November 10, 2011), online: CNN <<http://www.edition.cnn.com>>.

<sup>76</sup> *Supra* note 55.

<sup>77</sup> *Ibid.*

<sup>78</sup> Bahá'í International Community, *supra* note 1 ch 4.

Mashhad. The proceedings were videotaped, records and equipment were confiscated, and the exam process was dismantled. These disruptions and harassments have since continued.

In May 2011, as part of the latest government crackdown on BIHE, more than 30 homes in Tehran, Karaj, Isfahan, and Shiraz were raided and property was confiscated.<sup>79</sup> BIHE was then declared illegal by the Iranian authorities. During the raid sixteen individuals were arrested and seven professors and administrators were subsequently sentenced to four- and five-year prison terms “for being involved in an illegal group intending to commit crimes against national security.”<sup>80</sup> One of Iran’s newspapers reported “the BIHE university was a cover for the propagation of the Bahá’í Faith and was used to trap citizens in the Bahá’í spy network and to gather information from within the country.”<sup>81</sup> According to Diane Ala’i, a representative for the Bahá’í International Community, “neither defendants nor their lawyers have seen a written copy of the verdict.”<sup>82</sup> Abdolfattah Soltani, the lawyer for these individuals and the co-founder of the Defenders of Human Rights Centre, along with four others, including Nobel Peace Prize Laureate Shirin Ebadi were arrested in early September 2011, only a short period before the defendants’ trial in October 2011.

Despite the government’s attempts to shut down the institution, BIHE continues its operation today. More than 1,000 Bahá’í students apply to BIHE every year. BIHE offers seventeen programs and has around 250 instructors. BIHE confers degrees, but since the government does not recognize the institute, these degrees are not recognized. Despite this, a growing number of universities in Europe, North America, India, and Australia admit BIHE graduates for post-graduate studies. Most of these students return to Iran upon graduation.<sup>83</sup> BIHE sustains itself with the help of students who, upon finishing their program, return to Iran to work for BIHE. Funding for Bahá’í students is provided by the National Spiritual Assemblies of Bahá’ís (NSA), which are located in the countries where students attend universities. For example, Canada’s NSA covers students’ costs of accommodation and tuition, while Britain’s NSA pays for tuition only. Each year, the supporting NSAs announce the number of students that they are prepared to sponsor, and BIHE’s administrator decides which students to send from the list of applicants.

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<sup>79</sup> Mitra Mobasherat & Joe Sterling, “For Baha’i educators, a lesson in power from Iran”, CNN (3 June 2011), online: CNN <<http://www.edition.cnn.com>>. See also The situation of human rights in the Islamic Republic of Iran: Report of the Secretary-General, UNGAOR, 66th Sess, UN Doc A/66/361, (2011) at para 25.

<sup>80</sup> *Ibid.*

<sup>81</sup> “Trial of Bahá’í educators: condemnation spreads”, *Bahá’í World News Service* (7 November 2011), online: *Bahá’í World News Service* <<http://www.news.bahai.org>>.

<sup>82</sup> *Ibid.*

<sup>83</sup> Bahá’í World News Service, “What is the Baha’i Institute for Higher Education” Closed Doors: Iran’s campaign to deny higher education to Bahá’ís, online: *Baha’i World News Service* <<http://www.news.bahai.org>>.

This NSA sponsorship of Baha'i graduates of the BIHE is exemplified by the case of Mr. R, a friend of the author.<sup>84</sup> Mr. R obtained a Bachelor's of Computer Science from BIHE in Tehran. When he was offered the opportunity to continue his education in England, he had to find and apply to the university and program of his choice. Through this process, Mr. R was eventually able to obtain his Master of Science degree, and graduated with distinction from the University of Manchester. Mr. R described his experience in the following manner:

[G]aining admission into a university is the students' responsibility. Upon admission, the NSA will pay for your tuition. I applied to five universities in England. I was offered admission at the University of Manchester and the University of Edinburgh. Subsequently, I accepted University of Manchester's offer and enrolled in their Information Systems Engineering MSc program.<sup>85</sup>

It is clear that through the aforementioned government actions taken against Bahá'í students and BIHE, for the past three decades Iran has been in violation of a number of international laws regarding non-discrimination in education. Treatment of Bahá'ís in this respect demonstrates an organized pattern of deliberate governmental policy, which has withstood the changes of ruling presidents and their cabinets. On the one hand, this may be explained by the constitutionally protected powers that the supreme leader and his council practice over matters regarded to be of utmost importance. On the other hand, it represents deeply enshrined viewpoints of the Iranian Muslim population towards Bahá'ís. The Muslim clergy has relentlessly spread and reinforced a negative attitude against the Bahá'í faith. However, an analysis of the historical reasons for this practice is beyond the scope of this paper. Yet, the false accusations, which the Iranian Muslim clergy have used over the course of two centuries, to justify persecuting Bahá'ís to the masses, have remained the same and are voiced at the UN. Below, I will discuss and evaluate the reaction of international organizations to Iran's denial of the right to post-secondary education to Bahá'ís.

