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ARTICLE

INTERNATIONAL RELIGIOUS LIBERTY AND HUMAN RIGHTS LAW
AS A RESPONSE TO TOTALITARIAN LEGAL AND POLITICAL
DISCOURSES: THE CASES OF IRAN, MYANMAR, AND NORTH
KOREA

Yuri G. Mantilla[†]

A. *The Human Rights of Religious Minority Communities in Times of a
Global Pandemic*

In the current historical context characterized by processes of international economic integration and ethno-nationalistic reactions to those events, the global COVID-19 pandemic is not only undermining international economic relations but is also affecting sovereign states' social and economic development and the functioning of their political systems.¹ Totalitarian ideologies are gaining influence in shaping protectionist governmental economic policies and denying the importance of the global protection of human rights.² This increased influence is evidenced by widespread violations of human rights, including the right to religious liberty. A normative response to this global threat should include the mainstreaming of discourses that recognize the existence of legal obligations for the protection of fundamental human rights and human dignity. These types of ideas have been codified in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and in other international treaties and customary international law.³

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¹ See generally DANI RODRIK, STRAIGHT TALK ON TRADE (2017).

² For an analysis of the World Health Organization's response of COVID-19 and the potential international legal responsibility of the People's Republic of China for the pandemic, see Valerio de Oliveira Mazzuoli, *State International Responsibility for Transnational Pandemics: The Case of COVID-19 and the People's Republic of China*, 7 *INDON. J. INT'L & COMPAR. L.* 431 (2020).

³ See generally HURST HANNUM ET AL., *INTERNATIONAL HUMAN RIGHTS* (Wolters Kluwer, 6th ed. 2018).

In this article, a historical analysis of Nazi Germany and the Soviet Union illustrates how these totalitarian regimes used political and legal reasoning to justify violating fundamental human rights of religious minority communities. Some of these justifications, such as dehumanizing political and religious opponents, are similar to those used by totalitarian regimes in the twenty-first century. International human rights legal doctrines and norms, including the right to religious freedom, provide powerful answers to totalitarian regimes that use legal discourses to deny the fundamental human rights of religious minorities. This article presents a historical analysis of the ideas set out by the founders of the international human rights law system to highlight the importance of implementing and upholding human rights norms in the twenty-first century.

The governments of Iran, North Korea, and Myanmar have systematically violated the fundamental human rights of religious minority communities, including the right to life, the right to freedom of peaceful assembly, the right to freedom of expression, and the right to religious liberty.⁴ Regarding the importance of protecting international religious freedom in the twenty-first century, the International Religious Freedom Alliance (IRFA)⁵ believes:

The crisis facing the international community is of global proportions, and any measures enacted in response to COVID-19 should not be used as a justification to silence, target, or harass any members of civil society, including human rights defenders, journalists, and media workers. Even during pandemics, states are accountable for the obligations and commitments they have made to respect human rights, like freedom of religion or belief, that take on heightened

⁴ For a comprehensive overview of violations of religious freedom around the world, see U.S. COMM'N INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2020 (2020), [hereinafter USCIRF]; U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM (2020).

⁵ The IRFA is a network of countries with a commitment to ensure respect for international religious freedom norms. The Alliance includes Albania, Austria, Bosnia and Herzegovina, Brazil, Bulgaria, Colombia, Croatia, Czech Republic, Estonia, the Gambia, Georgia, Greece, Hungary, Israel, Kosovo, Latvia, Lithuania, Malta, the Netherlands, Poland, Senegal, Slovakia, Slovenia, Togo, Ukraine, the United Kingdom, and the United States of America. Adelle Banks, *27 Countries Join International Freedom Alliance*, CHRISTIANITY TODAY (Feb. 7, 2020), <https://www.christianitytoday.com/news/2020/february/international-religious-freedom-alliance-pompeo-brownback.html>.

importance in a time of national crisis and that encourage active efforts to control the pandemic.⁶

The IRFA's concern is consistent with the fact that governments have historically used genuine health emergencies, such as the COVID-19 pandemic, to justify persecuting and discriminating against their political opponents.⁷ Consistent with fundamental norms underlying international human rights law, the IRFA has asked sovereign states not to undermine the right to express religious beliefs and to stop closing places of worship under the excuse of protecting the health of their citizens.⁸

The COVID-19 pandemic has been used to dehumanize religious, ethnic, and political opponents. Historically, the dehumanization of the "other" has caused widespread violations of human rights, including the right to religious freedom. This was one of the strategies Nazi Germany and the Soviet Union used to justify their crimes against political and religious dissidents.⁹ In the current historical context, the systematic dehumanization of religious minorities is illustrated, for example, in efforts to blame these minority groups for spreading COVID-19.¹⁰ Ethnic, political, and religious minorities are especially vulnerable to violations of fundamental human rights in totalitarian regimes. Expressing this very concern, the IRFA stated:

The Alliance is particularly concerned about the impact of COVID-19 on religious minorities Members of religious minority groups are among the most vulnerable, and they have been subjected at times to verbal abuse, death threats, physical attacks, and discrimination in attempting to access public services, and in all too many cases, vital health services have been denied entirely.

We encourage governments to take proactive steps to ensure individuals in minority religion and belief communities are

⁶ *COVID-19 and Religious Minorities Pandemic Statement*, INTERNATIONAL RELIGIOUS FREEDOM ALLIANCE (Aug. 20, 2020), <https://www.state.gov/covid-19-and-religious-minorities-pandemic-statement/>.

⁷ *See id.*

⁸ *Id.*

⁹ Regarding the dehumanization of perceived enemies of the state, see VLADIMIR TISMANEANU, *THE DEVIL IN HISTORY: COMMUNISM, FASCISM, AND SOME LESSONS OF THE TWENTIETH CENTURY* (2012).

¹⁰ *COVID-19 and Religious Minorities Pandemic Statement*, *supra* note 6.

safe, protected, and receive health services in an equitable and non-discriminatory manner.¹¹

According to a report by the United States Commission on International Religious Freedom, fourteen countries are of special concern because of extreme violations of fundamental human rights of their religious minority groups.¹² These countries are Myanmar, China, Eritrea, India, Iran, Nigeria, North Korea, Pakistan, Russia, Saudi Arabia, Syria, Tajikistan, Turkmenistan, and Vietnam.¹³ These countries represent diverse socio-political and economic systems. They exemplify diverse geographical regions, and diverse ideologies sustain their political power. Human history has demonstrated that all types of totalitarian regimes are responsible for violations of fundamental human rights, including the right to religious freedom. To analyze this reality, in the context of a global pandemic, this article focuses on three very different countries—Iran, North Korea, and Myanmar—that share a common characteristic of widespread violations of fundamental human rights of religious minority communities.

B. *Legal and Political Discourses that Justify the Persecution of Religious Minorities in Myanmar, Iran, and North Korea*

Iran has an international legal obligation to protect human rights.¹⁴ Iran is a party to the following international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination,¹⁵ the International Covenant on Civil and Political Rights,¹⁶ the International Covenant on Economic, Social and Cultural Rights,¹⁷ the Convention on the Rights of the Child,¹⁸ and the Convention on the Rights of Persons with

¹¹ *Id.*

¹² USCIRF, *supra* note 4.

¹³ *Id.* at 11.

¹⁴ For an analysis of cultural relativism as a source for justifying universal human rights from Islamic law perspectives, see Isha Khan, *Islamic Human Rights, Islamic Law and International Human Rights Standards*, 5 APPEAL: REV. CURRENT L. & L. REFORM 74 (1999).

¹⁵ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD]. Iran ratified the CERD in 1968. *Id.*

¹⁶ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Iran ratified the ICCPR in 1975. *Id.*

¹⁷ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. Iran ratified the ICESCR in 1975. *Id.*

¹⁸ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. Iran ratified the CRC in 1994. *Id.*

Disabilities.¹⁹ Iran was one of the forty-eight countries that voted in favor of United Nations General Assembly Resolution 217, which adopted the Universal Declaration of Human Rights.²⁰

Even though Iran voted in favor of the Universal Declaration of Human Rights—which specifically recognized the right to religious freedom—and ratified other international human rights instruments, its national laws contradict fundamental international human rights norms.²¹ Regarding the characteristics of the Iranian legal system, the 2019 International Religious Freedom report said:

The constitution defines the country as an Islamic republic and specifies Twelver Ja’afari Shia Islam as the official state religion. It states all laws and regulations must be based on “Islamic criteria” and an official interpretation of sharia. The constitution states citizens shall enjoy human, political, economic, and other rights, “in conformity with Islamic criteria.” The penal code specifies the death sentence for proselytizing and attempts by non-Muslims to convert Muslims, as well as for *moharebeh* (“enmity against God”) and *sabb al-nabi* (“insulting the Prophet”). According to the penal code, the application of the death penalty varies depending on the religion of both the perpetrator and the victim. The law prohibits Muslim citizens from changing or renouncing their religious beliefs.²²

Iran’s totalitarian interpretation of Islamic law is designed to discriminate against and persecute religious minority groups.²³ The fact that the Iranian penal code includes the death penalty for efforts to convert Muslim believers to other religions demonstrates the inherent contradiction between Iran’s criminal law and international normative standards of the Universal Declaration of Human Rights, the International Covenant on Civil and Political

¹⁹ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD]. Iran acceded to the CRPD in 2009. *Id.*

²⁰ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

²¹ For an analysis of religious freedom in Iran, see MEDEA BENJAMIN, *INSIDE IRAN: THE REAL HISTORY AND POLITICS OF THE ISLAMIC REPUBLIC OF IRAN* 87–100 (2018).

²² U.S. DEP’T OF STATE, OFFICE OF INT’L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: IRAN 1 (2020).

²³ For Iran’s Islamic interpretation of international human rights, see Ann Elizabeth Mayer, *Islamic Rights or Human Rights: An Iranian Dilemma*, 29 *IRANIAN STUD.* 269 (1996).

Rights, and other international legal instruments.²⁴ Iran's criminal law expresses totalitarian ideas that seek to implement distorted views of absolute truth and universal justice by legalizing the intolerance of religious diversity. Human Rights Watch said: "Under the current penal code authorities have executed at least 36 people since January 2010 on the charge of 'enmity against God' or 'sowing corruption on earth' for their alleged ties to armed or terrorist groups."²⁵

The Iranian regime justifies its human rights violations with a totalitarian theological and political narrative.²⁶ Because of this, Sunni religious minorities, including Arabs, Kurds, and Baluchis, are systematically persecuted and even subjected to the death penalty.²⁷ The International Freedom Report stated that, in 2019, "[t]he government continued to execute individuals on charges of 'enmity against God,' including two Sunni Ahwazi Arab minority prisoners at Fajr Prison on August 4."²⁸ Persons who belong to religious minority groups are systematically tortured, unjustly imprisoned, and unjustifiably denied legal services.²⁹ For instance, women who belong to the Gonabadi Sufi religious minority are tortured in the Oarchak prison.³⁰

Iran also violates the rights of religious minority groups by denying access to medical care. For instance, the Center for Human Rights in Iran (CHRI) reported that "authorities gave Elham Ahmadi, an imprisoned member of the Sufi Gonabadi Order in Iran, an additional sentence of 148 lashes for speaking out about the denial of medical treatment and poor living conditions in the prison."³¹ Javid Rehman, United Nations Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, stated:

Overcrowding, poor nutrition and a lack of hygiene are also serious concerns. These issues indicate a high risk to

²⁴ For an analysis of the Iranian legal system and its relations with Iran's international human rights legal obligations, see Tahmineh Rahmani & Nader Mirzadeh Koohshahi, *Introduction to Iran's Judicial System*, 45 J. OF L., POL'Y & GLOBALIZATION 47 (2016).

²⁵ *Codifying Repression: An Assessment of Iran's New Penal Code*, HUM. RTS. WATCH (Aug. 29, 2012), <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-irans-new-penal-code>.

²⁶ See MOHAMMAD AYATOLLAHI TABAAR, *RELIGIOUS STATECRAFT: THE POLITICS OF ISLAM IN IRAN* 1–15 (2018).

²⁷ U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: IRAN, *supra* note 22, at 1.

²⁸ *Id.*

²⁹ *Id.* at 1–2.

³⁰ *Id.* at 1.

³¹ *Id.*

prisoners' health from malnutrition and disease. Recent reports indicate that the COVID-19 virus has spread inside Iranian prisons.

I am gravely concerned by reports that detained . . . protestors experienced torture and ill-treatment to extract forced confessions, that detainees are living in overcrowded centres without basic facilities, and that they are being denied fair trial rights.³²

The Iranian government violently oppresses the areas in which religious and ethnic minorities reside.³³ The Iranian government imprisons adherents of minority religions because of their disagreement with the Iranian government's religious orthodoxy. The 2019 Religious Freedom Report indicated that "at least 109 members of minority religious groups remained imprisoned for being religious minority practitioners."³⁴ Bahá'is are members of one of the largest non-Muslim religious minority groups in Iran³⁵ and have been a main target of widespread violations of human rights.³⁶ The 2020 U.S. Commission on International Religious Freedom (USCIRF) report said that, in 2019, "Iran's government blamed [Bahá'is]—without evidence—for widespread popular protests. . . . Iran's government also continued to promote hatred against

³² Javaid Rehman, Statement by Javaid Rehman, Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran at the 43rd Session of the Human Rights Council – Item 4 (Mar. 9, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25707&LangID=E>).

³³ For a description of Iran's violations of human rights in general and specifically violations against minority groups, see BENJAMIN, *supra* note 21, at 61–77.

³⁴ U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: IRAN, *supra* note 22, at 1–2.

³⁵ For an analysis of the situation of the Bahá'is in Iran, see Firuz Kazemzadeh, *The Bahá'is in Iran: Twenty Years of Repression*, 67 SOC. RSCH. 537 (2000).

³⁶ For a historical analysis of human rights violations of Bahá'is in Iran, see Paul D. Allen, *The Bahá'is of Iran: A Proposal for Enforcement of International Human Rights Standards*, 20 CORNELL INT'L L.J. 337 (1987). According to Allen:

The [Bahá'is'] persecutions are tantamount to systematic genocide. In addition to summary arrest, torture, and execution, the Iranian government denies [Bahá'is] jobs, pensions, education, freedom to travel abroad, and freedom to marry in violation of international law. The [Bahá'is] have no domestic legal recourse because the 1979 Iranian Constitution conspicuously fails to protect their rights.

Id. at 339–40 (footnotes omitted).

[Bahá'is] and other religious minorities on traditional and social media channels.”³⁷

Besides the Bahá'í religious community, another minority group that suffers persecution is the Sufi.³⁸ As an example of the persecution of Sufis, the USCIRF report indicated: “In March, several Sufis were convicted on spurious national security charges and sentenced to prison, lashings, internal exile, and social media bans. At the end of 2019, scores of Sufis remained incarcerated at Fashafuyeh and Qarchak prisons. Several were denied medical care.”³⁹

Similarly, Christians are systematically denied their right to religious freedom through imprisonment and the closing of churches.⁴⁰ The USCIRF Report said that, in 2019,

In May, Iran forcibly closed an Assyrian church in Tabriz. In December in Mashhad, authorities destroyed the grave of the only Christian pastor in Iran to have been executed for apostasy. Iran also twice delayed a sentencing hearing for Assyrian pastor Victor Bet Tamraz, his wife Shamiram Isavi, and three Christian converts from Islam. Pastor Bet Tamraz was charged in 2015 with “conducting evangelism” and “illegal house church activities.”⁴¹

There are around 750,000 Christians in Iran, including Assyrians, Armenians, Evangelicals, and Catholics.⁴² Iran’s violations of human rights

³⁷ USCIRF, *supra* note 4, at 24.

³⁸ See BENJAMIN, *supra* note 21, at 91, 93. Regarding Sufis, Benjamin wrote:

Sufis can be Shia or Sunni. Sufism is not a branch of Islam, but a practice that developed in the ninth and tenth centuries. Sufism in Iran has grown enormously since 1979. Before the revolution, about 100,000 people declared themselves Sufi Muslims. Today, there are somewhere between two and five million—making Iran the country with the largest Sufi population in the world.

Id. at 91.

³⁹ USCIRF, *supra* note 4, at 25.

⁴⁰ *Id.* at 24–25.

⁴¹ *Id.* at 24.

⁴² Jayson Casper, *Researchers Find Christians in Iran Approaching 1 Million*, CHRISTIANITY TODAY (Sept. 3, 2020, 10:38 AM), <https://www.christianitytoday.com/news/2020/september/iran-christian-conversions-gamaan-religion-survey.html>.

are especially directed at Christian converts from Islam.⁴³ Regarding this, the USCIRF report stated: “[I]n July 2019, for example, the Intelligence Ministry arrested eight Christian converts in Bushehr and sent them to solitary confinement.”⁴⁴ Regarding the persecution of Jewish people, the report noted: “In February, three Torah scrolls were stolen from the Ezra Yagoub synagogue in Tehran, but police did not investigate. On December 16, Ayatollah Khamenei praised a French Holocaust denier on Twitter.”⁴⁵

Governmental efforts to impose Shi’a Islam’s normative standards on all Iranians is one of the main reasons for systematic violations of the human rights of the country’s religious minority communities. Iranian religious minorities are excluded from important government jobs, arbitrarily imprisoned, and denied the right to be educated according to their own religious worldviews.⁴⁶ Regarding one of Iran’s recent violations of the right to religious freedom, Amnesty International noted that “[d]ozens of Bahá’i students were denied access to universities through expulsion for peacefully practi[c]ing their faith. . . . Dozens of Christians were subjected to

⁴³ Gulnar Francis-Dehqani, *Iran, in* CHRISTIANITY IN SOUTH AND CENTRAL ASIA 83, 83 (Kenneth R. Ross et al., eds., 2019). Dehqani wrote:

The situation of Christians in Iran since the Islamic Revolution of February 1979 is, essentially, paradoxical. On the one hand, the oppression and persecution of Christians are more severe now than they have been in several centuries. On the other, since the late 1990s in particular, the growth of new Christian groups, meeting privately in homes, has proved unprecedented. The phenomenon has been acknowledged at the highest level of government and action taken to suppress such gatherings.

Over the last 40 years or so a number of Christian leaders have been martyred, imprisoned or obliged to leave the country. At the beginning of 2018 more than 90 Christians were detained in prison and, with a few exceptions which have been kept under close supervision, all public Persian-speaking churches in Iran have been either closed or forbidden to use the Persian language in worship.

Id.

⁴⁴ USCIRF, *supra* note 4, at 25.

⁴⁵ *Id.*

⁴⁶ See Jamsheed K. Choksy, *Non-Muslim Religious Minorities in Contemporary Iran*, 16 IRAN & THE CAUCASUS 271, 277 (2012). For example, regarding the denial of religious education of the Bahá’i community, Jamsheed Choksy writes: “[Bahá’is] dare not operate any schools [publicly] as those would promptly be shut down by the state, and teachers and students (and their parents) arrested and charged with apostasy from Islam—a crime under the Shari’a or Muslim law punishable by execution in Iran.” *Id.*

harassment, arbitrary detention and prison sentences for practi[c]ing their faith.”⁴⁷

The Iranian efforts to universalize Shi’a Islam utilize violence against religious minority groups. This is the expression of a worldview that sustains the universality and absolute truthfulness of its main theological ideas by denying religious liberty.⁴⁸ In Iran, Ayatollah Ruhollah Musavi Khomeini influenced and shaped prevalent Shi’a political and theological ideas.⁴⁹ Regarding this influence, Greg Bruno wrote:

Under Khomeini[,] the Iranian religious and political landscapes were dramatically transformed, making Shia Islam an inseparable element of the country’s political structure. Khomeini ushered in a new form of government anchored by the concept of *velayat-e faqih*, or rule of the Islamic jurist. In his 1970 book, *Hokumat-e Islami: Velayat-e faqih*, Khomeini argued that government should be run in accordance [with] sharia, or Islamic law. For that to happen, an Islamic jurist—or faqih—must oversee the country’s political structure.⁵⁰

Despite the fact that the Iranian constitution recognizes the existence of the executive, judicial, and legislative branches of government, Khomeini controlled the highest power.⁵¹ Based on totalitarian views of

⁴⁷ *Everything You Need to Know About Human Rights in Iran: Iran 2019*, AMNESTY INT’L, (2020), <https://www.amnesty.org/en/countries/middle-east-and-north-africa/iran/report-iran/>.

⁴⁸ For an analysis of Islamic law, including Iran’s, see Norman Anderson, *Islamic Law Today the Background to Islamic Fundamentalism*, 2 ARAB L.Q. 339 (1987).

⁴⁹ See Hamid Mavani, *Khomeini’s Concept of Governance of the Jurisconsult “(Wilayat Al-Faqih)” Revisited: The Aftermath of Iran’s 2009 Presidential Election*, 67 MIDDLE EAST J. 207, 210 (2013). Mavani analyzed the critical shift in thought Khomeini sparked:

Khomeini’s concept of the jurisconsult’s absolute authority and mandate was a novel and radically different reading of the classical Shi’i doctrine and one that has a limited following among eminent . . . Shi’i jurists. His tendency to overemphasize the political dimension of the divine guides’ function and attribution of political connotations to every aspect of Shi’ism reached its climax when he equated divine politics [*siyasat-e khoda’i*] and religion [*din*] as synonymous or when he asserted that “the preservation of the Islamic Republic is a divine duty which is above all other duties.”

Id. (footnotes omitted).

⁵⁰ Greg Bruno, *Religion and Politics in Iran*, COUNCIL ON FOREIGN RELATIONS (June 19, 2008), <https://www.cfr.org/backgrounder/religion-and-politics-iran>.