### III. REACTION OF THE UN HUMAN RIGHTS MECHANISMS

#### A. Bahá'í International Community (BIC)

The Bahá'í International Community (BIC), a non-governmental organization, is headquartered at the UN offices in New York, NY, and has been at the forefront of bringing the case of Bahá'ís to the attention of the UN human rights agencies. BIC was accredited as an NGO by ECOSOC in 1970; since then, it has enjoyed special

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<sup>84</sup> Pseudonym used.

<sup>85</sup> Mr. R chose to remain anonymous for his interview with the author of this paper.

consultative status. As such, BIC has access to special events organized by the president of the general assembly, ECOSOC and its subsidiary bodies, as well as various human rights mechanisms of the UN. As an NGO with special consultative status, BIC also submits quadrennial reports to ECOSOC. According to the latest of these, the aim and purpose of BIC is “to bring the principles of the Bahá’í Faith and the insight and experience of its worldwide membership to bear on the issues under consideration by the United Nations, including the protection and promotion of human rights . . . ”<sup>86</sup> Since December 15, 1981, BIC has submitted reports on the persecution of Bahá’ís in Iran to ECOSOC.<sup>87</sup> BIC has also published numerous papers and addressed the UN and the world at large about the situation of Bahá’ís in Iran.<sup>88</sup> These reports have been referred to and reviewed by ECOSOC in its evaluation of the situation. As a result of the efforts of BIC, ECOSOC and its members have voiced serious concerns over the denial of education to Iranian Bahá’ís.

In its latest submissions to the CESCR’s second meeting of the fiftieth session, BIC mentioned the continued denial of post-secondary education to Iranian Bahá’í students and elaborated upon the barriers that young Bahá’ís face in securing employment. As of April 29, 2013, “[p]ersons identified as belonging to the Bahá’í community were banned from taking up any post in the public sector and 25 specific trades and professions in the private sector.”<sup>89</sup> This is enforced through recruitment procedures that require prospective employees to select one of the four recognized religions in their applications, much like the situation regarding university entrance examinations. Mr. R, the Information System Engineering student whose experiences were briefly discussed above, explained how Bahá’í students who have gone on to obtain post-graduate degrees upon completion of their studies at BIHE, face their first impediment in using their degrees to apply for jobs due to the refusal of the Ministry of Education to translate or recognize their certificates. As a result, Mr. R has had to do freelance work to make a living. In its reports and submissions, BIC has referred to the great number of Bahá’í students who have been denied entry to the Iranian universities throughout the past three decades.

## B. UNESCO

The Committee on Conventions and Recommendations, an agent of UNESCO, monitors educational standards. Article 7 of the UNESCO constitution requires member

<sup>86</sup> *Quadrennial reports for the period 2006-2009 submitted by non-governmental organizations in consultative status with the Economic and Social Council through the Secretary-General pursuant to Council resolution 1996/31*: Note by the Secretary-General, UNESCOR, 2011, UN Doc E/C.2/2011/2/Add.5, at 7.

<sup>87</sup> *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and other Dependant Countries and Territories: Treatment of Baha’is in Iran: Note by the Secretary-General*, UNESCOR, 38th Sess, UN Doc E/CN.4/1517, (1981).

<sup>88</sup> See e.g. *Chronological summary of individual acts of persecution against Baha’is in Iran, from August 1978*, (New York: Baha’i International Community, 1981).