⁵¹ *Id.*

law and politics, Khomeini tried to spread Islamic fundamentalist political ideas globally.⁵² Regarding the main features of this perspective, Greg Bruno wrote: “Khomeini began arguing that in the absence of the Imam Mahdi—also known as the Hidden Imam or the twelfth imam of the Shia faith—that governments should be run by those with a higher rank among [clerics].”⁵³

In Iran, church and state are integrated, and Islamic political theology is the foundation of Iran’s political system.⁵⁴ In a totalitarian state like Iran, where freedom of information is severely restricted, it is difficult to know the effects of global pandemics in the Iranian general population. It is especially difficult to know its effects on religious minority communities. Regarding the magnitude of the COVID-19 pandemic, Ramin Jabbarli and Brenda Shaffer wrote:

Iran is a multiethnic country, with over half of its population members of ethnic minority communities. The bulk of the ethnic minorities reside in Iran’s border provinces, while Persians are concentrated in Iran’s central cities, including the capital Tehran. . . .

Iran has been hit especially hard by Covid-19. Even by official tallies, Iran’s infection and fatality rates are among the world’s highest.⁵⁵

Because of Iran’s systematic discrimination against ethnic and religious minorities, these groups have experienced higher exposure to COVID-19.⁵⁶ An example of the disproportionate impact of COVID-19 on minority groups is demonstrated by Iran’s non-Persian regions. Regarding this disproportionate impact, Jabbarli and Shaffer wrote:

There have been 266 deaths registered in East Azerbaijan Province, which is populated primarily by the Azerbaijani Turk minority group. While the province comprises only 4.8

⁵² See *id.* (noting that Khomeini made “Islamic fundamentalism a political force that would change Muslim politics from Morocco to Malaysia”) (quoting VALI R. NASR, *THE SHIA REVIVAL* (2006)).

⁵³ *Id.*

⁵⁴ For a historical analysis of the influence of Islam in Iranian politics, see H.E. Chehabi, *Religion and Politics in Iran: How Theocratic Is the Islamic Republic?*, 120 *DAEDALUS* 69 (1991).

⁵⁵ Ramin Jabbarli & Brenda Shaffer, *Covid-19: Hitting Iran’s Minorities Harder*, MIDDLE EAST INST. (April 17, 2020), <https://www.mei.edu/publications/covid-19-hitting-irans-minorities-harder>.

⁵⁶ *Id.*

percent of Iran's population, it represents 5.8 percent of the country's Covid-19 deaths. Similarly, Ardabil Province, with its predominately Azerbaijani population, comprises 1.5 percent of Iran's population but has experienced 2.7 percent of Covid-19 deaths.⁵⁷

In Iran, ethnic and religious minority communities are among the poorest, such as the border provinces, where there are higher levels of unemployment and fewer governmental services.⁵⁸ "This is illustrated [by] the lower level of medical services received by these communities, which is likely playing a role in higher rates of Covid-19 infection and deaths in Iran's ethnically populated provinces."⁵⁹

Even though Iran has been heavily affected by COVID-19, the government has tried to control the narrative regarding governmental efforts to address the effects of the pandemic and its magnitude. As an example of this reality, Dyke Drewery writes: "Armed Forces spokesperson Abolfazl Shekarchi announced that the authorities had detained 3,600 people for challenging the government's narrative on the virus in Iran. On [May 10], officials announced the arrest of a further 320 people for spreading 'false and provocative' information on social media."⁶⁰

The COVID-19 pandemic increases the risk of systematic violations of the fundamental human rights of religious minorities in Iran, including Muslims, Bahá'is, and Christians. This is because they are economically and socially disadvantaged, which restricts their access to adequate health care. Violations of the human rights of religious minority groups, including the rights to life, freedom of expression, freedom of association, and religious liberty, demonstrate the consequences of Islamic fundamentalist ideas which disregard the importance of implementing universal human rights norms. This reality also highlights the importance of international human rights law in the twenty-first century to ensure respect for fundamental human rights of religious minority communities in Iran.

Myanmar is another country characterized by violations of the fundamental human rights of religious minorities.⁶¹ Myanmar is a party of

⁵⁷ *Id.* (emphasis removed).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ DREWERY DYKE, IN THE NAME OF SECURITY, HUMAN RIGHTS VIOLATIONS UNDER IRAN'S NATIONAL SECURITY LAWS 30 (June 2020), https://minorityrights.org/wp-content/uploads/2020/06/In-the-Name-of-Security_Iran_EN_June20.pdf.

⁶¹ For a historical analysis of Myanmar's violations of human rights of the Rohingya people and for the relations between Myanmar, the ETBNs and the Rohingya people, see

the following human rights law treaties: the Convention on the Prevention and Punishment of the Crime of Genocide,⁶² the International Covenant on Economic, Social and Cultural Rights,⁶³ the Convention on the Elimination of All Forms of Discrimination against Women,⁶⁴ the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁶⁵ the Convention on the Rights of Persons with Disabilities,⁶⁶ and the Convention on the Rights of the Child.⁶⁷

Despite the ratification of several international human rights law treaties, Myanmar systematically denies the fundamental human rights of the Rohingya and other religious minority communities. As a result, the Rohingya are displaced from their homes in large numbers.⁶⁸ The USCIRF 2020 Report said:

As of July 2019, approximately 910,000 civilians reside in camps in Cox's Bazar, Bangladesh, including Muslims, Christians, and Hindus. . . . United Nations (UN) Special Rapporteur on Myanmar Yanghee Lee found that Rohingya

Afroza Anwar, *Atrocities against the Rohingya Community of Myanmar*, 31 INDIAN J. OF ASIAN AFFS. 91 (2018).

⁶² Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter CPPCG]. Myanmar ratified the CPPCG in 1956. *Convention on the Prevention and Punishment of the Crime of Genocide*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280027fac&clang=_en (last visited Mar. 11, 2021).

⁶³ ICESCR, *supra* note 17. Myanmar ratified the ICESCR in late 2017. *Id.*

⁶⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. Myanmar ratified the CEDAW in 1997. *Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=080000028000309d&clang=_en (last visited Mar. 11, 2021).

⁶⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319. Myanmar acceded to the protocol in 2004. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280051ba9&clang=_en (last visited Mar. 11, 2021).

⁶⁶ CRPD, *supra* note 19. Myanmar acceded to CRPD in 2011. *Id.*

⁶⁷ CRC, *supra* note 18. Myanmar acceded to the CRC in 1991 and withdrew its reservation in 1993. *Convention on the Rights of the Child*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe&clang=_en (last visited Mar. 11, 2021).

⁶⁸ USCIRF, *supra* note 4, at 12.

remaining in Rakhine are unable to leave their villages or earn a living with increasingly limited access to aid.⁶⁹

The internally displaced Rohingya people have very limited access to health care.⁷⁰ This creates the conditions for an increased vulnerability to Covid-19. In this context, violations of the right to health can obviously have tragic consequences. The government of Myanmar is using the COVID-19 pandemic discourse to persecute religious minority groups. Human Rights Watch noted:

At least 500 people, including children, returning migrant workers, and religious minorities, have been sentenced to between one month and one year in prison in Myanmar since late March 2020 for violating curfews, quarantines, or other movement control orders . . . Myanmar authorities should stop jailing people for Covid-19 related infractions.⁷¹

Totalitarian regimes such as Myanmar use legal discourses to justify persecution against religious minority groups. As an example, Human Rights Watch highlights the use of laws, such as the National Disaster Management Law and The Prevention and Control of Communicable Diseases, as an excuse for the imprisonment of minority communities.⁷² Armed conflicts in Myanmar, including in the states of Rakhine and Chin, create the conditions for widespread violations of the fundamental human rights of religious

⁶⁹ *Id.*

⁷⁰ ZOLTAN BARANY, *THE ROHINGYA PREDICAMENT: WHY MYANMAR'S ARMY GETS AWAY WITH ETHNIC CLEANSING* (2019). Barany wrote:

Today, there are around 2.5 million Rohingya, who constitute one of the world's largest stateless populations. Fewer than half a million currently reside in Myanmar; the rest have fled decades of repression and exclusion in several waves, most often crossing the border into Bangladesh, where they inhabit sprawling, squalid refugee camps. Those who can, move on to wealthier Muslim-majority countries. Those who have remained in Myanmar are a subset of the country's Muslim community, which constitutes 4.3 per cent of the population. The majority of Myanmar's Muslims live in urban areas, speak Burmese, have Burmese names and are Myanmar citizens. The Rohingya are quite different: most live in rural areas in Rakhine State in the country's northwest, speak a dialect of Bengali (Chittangongian), have Muslim names and have never received citizenship.

Id. at 4.

⁷¹ *Myanmar: Hundreds Jailed for Covid-19 Violations*, HUMAN RIGHTS WATCH (May 28, 2020), <https://www.hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations>.

⁷² *Id.*

minorities, including access to health care for COVID-19. Regarding the situation in these places, *Foreign Policy* notes that “internet blackouts and media shutdowns have cut civilians off from vital information about the coronavirus. On April 20, a World Health Organization staffer was shot and killed while transporting test swabs from Rakhine state to Yangon.”⁷³

In Myanmar, a totalitarian political-religious worldview sustains ideas that dehumanize religious minority groups. This serves to justify actions of extreme violence using political discourses. Regarding this situation, Gerry van Klinken and Su Mon Thazin Aung wrote:

RNDP [Rakhine Nationalities Development Party] leaders underscored their anti-Rohingya rhetoric in public with violent and racist tropes drawn from world history. As the June 2012 anti-Rohingya violence was going on, the party’s chairman, veterinarian Dr. Aye Maung, told a magazine his aim was ethnic purity in Rakhine State, as well as autonomy One of the RNDP’s books reportedly had Hitler on its cover and declared that ethnic violence could sometimes be justified on national grounds: “Hitler may be an enemy to the Jews, but he is a hero to Germans.”⁷⁴

Human history demonstrates that religious groups that were once the victims of extreme human rights violations, including the right to religious freedom, can become perpetrators of those same atrocities. Regarding this reality in Myanmar, Maung Zarni wrote:

[I]n the past year, the world has been confronted with images of the same robed monks publicly demonstrating against Islamic nations’ distribution of aid to starving Muslim Rohingya, displaced into refugee camps in their own country following Rakhine Buddhist attacks. The rise of genocidal Buddhist racism against the Rohingya, a minority community of nearly one million people in the western

⁷³ Andrew Nachevson, *In Myanmar, the Coronavirus Gives Nationalists an Opening*, FOREIGN POL’Y (May 1, 2020), <https://foreignpolicy.com/2020/05/01/myanmar-coronavirus-pandemic-gives-nationalists-opening-ethnic-minorities-risk/>.

⁷⁴ Gerry van Klinken & Su Mon Thazin Aung, *The Contentious Politics of Anti-Muslim Scapegoating in Myanmar*, 47 J. OF CONTEMP. ASIA, 353, 360 (2017).