<sup>89</sup> UNCESCR ESCOR, 50th Sess, 2d Mtg, UN Doc E/C.12/2013/SR.2 at para 1.

states to submit reports on the actions taken pursuant to CADE in a manner determined by the General Conference, one of UNESCO's three organs.<sup>90</sup> This provision of the UNESCO constitution reinforces a parallel obligation placed upon the state by Article 7 of CADE. Reports are requested from member states by means of questionnaires that inquire about the states' realization of CADE. The committee then undertakes a consideration and an analysis of those reports.<sup>91</sup> Upon the conclusion of its examination, the committee transmits a report to UNESCO's executive board, which subsequently transmits it to the general conference. The report, supplemented by comments from the General Conference, is then made available to the UN and member states. Generally, the report contains UNESCO's assessment on how certain provisions of CADE should be interpreted, the extent to which CADE has been implemented, and what can be done to make the implementation more effective.<sup>92</sup> To date, UNESCO has neglected to focus on the discrimination of Iranian Bahá'í students in its reports. Considering the fact that this process rather naively relies on reports made by Iranian authorities, it is unrealistic to expect otherwise. Not surprisingly, this avenue of monitoring has been criticized for being too friendly and non-adversarial.<sup>93</sup> Furthermore, this system is considered flawed because the committee is composed of governmental representatives rather than experts, resulting in politicization that undermines its authority.<sup>94</sup>

UNESCO's monitoring of standards set out by CADE is also conducted through an individual complaint procedure. The committee is required to examine complaints submitted by individuals, groups, or NGOs concerning alleged violations of human rights in the field of education. Upon meeting certain criteria, including admissibility, the complaint process may elicit a confidential report from the committee, containing its decisions and recommendations. The report is subsequently made available to the complainant and the state to which the complaint was directed. Due to its confidential nature, little is known about the individual complaint procedure. Accordingly, the individual complaint procedure has been largely unsuccessful in ensuring protection of the Bahá'ís' right to education in Iran. As such, the complaint procedure has been subject to criticism. For example, Weissbrodt and Farley, having examined 64 cases of individual complaints presented to the committee between 1980 and 1991, concluded that, among other issues, this process does not reach enough cases. Due to its secrecy, only a few people seek relief.<sup>95</sup> Furthermore, the "UNESCO Committee often did not verify government statements with the case authors to ensure that the victims [who have

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<sup>90</sup> Constitution, *supra* note 14 at 288.

<sup>91</sup> *Executive Board, Examination of the methods of work of the Committee on Conventions and Recommendations: Information Document*, UNESCO, 139th Sess, UN Doc 169/EX/CR/2, (2004).

<sup>92</sup> Beiter, *supra* note 2 at 36.

<sup>93</sup> *Ibid* at 268.

<sup>94</sup> *Ibid*.

<sup>95</sup> *Ibid* at 239.

been imprisoned] were actually released.”<sup>96</sup> Also, while ameliorating the condition of some victims, the process has failed to ensure the protection of human rights on a larger scale.<sup>97</sup>

### C. Economic and Social Council (ECOSOC)

ECOSOC is one of the UN’s six principal organs. This body is empowered by Article 68 of the UN Charter to set up a commission for the promotion of human rights. Therefore, the bodies that are set up by ECOSOC are considered charter-based institutions.<sup>98</sup> UNESCO and the recently defunct UN Commission on Human Rights (UNCHR) are examples of such bodies. According to Article 16(1) of ICESCR, state parties are under an obligation to submit reports “on the measures which they have adopted and the progress made in achieving the observance of the rights recognized [in the covenant]”<sup>99</sup> to the assembly, which will subsequently submit copies to the ECOSOC for consideration. States must submit their first report two years after accepting ICESCR and, subsequently, every five years. Iran’s first report was due in 1977. Articles 19 and 20 of ICESCR provide a consultative mechanism between states, ECOSOC, and UNCHR. Under Article 21 of ICESCR, ECOSOC may submit reports to the assembly with recommendations on the measures taken by the state and the progress made in achieving general observance of the right to education. ECOSOC may also request international assistance by bringing issues arising from state reports to the attention of other organs of the UN.<sup>100</sup> ECOSOC uses the assistance of CESCR in considering the reports of state parties. As a result, it has designated CESCR to receive and consider state reports. The first report of the Islamic Republic of Iran was considered by CESCR in 1993, when the committee noted that the issue of the denial of university education to Bahá’ís had not been addressed.<sup>101</sup> It was not until May 2013 that the committee considered the next report. Again the committee expressed its concern “that members of the Bahá’í community face widespread and entrenched discrimination, including the denial of access to employment in the public sector and institutions of higher education, as well as to benefits of the pension system . . .”<sup>102</sup>

Special Rapporteurs with UNCHR have continuously recognized and condemned the discriminatory practices of the Iranian regime in their denial of the right

<sup>96</sup> *Ibid* at 393.

<sup>97</sup> David Weissbrodt & Rose Farley, “The UNESCO Human Rights Procedure: An Evaluation” (1994) 16:2 Hum Rts Q 391 at 392.

<sup>98</sup> John H Currie, Craig Forcese & Valerie Oosterveld, *International Law: Doctrine, Practice, and Theory* (Toronto: Irwin Law, 2007) at 645.

<sup>99</sup> Covenant, *supra* note 32 at 11.

<sup>100</sup> *Ibid*.

<sup>101</sup> *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Iran* (Islamic Republic of), UNCESCR, 8th Sess, UN Doc E/C.12/1993/7 at para 5.

<sup>102</sup> *Concluding observations on the second periodic report of the Islamic Republic of Iran, adopted by the Committee at its fiftieth session* (29 April-17 May 2013), UNESCOR, 50th Sess, UN Doc E/C.12/IRN/CO/2, at para 8.

to education to the Bahá'ís.<sup>103</sup> Abdelfattah Amor visited Iran on December 15–22, 1995. Following this visit, he recommended that, although the situation of non-recognized religious minorities such as the Bahá'ís is covered by the constitution, further “legislative enactment should give clearer recognition to these rights” regardless of their beliefs or religions.<sup>104</sup> However, the Iranian constitution does not recognize Bahá'ís as a legitimate religious minority. He further emphasized that “no discrimination should impede access by Bahá'ís to education in higher educational establishments . . .”<sup>105</sup> Special Rapporteur Ambeyi Ligabo, who visited Iran in November 2003, raised concerns over the situation of Bahá'ís. On August 4, 2005, he sent an urgent appeal to the government concerning Abdolfattah Soltani and another lawyer, who were arrested prior to the trial of BIHE staff. The authorities responded to this appeal on August 22, 2005, stating that Mr. Soltani was “charged with disclosing classified information and measures threatening the internal security of the State.”<sup>106</sup> While these lawyers remained in custody, Ligabo sent another urgent appeal on December 14, 2005, and in his report to ECOSOC he indicated that the replies he received did not respond to the issues raised. Ligabo further emphasized the “need to be provided with information concerning the grounds of arrests . . . and the compatibility of these grounds with the government’s national and international obligations . . .”<sup>107</sup>

Iranian representatives in ECOSOC have repeatedly failed to present a persuasive justification for their actions. In the rare responses provided to ECOSOC, the Iranian government states that the Bahá'ís are guilty of unproven charges of spreading propaganda and are linked to Zionists and imperialists. For example, in correspondence forwarded on January 19, 1983, from the Permanent Mission of the Islamic Republic of Iran to the UN’s Centre for Human Rights (reproduced by ECOSOC), Iranian representatives alleged that the Bahá'í faith had been manufactured as a source of propaganda to act against the government. Additional correspondence dated Feb 3,

<sup>103</sup> See e.g. *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*, UNCHR, 49th Sess, UN Doc E/CN.4/1993/41.; *Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne, pursuant to Commission resolution 1997/54*, UNESCOR, 54th Sess, UN Doc E/CN.4/1998/59.; *Report of the Economic and Social Council: Situation of human rights in the Islamic Republic of Iran: Note by the Secretary-General*, UNGAOR, 42d Sess, UN Doc A/42/648 (1987).

<sup>104</sup> *Implementation of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief*, UN ESCOR, 52<sup>nd</sup> Sess., UN Doc. E/CN.4/1996/95/Add.2. (1996) at para 90.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Civil and political rights, including the question of freedom of expression: The right to freedom of opinion and expression: Report of the Special Rapporteur, Ambeyi Ligabo (Addendum): Summary of cases transmitted to Governments and replies received*, UNESCOR, 62d Sess, UN Doc E/CN.4/2006/55/Add.1, at para 438.

<sup>107</sup> *Ibid* at 54.

1983, claimed that the Bahá'í faith is “not a religion but a political entity created and nourished by anti-Islamic and Colonial Powers.”<sup>108</sup>

When Special Rapporteur Amor voiced the issue of the Bahá'í faith not being identified as a religious minority in the Iranian constitution, he was told that the “Bahá'ís are not a religious minority, but a political organization which was associated with the [former] Shah's regime.”<sup>109</sup> In the same correspondence, the Iranian regime also emphasized that, despite their non-recognition as a religious minority, Bahá'ís are entitled to all recognized rights of Iranian citizens.<sup>110</sup> However, when questioned about the systemic barriers in accessing universities, the regime blamed Bahá'í students for identifying themselves as such and stated, “They can enroll in [universities] provided that they do not declare their Bahá'í identity.”<sup>111</sup>

The government of President Mahmoud Ahmadinejad and his cabinet intensified their attack on BIHE, branding it criminal in nature, and remained steadfast in their policy of denying Bahá'í students the opportunity to access the country's universities. Reminiscent of earlier years of the Islamic regime, the government continues today to base its actions on incomplete and unsupported excuses, such as “threat to national security” or “spying for Zionists and Imperialists.” Although the newly elected president, Hassan Rouhani, has advocated a position of tolerance towards the Bahá'í faith and has vowed to eradicate discrimination in higher education, it is still too early to say if any concrete steps being taken towards the fulfillment of this promise.