Burmese province of Rakhine (also known as Arakan), is an international humanitarian crisis.⁷⁵

Besides the systematic discrimination against the Rohingya people because of their religious beliefs, there are also ethnic identity motivations for violating their human rights. Regarding this, Maung Zarni wrote:

Physical appearance—aside from language, religion, culture, and class—is an integral marker in a community of nationalists. The importance of complexion is often overlooked when examining racism across Asia. Rohingya are categorically darker skinned people—sometimes called by the slur “Bengali *kalar*.” Indeed, the lighter-skinned Buddhists of Burma are not alone in their fear of dark-skinned people and belief that the paler the skin, the more desirable, respectable, and protected one is.⁷⁶

Human history is characterized by the systematic dehumanization of one ethnic or religious group by another. These actions are the result of efforts to impose one worldview against another through violence. This is not limited to certain groups of people; all human beings can commit acts of extreme political evil. For instance, regarding Myanmar, Zarni wrote:

The current leaders of Burma’s 25-year-old human rights movement now speak the language of national security, absolutist sovereignty, and conditional human rights, echoing the language and sentiment of their former captors, the ruling military. . . . Their embrace of conditional human rights and their absolutist reading of sovereignty indicates that they have talked the talk of Buddhism, with its ideal of universal lovingkindness, but have failed to walk the walk. Many student leaders and human rights activists of the 1988 uprisings who spent half their lives behind bars in the notorious military-run Insein Prison as “prisoners of conscience” are unprepared to extend such human rights ideals to the Rohingya Muslims, a population that the

⁷⁵ Maung Zarni, *Buddhist Nationalism in Burma, Institutionalized Racism Against the Rohingya Muslims Led Burma to Genocide*, TRICYCLE (Spring 2013), <https://tricycle.org/magazine/buddhist-nationalism-burma/>.

⁷⁶ *Id.*

United Nations identifies as one of the world's most persecuted minorities.⁷⁷

Myanmar is an example of how a government that claims to represent a religious community, Buddhists, which was oppressed in the past, has become the oppressor of a minority religious community, the Rohingya, in the present. This reality highlights the importance of the universality of human rights norms which require the protection of the dignity of human beings, against governmental abuses, in all societies and in all historical contexts.⁷⁸ The universality of human rights norms is very relevant in the current historical context in which humankind is facing the negative health, economic, and social consequences of the COVID-19 pandemic.

Unlike in Iran and Myanmar, where religious doctrine is used to justify violations of human rights, atheistic ideas sustain governmental violations of the fundamental human rights of religious minorities in North Korea. Despite its formal constitutional recognition of the right to religious freedom, North Korea is one of the worst violators of this fundamental human right.⁷⁹ According to Article 68 of the North Korean Constitution, "Citizens have freedom of religious beliefs. This right is granted by approving the construction of religious buildings and the holding of religious ceremonies."⁸⁰ However, the second paragraph of this Article limits this right. It says: "No one may use religion as a pretext for drawing in foreign forces or for harming the State and social order."⁸¹ Constitutional law and criminal law are used to implement totalitarian communist ideas and justify the persecution of religious minority communities.⁸² For example, according to Article 267 of the penal code, "A person who repeatedly engages in superstitious activities in exchange for money or goods shall be punished by short-term labour for less than two years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for less than five years."⁸³ According to

⁷⁷ *Id.*

⁷⁸ For the foundations of a universal perspective on human rights, see NICHOLAS WOLTERSTORFF, *JUSTICE* (2008).

⁷⁹ See Esther Song, *Legal Implications of the Final Report of the United Nations Commission of Inquiry on Human Rights in the Democratic Republic of Korea*, 15 KOR. UNIV. L. REV. 3 (2014).

⁸⁰ SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, Dec. 27, 1972, ch. 5, art. 68 (North Korea).

⁸¹ *Id.*

⁸² For a description of the North Korean criminal law system, see Pyong Choon Hahm, *Ideology and Criminal Law in North Korea*, 17 AM. J. COMPAR. L. 77 (1969).

⁸³ BRILL NIJHOFF, *ASIA AND OCEANIA* 285 (Talia Naamat et al., eds., 2019) (collecting non-discrimination norms).

the International Religious Freedom Report, these types of norms are used to interdict ownership of religious resources, and they are used to justify severe punishments, such as the death penalty and imprisonment.⁸⁴

North Korea has ratified the International Covenant on Civil and Political Rights,⁸⁵ the International Covenant on Economic, Social, and Cultural Rights,⁸⁶ the Convention on the Rights of the Child,⁸⁷ and the Convention on the Elimination of All Forms of Discrimination against Women.⁸⁸ Despite its international legal commitments, North Korea is one of the worst violators of human rights in the world.⁸⁹

According to the United Nations Commission of Inquiry on Human Rights in North Korea, there is a systematic and constant denial of fundamental human rights of religious communities in that country.⁹⁰ These include, among others, violations of the rights to life, freedom of religion, freedom of expression, freedom of movement, and adequate food; these violations take the form of systematic discrimination, arbitrary detention, torture, and enforced disappearances.⁹¹ Considering the magnitude of human rights violations in North Korea, these violations amount to crimes

⁸⁴ U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 3–4 (2020).

⁸⁵ ICCPR, *supra* note 16. North Korea acceded to the ICCPR in 1981. *International Covenant on Civil and Political Rights*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=_en (last visited Mar. 11, 2021).

⁸⁶ ICESCR, *supra* note 17. North Korea acceded to the ICESCR in 1981. *International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002b6ed&clang=_en (last visited Mar. 11, 2021).

⁸⁷ CRC, *supra* note 18, at 3. North Korea ratified the CRC in 1990. *Convention on the Rights of the Child*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe&clang=_en (last visited Mar. 11, 2021).

⁸⁸ CEDAW, *supra* note 64, at 13. North Korea acceded to the CEDAW in 2001 and withdrew some of its reservations in 2015. *Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=080000028000309d&clang=_en (last visited Mar. 11, 2021).

⁸⁹ For an analysis of the limitations and failures of international human rights law in changing the situation in North Korea, see Patricia Goedde, *Legal Mobilizations for Human Rights Protection in North Korea: Furthering Discourse or Discord*, 32 HUM. RTS. Q. 530 (2010).

⁹⁰ Hum. Rts. Council, Rep. of the Comm. of Inquiry on Human Rts. in the Democratic People's Republic of Korea, ¶ 1, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014) [hereinafter Human Rights in North Korea].

⁹¹ *Id.* ¶ 3.

against humanity.⁹² The main entities responsible for human rights violations include the Workers' Party of Korea, Kim Jong-un (the "Supreme Leader"), the National Defense Commission, the State Security Department, and the Korean People's Army.⁹³

The communist ideology that sustains the North Korean government is based on the personality cult of the "Supreme Leader," Kim Jong-un, as well as the dictatorship of the communist party and an extremely centralized economic system.⁹⁴ The North Korean communist ideology endorses the use of force against political opponents, including religious minority communities.⁹⁵ This leads to widespread violations of fundamental human rights.⁹⁶ Regarding these violations, the United Nations Commission of Inquiry on Human Rights in North Korea stated:

The commission finds that there is an almost complete denial of the right to freedom of thought, conscience and religion, as well as of the rights to freedom of opinion, expression, information and association

The State operates an all-encompassing indoctrination machine that takes root from childhood to propagate an official personality cult and to manufacture absolute obedience to the Supreme Leader (*Suryong*), effectively to the exclusion of any thought independent of official ideology and State propaganda.⁹⁷

The Workers' Party of Korea, in violation of international human rights law, controls all associations and social activities of North Korea's citizens.⁹⁸ Contrary to fundamental norms of human rights, including freedom of expression, governmental entities censor any views critical of the communist leadership and its ideology.⁹⁹ According to the Commission, "Citizens are punished for any 'anti-State' activities or expressions of dissent. They are

⁹² See *id.* ¶ 1.

⁹³ *Id.* ¶ 24. For an analysis of the personality cult concept in North Korea, see Lim, Jaechon & Ho-yeol Yoo, *Institutionalization of the Cult of the Kims: Its Implications for North Korean Political Succession*, 22 KOREAN J. OF DEF. ANALYSIS 341 (2010).

⁹⁴ See Human Rights in North Korea, *supra* note 90, ¶ 25. Regarding the personality cult and the ideology of Kim Jong-un, see Peter Wiles, *North Korea: Isolation and the Cult of Personality Under Communism*, 5 ASIAN PERSPECTIVE 133 (1981).

⁹⁵ See Human Rights in North Korea, *supra* note 90, ¶ 31.

⁹⁶ See *id.* ¶ 24.

⁹⁷ *Id.* ¶¶ 26–27.

⁹⁸ *Id.* ¶ 28.

⁹⁹ *Id.* ¶ 29.

rewarded for reporting on fellow citizens suspected of committing such ‘crimes.’”¹⁰⁰ In violation of the right to freedom of expression and information, state-operated media networks are the only legal source of information.¹⁰¹ This control is part of North Korea’s efforts to undermine the religious expressions of Christians and other groups. The Commission said:

The State considers the spread of Christianity a particularly serious threat, since it challenges ideologically the official personality cult and provides a platform for social and political organization and interaction outside the realm of the State. Apart from the few organized State-controlled churches, Christians are prohibited from practising their religion and are persecuted. People caught practising Christianity are subject to severe punishments in violation of the right to freedom of religion and the prohibition of religious discrimination.¹⁰²

Similar to Nazi Germany and the Soviet Union, the Democratic People’s Republic of Korea is a totalitarian regime. Regarding North Korea’s totalitarian characteristics, the Commission said:

[T]he rule of a single party, led by a single person, is based on an elaborate guiding ideology that its current Supreme Leader refers to as ‘Kimilsungism-Kimjongilism’. The State seeks to ensure that its citizens internalize this guiding ideology by indoctrinating citizens from childhood, suppressing all political and religious expression that questions the official ideology, and tightly controlling citizens’ physical movement and their means of communication with each other and with those in other countries. Discrimination on the basis of gender and *songbun* is used to maintain a rigid social structure that is less likely to produce challenges to the political system.¹⁰³

The inherent deficiencies of a centralized economy have created a system that is unable to provide food for its citizens.¹⁰⁴ Therefore, North Korea’s

¹⁰⁰ *Id.* ¶ 28.

¹⁰¹ See Human Rights in North Korea, *supra* note 90, ¶ 26.

¹⁰² *Id.* ¶ 31.

¹⁰³ *Id.* ¶ 81.

¹⁰⁴ *Id.* ¶ 82.

regime uses the distribution of food as a political instrument to buy loyalty.¹⁰⁵ Like other totalitarian regimes, North Korea uses fear as a political strategy to undermine political and religious views contrary to its ideology. Regarding these strategies, the Commission said: “Public executions and enforced disappearance to political prison camps serve as the ultimate means to terrorize the population into submission. The State’s violence has been externalized through State-sponsored abductions and enforced disappearances of people from other nations. These internationally enforced disappearances are unique in their intensity, scale, and nature.”¹⁰⁶

Regarding the situation in North Korea, the 2019 International Religious Freedom Report stated: “A South Korean nongovernmental organization (NGO) . . . reported 1,341 cases of violations of the right to freedom of religion or belief by DPRK authorities, including 120 killings and 90 disappearances.”¹⁰⁷ The Workers’ Party’s ideology sustains the view that religious people are a threat to the existence of the communist state.¹⁰⁸ Regarding this, Sandra Fahy wrote:

In a 1962 speech to the People’s Safety Agency (the North Korean secret political police) Kim Il Sung explained the elimination of religious believers for the sake of communism: “We cannot move towards a communist society with religious people. This is why we had to put on trial and punish those who held positions of deacons or higher in Protestant and Catholic churches. Other undesirables . . . were also put on trial. Those who did not [give up religion] were sent to prison camps.