#### D. UN General Assembly

The General Assembly is another of the six principal organs of the UN. Resolutions and declarations adopted by the UN General Assembly are invoked as binding interpretations of UN charter obligations. With the dissolution of the UNCHR in 2006, the Human Rights Council (UNHRC) was created, not as a subsidiary of the ECOSOC but, rather, of the assembly. Although UNHRC has rarely addressed the denial of tertiary education to Iranian Bahá'ís, on a few occasions it has mentioned the human rights violations against Bahá'ís.<sup>112</sup>

The reports of the special representative of the UNCHR have been voiced in the assembly on several occasions.<sup>113</sup> Maurice Copithorne drew the attention of the UN

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<sup>108</sup> Note verbale dated 3 February 1983 from the Permanent Mission of the Islamic Republic of Iran addressed to the Chairman of the Commission on Human Rights at its thirty-ninth session, UNESCOR, 39th Sess, Annex II, Agenda Item 12, UN Doc E/CN.4/1983/19 at 15.

<sup>109</sup> *Supra* note 51.; *The Situation of Human Rights in the Islamic Republic of Iran: Report of the Secretary-General*, UNGA 66th Sess., 15 September 2011, A/66/361.

<sup>110</sup> *Supra* note 51.; *The Situation of Human Rights in the Islamic Republic of Iran: Report of the Secretary-General*, UNGA 66th Sess., 15 September 2011, A/66/361.

<sup>111</sup> *Supra* note 51 at para 63.

<sup>112</sup> See e.g. *Draft Report of the working group on the universal periodic review: Islamic Republic of Iran*, UNGAOR, 7th Sess, UN Doc A/HRC/WG.6/7/L.11, (2010).

<sup>113</sup> See e.g. *Third Committee, Draft Resolution: Situation of human rights in the Islamic Republic of Iran*, UNGAOR, 65th Sess, UN Doc A/C.3/65/L.49, (2010).



General Assembly to violations of the Bahá'ís' economic, social, and cultural rights in 1999 and noted that "[t]he situation of Bahá'ís remain serious."<sup>114</sup> During the fifty-fourth session of the UN General Assembly, the secretary general adopted his recommendations on September 21, 1999.<sup>115</sup> In his report, Copithorne urged the Iranian government "to put an end to discrimination against Bahá'ís in all spheres of public life and service . . ."<sup>116</sup>

In its resolutions and reports, the assembly has continued to voice its concern regarding the discrimination against Bahá'í students.<sup>117</sup> On October 27, 2011, in a draft resolution the assembly urged the government of Iran "to eliminate discrimination against . . . members of Bahá'í faith, regarding access to higher education, and to eliminate the criminalization of efforts to provide higher education to Bahá'í youth denied access to Iranian universities."<sup>118</sup> Bani Dugal, representative of the BIC in the UN, considered this resolution to be the strongest condemnation of the behaviour of Iranian authorities issued by the UN.<sup>119</sup> In addition, the resolution requested that the UN Secretary General issue a report on the state of human rights in Iran.

#### IV. CONCLUSION

The denial of the right to education to members of a religious group over a continuous period of time, which has been the experience of the Bahá'ís, is incredibly damaging to the progress of their community. "For without education, the individual is condemned to the prison of his own ignorance, tortured over his lack of opportunities, and more than likely, consigned to a life of poverty, underdevelopment, and oppression."<sup>120</sup>

As the evidence discussed in this article demonstrates, the Islamic Republic of Iran has violated a number of international laws in its treatment of Bahá'í students. The most visible consequence of these violations is that an entire generation of Bahá'ís has been left without post-secondary education. In the larger scheme, the unwavering pattern of discrimination represents a systematic effort to inhibit the progress of Bahá'ís in every aspect of their social and economic lives. The denial of post-secondary

<sup>114</sup> *Situation of human rights in Islamic Republic of Iran: Report of the Special Representative, Maurice Danby Copithorne*, submitted pursuant to Commission resolution 1999/13, UNESCOR, 56th Sess, UN Doc E/CN.4/2000/35, (2000) at para 28.

<sup>115</sup> *Situation of human rights in Islamic Republic of Iran: Note by the Secretary General*, UNGAOR, 54th Sess, UN Doc A/54/365, (1999).

<sup>116</sup> *Ibid* at para 48.

<sup>117</sup> See e.g. *Supra* note 111.; *Situation of human rights in the Islamic Republic of Iran*, GA Res 63/191, UNGAOR, 63d Sess, UN Doc A/RES/63/191, (2009).

<sup>118</sup> *Third Committee, Draft Resolution: Situation of human rights in the Islamic Republic of Iran*, UNGAOR, 66th Sess, UN Doc A/C.3/66/L.56, (2011) at para 6(g).

<sup>119</sup> "UN strongly condemns Iran's human rights violations; European Parliament joins global outcry", *Bahá'í World News Service* (21 November 2011), online: Bahá'í World News Service <<http://www.news.bahai.org>>.

<sup>120</sup> Bahá'í International Community, *supra* note 1 ch 1.

education at a juncture when more and more jobs demand university or college degrees has the effect of reducing the scope of employment opportunities and, consequently, it perpetuates poverty amongst this group. The resilience of the Iranian Bahá'í community in ensuring its survival and in providing the means for alternative routes of education is praiseworthy. Yet, the continuing efforts of the Iranian government in blocking these alternative routes, despite opposition from the international community and NGOs, are disheartening. It is now clear that these efforts are part of Iran's plan to force the followers of the Bahá'í faith either to leave the country or to live on the fringes of society. For over 30 years, Bahá'ís have been denied the right to contribute effectively towards their native land's important social, economic, scientific, or political matters. By identifying members of the Bahá'í faith and forbidding their employment and participation in the governmental sphere, this religious minority has been effectively denied some of the most important aspects of citizenship. The view of the Iranian ruling parties towards Bahá'ís is a factor in the current level of discriminatory practices. Importantly, the power of the discourse that has been created against Bahá'ís, as well as the powers of Iran's supreme leader as guaranteed in the country's constitution,<sup>121</sup> must also not be overlooked in the way shaping the regime shapes treatment of Bahá'ís.

The UN and its various human rights organs have failed in opening the closed doors of universities to Bahá'í students. The systems designated for identifying violations of human rights are, for the most part, naively reliant on self-reporting mechanisms. The most obvious effect of these failures is the ignorance of the international community to Iran's discriminatory practices against Bahá'ís. On the other hand, one may argue that the international community's lack of knowledge emboldens the Iranian government to continue and, at times, intensifies its discriminatory measures against Bahá'ís. Furthermore, the enforcement of human rights in Iran by the UN remains an issue that suffers from legal and political impediments and has yet to attain academic and ideological legitimacy.

It can be argued that the measures adopted by UN human rights organs have done an effective job in keeping the level of these violations, at the very least, stable. During the first decade after Iran's Islamic revolution, the human rights bodies of the UN seemed to have made great progress towards improving the plight of Bahá'ís by reducing the number of executions. It would be difficult to argue that the elimination of the question of religion from the entrance exams was not, at least partially, the result of international pressure largely facilitated by the UN. Even though admission to universities with the intention of later identifying and expelling Bahá'ís can hardly be deemed substantive progress, it is a step forward from a time when it was unthinkable for Bahá'í students to even step foot in a lecture hall.

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<sup>121</sup> *Supra* note 56 at 266-267.

Nevertheless, progress at this pace will not give rise to adequate implementation of the internationally recognized right to education in Iran, at least within the foreseeable future. The UNCHR seems to have fallen victim to the trap of its own political structure. The Human Rights Council owes its successful attempts to bring back the issue of Iranian Bahá'ís to the UN agenda to its special procedures mechanism, particularly BIC and the special rapporteurs on religious freedom or belief. However, making it onto the agenda of these bodies and remaining as a subject of annual consideration is not enough.

With the recent demonstrations in 2009 over the election of the as well as reports of torture, Bahá'ís murder, and imprisonments of non-Bahá'í political “dissidents,” it has become obvious that the Iranian regime has very little regard for its international commitments. There is much that can be said regarding the many angles of the denial of the right to education, which received only a cursory overview in this article. It is hoped, however, that this paper will ignite further investigation and action into the plight of the Bahá'ís of Iran.