This anti-Christian atmosphere was heavy with propaganda, and policies aimed at eliminating Christians after the Korean War.¹⁰⁹

Religious entities, including churches and monasteries, were closed.¹¹⁰ Religious activities were closely monitored, and religious believers were

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* ¶ 83.

¹⁰⁷ U.S. DEP’T OF STATE, OFFICE OF INT’L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA, 1 (2020).

¹⁰⁸ SANDRA FAHY, DYING FOR RIGHTS: PUTTING NORTH KOREA’S HUMAN RIGHTS ABUSES ON THE RECORD 32, 34–35 (2019).

¹⁰⁹ *Id.* at 35.

¹¹⁰ *Id.*

considered “counterrevolutionaries” and enemies of the state.¹¹¹ As an example of the persecution of religious believers, Sandra Fahy wrote:

[T]he Ministry of Public Security, guided by the Central Party, classified people into fifty-one different groups, each falling into one of three broader class divisions—core, wavering, and hostile. As part of identification within these fifty-one classes, individuals of religious leaning were given the number 37 for Protestants, 38 for Buddhists, and 39 for Catholics. These three, among others of politically questionable identity, were deemed hostile and were subjected to severe surveillance and punishment.¹¹²

North Korea’s extreme hostility towards Christians, Buddhists, and other religious minority groups demonstrates the inherent incompatibility between totalitarian communist views based on the cult of personality and universal human rights ideas based on respect for human dignity and religious freedom. One is based on the violent imposition of dogmatic views of reality that seek to destroy human freedom; the other is based on the idea of the recognition of the intrinsic worth of all human beings who hold inherent natural rights and freedoms that totalitarian regimes cannot take away.

Despite this reality, international human rights law recognizes certain circumstances in which the implementation of human rights norms can be limited. For example, Article 29.2 of the Universal Declaration of Human Rights says:

In the exercise of his rights and freedoms, everyone shall 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.¹¹³

It can be argued that quarantines, mask mandates, and other measures to prevent the spread of COVID-19 are consistent with just requirements for seeking the general welfare and respecting the rights of others. However, the use of health measures in Iran, North Korea, and Myanmar to undermine human rights and freedoms of religious minority communities is

¹¹¹ *Id.*

¹¹² *Id.* at 36.

¹¹³ UDHR, *supra* note 20, art. 29.2.

inconsistent with Article 29.2 of the Universal Declaration of Human Rights.

Regarding exceptions to the right to religious freedom, during situations of emergency, Article 18.3 of the International Covenant on Civil and Political Rights says: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹¹⁴ Contrary to Article 18.3, notwithstanding that part of the motivation was public health concerns, the limitations on religious liberty in Iran, Myanmar, and North Korea have been used to increase the persecution of religious minority communities. Concerning the limits of the restrictions under Article 18.3, Elizabeth K. Cassidy wrote:

Under Article 18(3), limitations can only apply to the freedom to manifest one’s religion or belief. The freedoms of thought and conscience and the freedom to have or adopt a religion or belief of one’s choice without coercion cannot be restricted, nor can parents’ freedom to ensure the religious and moral upbringing of their children. . . . Similarly, the right to hold any opinion without interference under Article 19(1) cannot be limited.¹¹⁵

Limitations on the right to religious freedom cannot be used to undermine fundamental human rights norms. Consistent with this view, Article 30 of the Universal Declaration of Human Rights says: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”¹¹⁶ According to Article 5.1 of the International Convention on Civil and Political Rights:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.¹¹⁷

¹¹⁴ ICCPR, *supra* note 16, art. 18.3.

¹¹⁵ Elizabeth K. Cassidy, *Restricting Rights? The Public Order and Public Morality Limitations on Free Speech and Religious Liberty in UN Human Rights Institutions*, 13 REV. OF FAITH & INT’L AFFS. 5, 6 (2015).

¹¹⁶ UDHR, *supra* note 20, art. 30.

¹¹⁷ ICCPR, *supra* note 16, art. 5.1.

Any limitations on the right to religious liberty should not violate fundamental human right norms, such as the right to life, the prohibition of torture, the right to freedom of expression, and the right to freedom of assembly.¹¹⁸ Widespread violations of fundamental human rights in Iran, North Korea, and Myanmar cannot be justified based on totalitarian and unjust views of justice or by supposed concerns to protect their populations from COVID-19.

Moreover, when totalitarian regimes like Iran, Myanmar, and North Korea use the discourse of protecting the health of their populations to persecute religious minority communities, the exceptions become meaningless. Exceptions to the implementation of human rights norms designed for emergency situations, including protecting the health of populations in cases of global pandemics, can never be used to achieve the opposite result, which is to increase exposure to diseases and deny oppressed minority religious groups the right to health care.¹¹⁹

Despite the diversity of political ideologies, religions, and ethnic groups in North Korea, Iran, and Myanmar, these countries share a common history of systematic dehumanization of political and religious opponents. They share a common history of violations of international standards which require respect for the right to life, the right to religious freedom, the right to freedom of expression, and other human rights. This demonstrates that any ethnic, political, or religious group can commit acts of extreme inhumanity.¹²⁰

¹¹⁸ Cassidy, *supra* note 115, at 6. According to Cassidy,

As explained by the UN Human Rights Committee . . . limitations are not allowed on a ground not stated in the relevant provision, even if that ground may be a basis for limiting other rights. For example, national security is not a permissible ground for limiting manifestations of freedom of religion or belief, although it is for freedom of expression Limitations also must be consistent with the ICCPR's provisions requiring equality before the law and prohibiting discrimination (ICCPR Arts. 2, 3, 26).

Id.

¹¹⁹ For analysis regarding widespread violations of human rights, including health care related issues, in Iran, Myanmar and North Korea, see USCIRF, *supra* note 4; U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM (2020).

¹²⁰ See *supra*, Part B.

C. *The Use of Legal and Political Discourses in Nazi Germany and the Soviet Union and Violations of Fundamental Human Rights of Religious Communities*

To understand the reasons for widespread violations of the human rights of religious minority communities in the twenty-first century, it is necessary to analyze the historical precedents of contemporary totalitarian regimes, including Nazi Germany and the Soviet Union. The Nazi worldview disregarded the humanity of the Jewish people. Adolf Hitler illustrated this when, on January 30, 1939, he said:

Today I will be once more a prophet: if the international Jewish financiers in and outside Europe should succeed in plunging the nations once more into a world war, then the result will not be the Bolshevizing of the earth, and thus the victory of Jewry, but the annihilation of the Jewish race in Europe!¹²¹

The Nazi regime killed millions of Jews.¹²² Consistent with the objectives and presuppositions of the Nazi worldview, the Nazi Party and the German government used legal norms and institutions to justify the killing and persecution of, and discrimination against, ethnic and religious minority communities, especially the Jewish community.¹²³ This included systematic violations of the right to religious freedom and freedom of expression. The Nazi worldview of medicine included using human beings for medical experimentation.¹²⁴ Nazi criminals, including medical doctors and lawyers, were responsible for extreme violations of fundamental human rights, including the right to life, the right to freedom of expression, and the right to religious liberty.¹²⁵ The perpetrators appealed to racist ideologies to justify their crimes, and such ideology denied the worth of the religious beliefs and

¹²¹ Hans Mommsen, *Hitler's Reichstag Speech of 30 January 1939*, 9 HIST. AND MEMORY 147, 147 (1997).

¹²² For an analysis of the psychological aspects of the Nazi actions and a comparison with Stalin's human rights violations, see Saul Friedlander, *The "Final Solution": On the Unease in Historical Interpretation*, in THE HOLOCAUST: THEORETICAL READINGS 69–74 (Neil Levi & Michael Rothberg eds., 2003).

¹²³ For an analysis of the law in Nazi Germany, see Lovell Fernandez, *The Law, Lawyers and the Courts in Nazi Germany*, 1 S. AFR. J. HUM. RTS. 124 (1985).

¹²⁴ See GEORGE J. ANNAS & MICHAEL A. GRODIN, *THE NAZI DOCTORS AND THE NUREMBERG CODE: HUMAN RIGHTS IN HUMAN EXPERIMENTATION* (1992).

¹²⁵ See Michael H. Kater, *Criminal Physicians in the Third Reich: Toward a Group Portrait*, in *MEDICINE AND MEDICAL ETHICS IN NAZI GERMANY* 77, 80 (Francis R. Nicosia & Jonathan Huener eds., 2008) (showing from the total of professional members in the Nazi Party that 45% were medical doctors and 25% were lawyers).

cultural values of the Jewish community. A clear example of the consequences of this worldview was one of the most well-known Nazi doctors, Josef Mengele.¹²⁶ Regarding Mengele's motives, Henry Friedlander wrote:

Most observers at Auschwitz have described him as arrogant, and this arrogance, together with his eugenic and racial world-view, explains his zealous enforcement of the Auschwitz killing process.

The T4 physicians as well as the SS physicians at Auschwitz were volunteers who could have refused to participate. They became killers because they adhered to the governing ideology and because they were arrogant, ambitious, and greedy.¹²⁷

Consistent with Nazi ideology, Nazi doctors believed in their mission to exterminate "inferior" people.¹²⁸ To demonstrate their commitment, they joined entities such as the Nazi Party, the SS, and the Nazi Physicians' League in considerable numbers.¹²⁹ Regarding the influence of Darwinism in Nazi ideology, Richard Weikart wrote:

[T]hey provided evolutionary explanations for the development of different human races, including the Nordic or Aryan race Specifically, they believed that the Nordic race had become superior because harsh climatic conditions in north-central Europe during the Ice Ages had sharpened the struggle for existence, causing the weak to perish and leaving only the most vigorous. . . . [T]hey believed that the

¹²⁶ Henry Friedlander, *Physicians as Killers in Nazi Germany: Hadamar, Treblinka, and Auschwitz*, in *MEDICINE AND MEDICAL ETHICS IN NAZI GERMANY* 59, 71 (Francis R. Nicosia & Jonathan Huener eds., 2008). Regarding the Nazi doctors' experiments with human beings, such as Dr. Mengele, Henry Friedlander wrote:

In Auschwitz Mengele performed the usual duties of a camp SS physician as well as the special Auschwitz assignment of directing selections for the gas chamber. In addition, Auschwitz opened up unlimited opportunities for an ambitious researcher. Research subjects were available in large numbers, and the restraints of medical ethics did not apply.

Id.

¹²⁷ *Id.* at 73.

¹²⁸ Kater, *supra* note 125, at 88.

¹²⁹ *Id.* at 88.

differential evolutionary development of the races provided scientific evidence for racial inequality.¹³⁰

The Nazi justifications for widespread violations of fundamental human rights, such as the right to life and religious freedom, included legal arguments and the active engagement of lawyers in the process of constructing and implementing inhumane policies.¹³¹ Regarding the reasons for lawyers' active collaboration in justifying genocidal actions, Alan E. Steinweis explained that: "[i]n explaining the readiness of German professionals to participate in the 'Final Solution,' Jarausch argues that genocide provided them with an opportunity to demonstrate their indispensability to the German state in a matter of the highest priority."¹³² Regarding the analysis of Nazi law in the reasoning of the Nuremberg Tribunal in the Justice Case, Harry Reicher wrote:

The charge was precisely that the defendants had perverted the legal system, in order to turn it into an instrument of brutality. It was therefore a circular, bootstrap argument to plead that very legal system in their defense. The defendants committed judicial murder. And murder is still murder, even with a judicial façade.¹³³

Regarding the corruption of the Nazi legal system, at the trial of Josef Altstoetter the U.S. Military Tribunal at Nuremberg said:

[T]he laws, the Hitlerian decrees and the Draconic, corrupt, and perverted Nazi judicial system themselves constituted

¹³⁰ Richard Weikart, *The Role of Darwinism in Nazi Racial Thought*, 36 GER. STUD. REV. 537, 538 (2013).

¹³¹ See generally THE LAW IN NAZI GERMANY: IDEOLOGY, OPPORTUNISM, AND THE PERVERSION OF JUSTICE (Alan E. Steinweis & Robert D. Rachlin eds., 2013).

¹³² Alan E. Steinweis & Robert D. Rachlin, *Introduction: The Law in Nazi Germany and the Holocaust* to THE LAW IN NAZI GERMANY, *supra* note 131, at 1, 6 ("Jarausch parcels lawyers and other professionals into three concentric circles of involvement in genocide: passive facilitators, active supporters, and killing professionals. Legal professionals were present in all three of these categories, with the highest numbers in the first two. Resistance and dissent did take place, but was infrequent.").

¹³³ Harry Reicher, *Evading Responsibility for Crimes against Humanity: Murderous Lawyers at Nuremberg*, in THE LAW IN NAZI GERMANY, *supra* note 131, at 137, 153–54 ("Of the sixteen defendants in the case, ten were convicted and four acquitted. . . . Four of those convicted were sentenced to life imprisonment, and the other six who were found guilty were sentenced to prison terms of between five and ten years. Schlegelberger and Rothaug were both among those sentenced to life imprisonment. Frustratingly, in view of the evil they had perpetrated and their contemptible manner of judicial 'administration,' both were released early.").

the substance of . . . crimes against humanity and . . . participation in the enactment and enforcement of them amounts to complicity in crime.

. . . .

The charge, in brief, is that of conscious participation in a nation wide government-organized system of cruelty and injustice, in violation of the laws of . . . humanity, and perpetrated in the name of law by the authority of the Ministry of Justice, and through the instrumentality of the courts. The dagger of the assassin was concealed beneath the robe of the jurist.¹³⁴

The systematic dehumanization of the Jewish people and the denial of the worth of their religious beliefs and cultural traditions were used to attempt to justify widespread violations of natural human rights. This created the conditions for genocide, crimes against humanity, and war crimes. It was not only the Nazi military who were responsible for these atrocities; lawyers, medical doctors, and other professionals were actively involved in defending and committing genocide and other crimes against humanity.¹³⁵ When governments and populations embrace worldviews contrary to the idea of respect for the human dignity of all human beings, then widespread violations of human rights are the natural consequence. In the current historical context, countries such as Iran, Myanmar, and North Korea have embraced worldviews contrary to the idea of respect for the humanity dignity of all people, including the Rohingya, Bahá'i, Christian, Muslim, Jewish, and all other minority communities.

Similarly, like the Nazi regime, the Soviet Union was characterized by systematic and widespread violations of the fundamental human rights of religious communities. Like the Nazi violations, the Soviet Union's violations were the consequence of a worldview that denied the importance of political and religious pluralism and undermined the human dignity of those perceived to be enemies of the state. Vladimir Lenin's views of religion were consistent with those of Karl Marx, who believed that religion was the "opiate" of the people.¹³⁶ According to Albert Boiter, "Lenin accepted Marx's atheist views without significant theoretical additions of his own, though he

¹³⁴ TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10: THE JUSTICE CASE 984-985 (U.S. Gov't Printing Off. 1951).

¹³⁵ See *supra* Part C.

¹³⁶ Albert Boiter, *Law and Religion in the Soviet Union*, 35 THE AM. J. OF COMPAR. L. 97, 101 (1987)

put more stress on how religion was used by the ruling classes as an instrument of oppression and also on the need to liberate minds from religion.”¹³⁷

The atheistic worldview was one of the main ideological foundations of the Soviet Union.¹³⁸ Therefore, there were systematic efforts to eliminate all forms of religious beliefs. Regarding the forced closing of churches, Albert Boiter wrote:

The almost total annihilation of organized religion in the 1930s is a well-known chapter of Soviet history. It suffices to note that by 1939 only a few hundred churches remained open, tens of thousands having been forcibly closed in successive waves of antireligious fervor, along with all seminaries, monasteries, and religious publications.¹³⁹

Consistent with a worldview that not only denied the value of religious beliefs, but also considered religious people a threat to the success and security of the socialist state, legal institutions were used to persecute religious believers. Regarding punishment for violations of the law, Boiter wrote: “Violators of regulations on religion are liable for disciplinary, administrative, or criminal sanctions. The Criminal Code (art. 142) provides for a sentence of 1 to 5 years corrective labor for ‘violations of the laws on separation of church and state and school from church.’”¹⁴⁰

The Marxist-Leninist worldview is inherently opposed to religious freedom because it sees religion as contrary to supposed objective laws of the historical development of humankind towards a communist system.¹⁴¹ Boiter

¹³⁷ *Id.*

¹³⁸ VICTORIA SMOLKIN, *A SACRED SPACE IS NEVER EMPTY* 106–41 (2018). According to Smolkin,

If building Communism was the ideological project of the Khrushchev era, the center of that project was the inculcation of the scientific atheist worldview. This discourse about worldview had roots in nineteenth-century European socialism, within which the transformation of worldviews was the mechanism of cultural and political revolution. Although the ideological debates of the Khrushchev era did not make this genealogy explicit, the Soviet use of worldview echoed the German conception of *weltanschauung*, which, as historian Todd Weir wrote, embodied “a systematic understanding of the world [conceived] as a meaningful totality that formed the basis of a community.”

Id. at 127 (footnote omitted).

¹³⁹ Boiter, *supra* note 136, at 111.

¹⁴⁰ *Id.* at 122.

¹⁴¹ *See id.* at 122–23.

wrote: “Having reviewed the Soviet system using the criterion of an interplay between ideology, law, and religion—or, alternatively, between church, state, and party—the subordination of both law and religion to the political wishes of the Party appears too fundamental.”¹⁴²

The dictatorship of the proletariat idea was one of the main foundations of the communist party of the Soviet Union.¹⁴³ Consistent with the communist totalitarian worldview, all other political philosophies and theological perspectives were considered false. This justified a political regime that was sustained by one political party and one ideology. In this historical context, Christianity, Buddhism, Islam, Mormonism, and other religions were considered false and dangerous to the stability of a political system that was based on atheistic views of reality.¹⁴⁴ Consistent with this perspective, law was part of the socio-economic superstructure, which was determined by economic relations of production between social classes.¹⁴⁵

According to Soviet Marxist-Leninist’s interpretations of sociology and history, communist law was considered an instrument that served the interests of the working class to build up a supposed classless society.¹⁴⁶ This was similar to the view of the Nazi regime which, based on false sociological and historical presuppositions, sustained the idea of law as an instrument to implement the will of a “superior” German race. Like the Soviet view of law, this totalitarian perspective considered all other views of the law, including

¹⁴² *Id.* at 125.

¹⁴³ See generally John N. Hazard, *The Soviet Union: A Working Class Dictatorship*, in *DICTATORSHIP IN THE MODERN WORLD* 93 (Guy Stanton Ford ed., 1939) (discussing the Soviet perspective of the dictatorship for the proletariat).

¹⁴⁴ See Orest Subtelny, *Law and Repression in the Soviet Union*, 7 *HARV. J.L. & PUB. POL’Y* 109 (1984) (discussing the use of law to justify human rights violations in the Soviet Union).

¹⁴⁵ See John N. Hazard, *The Soviet Union and International Law*, 43 *ILL. L. REV.* 591, 592 (1948). Hazard wrote:

Soviet jurists repeat constantly that their conception of international law rests upon the teaching of Marx and Engels, and their principal Soviet interpreters, Lenin and Stalin. This reliance upon the Soviet classics has become so extensive that a leading Soviet international lawyer has found it possible to question the claim of a Soviet textbook that Hugo Grotius was a “founder” of international law. Professor E. A. Korovin in his review of the offending text declares that Marx, Engels, Lenin and Stalin are the “founders” of all contemporary science concerning society and the state, and that a Marxist jurist can recognize Grotius only as a great figure of the absolutist phase of feudal society.

Id. (footnote omitted).

¹⁴⁶ See Alice Erh-Soon Tay & Eugene Kamenka, *Marxism, Socialism and the Theory of Law*, 23 *COLUM. J. TRANSNAT’L L.* 217 (1985) (analyzing Marxist ideas as the foundation of the Soviet Union’s prevalent legal ideas and institutions).

religious perspectives, to be false and contrary to historical development.¹⁴⁷ In her analysis of Nazi and Bolshevik ideas of law, Hannah Arendt wrote:

In the interpretation of totalitarianism, all laws have become laws of movement. When the Nazis talked about the law of nature or when the Bolsheviks talk about the law of history, neither nature nor history is any longer the stabilizing source of authority for the actions of mortal men; they are movements in themselves. Underlying the Nazis' belief in race laws as the expression of the law of nature in man is Darwin's idea of man as the product of a natural development which does not necessarily stop with the present species of human beings, just as under the Bolsheviks' belief in class-struggle as the expression of the law of history lies Marx's notion of society as the product of a gigantic historical movement which races according to its own law of motion to the end of historical times when it will abolish itself.¹⁴⁸

Unlike the ideas regarding the inherent equality and dignity of all human beings as well as the existence of intrinsic, natural human rights, the Soviet and Nazi views of human nature were based on ideas of the survival-of-the-fittest theory and the inherent violent nature of relations between social groups.¹⁴⁹ These views of human nature sustained Nazi and Soviet ideas of supposedly universal laws that were applied to their political and legal ideologies. Regarding the similarities between Nazi and Marxist ideas of "natural" law, Arendt wrote:

The "natural" law of the survival of the fittest is just as much a historical law and could be used as such by racism as Marx's law of the survival of the most progressive class. Marx's class struggle, on the other hand, as the driving force of history is only the outward expression of the development of productive forces which in turn have their origin in the "labor-power" of men.¹⁵⁰

The inherent falsehood and inhumanity of the Nazi and Soviet ideologies were seen in their systematic efforts to find new enemies of the state and use

¹⁴⁷ For an analysis of the law in Nazi Germany, see Friedrich Roetter, *The Impact of Nazi Law*, 1945 WIS. L. REV. 516 (1945).

¹⁴⁸ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 597 (2004).

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*

violence against them to ensure the irrational political and legal ideas adopted by those in power were successful.¹⁵¹ Regarding the totalitarian Nazi and Communist imperative of constantly finding new enemies and justifications for killing, Arendt wrote:

If it is the law of nature to eliminate everything that is harmful and unfit to live, it would mean the end of nature itself if new categories of the harmful and unfit-to-live could not be found; if it is the law of history that in a class struggle certain classes “wither away,” it would mean the end of human history itself if rudimentary new classes did not form, so that they in turn could “wither away” under the hands of totalitarian rulers. In other words, the law of killing by which totalitarian movements seize and exercise power would remain a law of the movement even if they ever succeeded in making all of humanity subject to their rule.¹⁵²

The Nazi and Soviet communist regimes are clear examples of the tragic consequences of political ideologies that dehumanize political and religious opponents. Despite the fundamental ideological differences that sustained these regimes, both were characterized by efforts to impose distorted and inhumane views of law, politics, and medicine. Both regimes were characterized by the denial of natural, inherent human rights. Both regimes were based on ideas that recognized the supposed superiority of certain groups of people. Consistent with their totalitarian and inhumane views of reality, both regimes used legal discourses to violate the inherent, natural rights of religious minority communities, including the right to life, the right to freedom from torture, and the right to religious freedom.

In both cases, the widespread violations of fundamental, natural human rights resulted in the killing of millions of innocent human beings, including members of religious minority groups. Regarding the extent of the international crimes committed by the Nazi regime, Jackson said: “The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”¹⁵³

In the name of law and justice, Nazi lawyers attempted to justify killing and torturing innocent Jewish people. In the name of communist justice, the

¹⁵¹ *Id.* at 597–98.

¹⁵² *Id.* at 598.

¹⁵³ 2 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 98–99 (1947).

Soviet regime justified the killing and torturing of Christians, Jews, and other religious believers. In the name of advancing medical science, Nazi doctors attempted to justify the killing and torture—in medical experiments—of innocent human beings. Considering that widespread violations of human rights and human dignity, including against religious minority groups, are still taking place in the twenty-first century, it is essential to remember the lessons provided by the Nazi and Soviet regimes.

These lessons are painful and appalling. It is hard to acknowledge the harsh reality of the world in which we live. It is also difficult to recognize the limitations in the fields of knowledge such as law and medicine. However, the lives and freedom of millions of innocent human beings who belong to persecuted religious minority communities require the rest of the world to remember the atrocities of the past with the hope and willingness to end current actions of extreme political evil and prevent future inexcusable widespread violations of human dignity. History has demonstrated that movements for the defense of human rights not only have saved human lives, but they have also significantly contributed to the defeat of totalitarian regimes.

In the Soviet Union, human rights movements, inspired by the Universal Declaration of Human Rights and other international normative instruments, resisted the communist regime.¹⁵⁴ Similarly, in Poland, the Solidarity movement defeated a communist dictatorship by defending fundamental human rights, including respect for religious freedom.¹⁵⁵ Natural law and positive human rights law were the sources of powerful discourses that inspired the people of these countries to organize, resist, and finally defeat totalitarian regimes.

A key moment in the development of the human rights movement in the Soviet Union occurred in 1965. Human rights advocates assembled to celebrate the anniversary of the Universal Declaration of Human Rights. Sarah B. Snyder wrote: “Approximately two hundred people assembled in Pushkin Square in December to press for fair trials for imprisoned writers. . . . The year 1965 also marked the first publication of the *Chronicle of Current Events*, the *samizdat* (self-published) compilation of human rights

¹⁵⁴ See SARA B. SNYDER, *FROM SELMA TO MOSCOW* 20 (2018).

¹⁵⁵ See Magdalena Kubow, *The Solidarity Movement in Poland: Its History and Meaning in Collective Memory*, 58 POLISH REV. 3, 14 (2013) (“The elections were held on June 4, 1989, and Solidarity was victorious, winning ninety-nine of a hundred seats in the Senate. The first non-Communist government in Eastern Europe (since Yalta) was formed with Tadeusz Mazowiecki named premier. Lech Wałęsa was elected president of the Polish Republic in 1990. Seemingly, the battle against oppression and struggle was over.”).

abuses.”¹⁵⁶ Despite severe governmental restrictions enacted by the Soviet regime, human rights advocates established nongovernmental organizations to denounce systematic violations of human rights normative standards.¹⁵⁷ Regarding this, Snyder wrote:

The two most important groups to develop during the 1960s and early 1970s were the Moscow Human Rights Committee (MHRC) and the Initiative Group for the Defense of Human Rights in the USSR. . . . The Soviet government perceived such organizations as threatening and prevented them from operating freely. Members of the MHRC such as nuclear physicist Andrei Sakharov faced a prohibition against living in Moscow as well as the confiscation of written materials, the refusal of exit visas, and the interception of mail. In a notable act of protest, members of the Initiative Group for the Defense of Human Rights in the USSR signed a May 1969 letter that alleged human rights violations in the Soviet Union and addressed it to the UN, making the group the first Soviet NGO to send a letter to that organization. Later, in October 1973, several prominent Soviet dissidents, including Orlov, Valentin Turchin, and Sergei Kovalev, formed a national section of Amnesty International.¹⁵⁸

Resistance movements against the Nazi regime were inspired by normative ideas regarding respect for human rights and human dignity. The Nazi regime created the conditions for Jewish people in Eastern Europe to die of starvation and diseases. Jewish organizations resisted these genocidal efforts by providing means for the survival of their communities. Patrick Henry said:

Here, more generally, nonviolent forms of resistance would have included any life-sustaining activities or actions that fostered human dignity in the face of a cruel machine designed to extinguish it: smuggling in and sharing food, clothing, and medicine; putting on plays, poetry readings, and art exhibits; creating orchestras, orphanages, study groups, and other morale building acts of solidarity; publishing underground newspapers, founding schools,

¹⁵⁶ SNYDER, *supra* note 154, at 20.

¹⁵⁷ *Id.* at 21.

¹⁵⁸ *Id.*

establishing religious activities, and documenting one's experiences . . .¹⁵⁹

These efforts for the defense of human dignity were inspired by ethical Jewish ideas such as *amidah*, which signifies resistance against injustice by peaceful and violent means.¹⁶⁰ Even in the most challenging circumstances in concentration camps, efforts to protect human rights and human dignity took place in the resistance to the Nazi regime. On this point, Patrick Henry wrote:

In the camps too, but much more strikingly, any attempt by sick, starving human beings to stay clean, to care for the dying, to pray, to observe *shabbat*, to say *kaddish* for their fallen relatives and friends, to read, or to remain physically, intellectually, culturally, theologically, and morally alive constituted resistance to Nazi restrictions, which were designed to demolish individuals, to destroy their souls and their wills . . .¹⁶¹

This shows that human beings have the rational capacity to understand the existence of natural, inalienable rights and the inherent strength of human rights discourses that seek to ensure universal respect for human dignity at all times and in all places.

D. *The Discourse of International Human Rights Law as a Response to Totalitarian Ideas of Law and Politics*

Totalitarian regimes like Iran, North Korea, and Myanmar sustain their power with discourses based on unjust worldviews that justify the use of force

¹⁵⁹ Patrick Henry, *Introduction to JEWISH RESISTANCE AGAINST THE NAZIS* xx, xx (Patrick Henry ed. 2014).

¹⁶⁰ *Id.* at xxi. Regarding the concept of “Amidah”, Patrick Henry wrote:

Thinking along these richly humanitarian lines, Yehuda Bauer uses the Hebrew term *amidah* (“standing up against”) to define a broad range of resistance that includes both armed and unarmed resistance:
 “What does *amidah* include? It includes smuggling food into ghettos; mutual self-sacrifice within the family to avoid starvation or worse; cultural, educational, religious, and political activities taken to strengthen morale; the work of doctors, nurses, and educators to consciously maintain health and moral fiber to enable individual and group survival; and, of course, armed rebellion or the use of force (with bare hands or with ‘cold’ weapons) against the Germans and their collaborators.”

Id. (quoting YEHUDA BAUER, *RETHINKING THE HOLOCAUST* 144 (2001)).

¹⁶¹ *Id.*

against political and religious opponents. As discussed in a previous section of this article, the Iranian government's Shi'a Islamic fundamentalist worldview disregards the worth and contributions of other sects and other religions, including the Bahá'i faith, Christianity, and Sunni Islam. The Islamic fundamentalist ideology of some Iranian Ayatollahs is based on distorted views of universal justice.¹⁶² Therefore, there is no place for religious pluralism, freedom of conscience, freedom of expression, and freedom of religion. The North Korean regime's version of Marxism sustains the personality cult idea with the excuse of constructing a utopian, classless society.¹⁶³

The North Korean rulers believe that they are the keepers of communist universal truth and justice.¹⁶⁴ Therefore, they use the law and other social institutions to undermine religious and political worldviews that oppose the governmental communist orthodoxy. A similar totalitarian attitude sustains the regime in Myanmar, where Rohingya Muslims and other religious minorities are considered a hindrance to the implementation of "just" and "universal" laws based on Buddhist and nationalist ideas of reality.¹⁶⁵ It is difficult to acknowledge that these inhumane ideas are still influential in the twenty-first century.

Throughout history, totalitarian ideologies based on universal truth narratives have sustained political regimes such Nazi Germany, the Soviet Union, Iran, Myanmar, and North Korea. To implement their absolutist views of reality, these regimes have used legal norms that denied the equality and dignity of minority ethnic and religious communities. Discussing the concept of lawfulness in totalitarian regimes, Hannah Arendt wrote: "[T]otalitarian lawfulness pretends to have found a way to establish the rule of justice on earth—something which the legality of positive law admittedly could never attain."¹⁶⁶

One of the main reasons for violations of human rights norms in Myanmar, Iran, and North Korea is the lack of understanding of the importance of constructing societies that respect fundamental human rights and human dignity of all its members. human rights system.¹⁶⁷ By voting in

¹⁶² See *supra* Part B (discussing Islamic fundamentalist ideology).

¹⁶³ See ANDREI LANKOV, *THE REAL NORTH KOREA: LIFE AND POLITICS IN THE FAILED STALINIST UTOPIA* 69–70 (2015).

¹⁶⁴ *Id.*

¹⁶⁵ See *supra* Part B (discussing Myanmar's totalitarian ideology).

¹⁶⁶ ARENDT, *supra* note 148, at 595.

¹⁶⁷ For an analysis of international religious freedom and human rights as a global discourse and the challenges to its implementation and foundations, see John Witte, Jr. & M.

favor of and ratifying international human rights legal instruments while failing to respect them, these regimes have broken the international *consensus iuris* that emerged after World War II regarding the implementation of international human rights norms.¹⁶⁸ The Nazi and Soviet regimes followed similar paths. Arendt wrote:

If it is true that the link between totalitarian countries and the civilized world was broken through the monstrous crimes of totalitarian regimes, it is also true that this criminality was not due to simple aggressiveness, ruthlessness, warfare and treachery, but to a conscious break of that *consensus iuris* which, according to Cicero, constitutes a “people,” and which, as international law, in modern times has constituted the civilized world insofar as it remains the foundation-stone of international relations even under the conditions of war. Both moral judgment and legal punishment presuppose this basic consent . . .¹⁶⁹

The contradictory actions of Iran, Myanmar, and North Korea regarding normative standards are demonstrated by their formal recognition of religious freedom in their domestic laws and their persistent violations of fundamental human rights such as religious liberty. Regarding a unique characteristic of totalitarian views of law and policy, Hannah Arendt wrote: “Totalitarian policy does not replace one set of laws with another, does not establish its own *consensus iuris*, does not create, by one revolution, a new form of legality. Its defiance of all, even its own positive laws implies that it believes it can do without any *consensus iuris*.”¹⁷⁰

The North Korean government’s systematic violations of fundamental human rights of Christians and other religious minority communities are designed to terrorize and undermine the beliefs of anybody that disagrees

Christian Green, *Religious Freedom, Democracy, and International Human Rights*, 23 EMORY INT’L L. REV. 583 (2009).

¹⁶⁸ For an analysis of the fulfillment of human rights obligations and the application of the international bill of human rights in cases at International Court of Justice, the General Assembly of the United Nations, and the United Nations Commission, see B. G. Ramcharan, *The Legal Status of the International Bill of Human Rights*, 55 NORDIC J. INT’L L. 366, 366 (1986). According to Ramcharan, “[I]nternational practice has confirmed the notion that the International Bill of Human Rights consisting of the Universal Declaration, and the International Covenants contain ‘unequivocal world standards of human rights’ which give to the International Bill a distinctive legal status in contemporary international law.” *Id.*

¹⁶⁹ ARENDT, *supra* note 148, at 596.

¹⁷⁰ *Id.*

with the personality cult of Kim Jong-un.¹⁷¹ Similar situations, with different ideological and normative justifications, take place in Iran and Myanmar.¹⁷² Widespread violations of freedom of conscience and freedom of expression lead to systems of oppression because these governments use positive laws to justify acts of extreme political evil. Regarding the interactions between positive law and terror, in totalitarian regimes, Arendt wrote: “In the body politic of totalitarian government, this place of positive laws is taken by total terror, which is designed to translate into reality the law of movement of history or nature.”¹⁷³

In countries such as Iran, North Korea, and Myanmar, the guilt of religious minority groups is defined by arbitrary ideological standards and not by just legal norms. Arendt’s views on the concepts of guilt and innocence in totalitarian regimes are helpful in understanding the situation in these countries. According to her,

Guilt and innocence become senseless notions; “guilty” is he who stands in the way of the natural or historical process which has passed judgement over “inferior races,” over individuals “unfit to live,” over “dying classes and decadent peoples.” Terror executes these judgments, and before its court, all concerned are subjectively innocent: the murdered because they did nothing against the system, and the murderers because they do not really murder but execute a death sentence pronounced by some higher tribunal. The rulers themselves do not claim to be just or wise, but only to execute historical or natural laws; they do not apply laws, but execute a movement in accordance with its inherent law.¹⁷⁴

North Korea, Iran, and Myanmar justify violations of fundamental human rights of religious minority communities through totalitarian views of law and justice. Furthermore, these regimes often argue that the international community should respect the principle of national sovereignty and should not criticize actions inside their own jurisdictions.¹⁷⁵ Similarly, Nazi criminals at the Nuremberg trials argued that their actions were consistent

¹⁷¹ See *supra* Part B.

¹⁷² See *id.*

¹⁷³ ARENDT, *supra* note 148, at 598.

¹⁷⁴ *Id.* at 599.

¹⁷⁵ See Jack Donnelly, *The Relative Universality of Human Rights*, 29 HUM. RTS. Q. 281, 283, 290, 294 (2007) (analyzing and critiquing the universality of human rights).

with German positive law and the sovereign will of the state.¹⁷⁶ The defense lawyers argued that the defendants should not be judged *ex post facto* because neither German law nor international law applied to the crimes they perpetrated inside the German jurisdiction.¹⁷⁷ The lawyers also argued that the Nazi defendants were simply obeying orders.¹⁷⁸

In that historical context, legal positivism was a prevalent juridical worldview. In response to the arguments of the Nazi defense, the prosecution persuasively explained the importance of recognizing the existence of a law higher than German law and higher than positive international law. Regarding this, Robert Jackson, Chief U.S. Prosecutor, said: “As an International Military Tribunal, it rises above the provincial and transient and seeks guidance not only from international law but also from the basic principles of jurisprudence which are assumptions of civilization . . .”¹⁷⁹

In the current historical context, it is essential to embrace the natural and inherent human rights ideas that were used as a response to the actions of extreme political evil perpetrated by the Nazi and other totalitarian regimes.¹⁸⁰ The post-World War II order was built on universal principles, including the importance of respecting universal human rights norms as a foundation for the survival of humankind.¹⁸¹ In response to the atrocities committed during the Nazi regime, human rights law became one of the main foundations of the international order.¹⁸² Regarding this, Professor Samuel Murumba said:

¹⁷⁶ See F. B. Schick, *The Nuremberg Trial and the International Law of the Future*, 41 AM. J. INT’L L. 770 (1947).

¹⁷⁷ *See id.*

¹⁷⁸ *Id.* at 792–793.

¹⁷⁹ 19 TRIALS OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 398 (1948).

¹⁸⁰ For a historical analysis of diverse field of international law, for the protection of human dignity, including international human rights law and international criminal law, see Jeremy Sarkin, *The Historical Origins, Convergence and Interrelationship of International Human Rights Law, International Humanitarian Law, International Criminal Law and Public International Law and their Application since the Nineteenth Century*, 1 HUM. RTS. & INT’L DISCOURSE 125 (2007).

¹⁸¹ On the importance of respecting principles of civilization for the survival of humankind, see Robert H. Jackson, *Closing Arguments for Conviction of Nazi War Criminals*, 20 TEMP. L.Q. 85, 85 (1947).

¹⁸² For a historical analysis of the establishment of the international human rights law system after World War II, see John Humphrey, *The International Law of Human Rights in the Middle Twentieth Century in The Present State of International Law*, in THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS 75 (Maarten Bos ed., 1973).

In a dramatic break with this past, the post-World War II order was explicitly built upon the normative foundation of human dignity and human rights. This triumph—of natural law over the positivism that had enjoyed pre-eminence for most of the nineteenth and the first part of the twentieth centuries—was due to specific historical circumstances.¹⁸³

As part of the establishment of the international human rights system, the Universal Declaration of Human Rights is a central normative instrument that expresses norms of customary international law for the protection of human dignity.¹⁸⁴ Regarding the importance of the Declaration, Harvard Law School Professor Mary Ann Glendon wrote:

Together with the Nuremberg Principles of international criminal law developed by the Allies in 1946 for the trials of German and Japanese war criminals and the 1948 Genocide Convention, the Universal Declaration of Human Rights became a pillar of a new international system under which a nation's treatment of its own citizens was no longer immune from outside scrutiny. The Nuremberg Principles, by sanctioning prosecution for domestic atrocities committed in wartime, represented a determination to punish the most violent sort of assaults on human dignity. The Genocide Convention obligated its signers to prevent and punish acts of genocide, whether committed in times of war or in peace. The Universal Declaration was more ambitious. Proclaiming that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind," it aimed at *prevention* rather than punishment.¹⁸⁵

Regarding the essence of the Universal Declaration of Human Rights, Linde Lindkvist wrote: "The key to unlocking the text's central message, Anna Grear maintains, is to realize that it 'carries *at its heart* a visceral awareness of a common human vulnerability—an awareness that was starkly

¹⁸³ Samuel K. Murumba, *Grappling with a Grotian Moment: Sovereignty and the Quest for a Normative World Order*, 19 BROOK. J. INT'L L. 829, 839 (1993) (footnote omitted).

¹⁸⁴ For a classical analysis of the Universal Declaration of Human Rights as a legal instrument, see H. Lauterpacht, *The Universal Declaration of Human Rights*, 25 BRIT. Y.B. INT'L L. 354 (1948).

¹⁸⁵ MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* xvi (2001) (emphasis in original).

and tragically lit by the fires of Auschwitz and Treblinka.”¹⁸⁶ This vulnerability is demonstrated by systematic violations of human rights of religious minority communities in countries such as Iran, Myanmar and North Korea. In the current historical context, which is still characterized by widespread acts of political violence, it is essential to remember the normative ideas that guided the founders of the international human rights law system. One of the most important intellectuals who drafted the Universal Declaration of Human Rights was Ambassador Charles Malik. He was Lebanon’s Minister of Foreign Affairs, representative to the United Nations, and President of the U.N. Commission on Human Rights.¹⁸⁷

Regarding Malik’s influence on the drafting of the Universal Declaration of Human Rights, Linde Lindkvist said: “In the literature on the Universal Declaration, Malik is generally recognized as the youngest . . . , by far the most independent, and one of the most influential members of the original Commission on Human Rights.”¹⁸⁸ Malik believed in the necessity of recognizing the importance of freedom of conscience as an essential human attribute for human existence.¹⁸⁹ Consistent with this belief, Malik rejected actions of sovereign states that have the objective of coercing the consent of their citizens to embrace specific political ideologies.¹⁹⁰

Rene Cassin, another author of the Universal Declaration of Human Rights, agreed with Malik’s views regarding the importance of freedom of conscience as a fundamental attribute of human dignity.¹⁹¹ Regarding his views, Linde Lindkvist wrote: “Cassin also marked the freedom of thought and conscience as ‘absolute and sacred,’ thus awarding it a special status, both with this specific article and the UN declaration at large.”¹⁹² Consistent with Malik’s and Cassin’s views on human nature, Article 1 of the Universal Declaration of Human Rights reads: “All human beings are

¹⁸⁶ LINDE LINDKVIST, RELIGIOUS FREEDOM AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 57 (2017) (emphasis in original) (quoting ANNA GREAR, REDIRECTING HUMAN RIGHTS 145 (2010)).

¹⁸⁷ See THE CHALLENGE OF HUMAN RIGHTS: CHARLES MALIK AND THE UNIVERSAL DECLARATION (Habib C. Malik ed., 2000).

¹⁸⁸ LINDKVIST, *supra* note 186, at 43 (explaining that Malik’s academic career “included studies in philosophy at Harvard University, a stint in Freiburg as a student of Martin Heidegger, a term as Head of the Department of Philosophy at the American University in Beirut, and an appointment as Minister of Lebanon to the United States and the UN.”).

¹⁸⁹ See THE CHALLENGE OF HUMAN RIGHTS, *supra* note 187.

¹⁹⁰ LINDKVIST, *supra* note 186, at 25.

¹⁹¹ *Id.* at 27.

¹⁹² *Id.*

born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁹³

The Universal Declaration of Human Rights was drafted during the Cold War era. The Soviet Union’s representatives to the committee in charge of drafting the Universal Declaration of Human Rights opposed the idea of individual inherent human rights.¹⁹⁴ Malik was not only one of the main proponents of respect for inalienable human rights, but also a strong critic of communist ideas such as those defended by the Soviet Union, which he considered antagonistic to the foundations of natural human rights.¹⁹⁵ Malik also opposed the Nazi ideology, which he considered a totalitarian view that was inherently contrary to human freedom in all its dimensions, including the religious and intellectual dimensions.¹⁹⁶ In his analysis of Malik’s view of the Universal Declaration, Linde Lindkvist wrote:

[T]he emphasis on human reason and conscience constituted the text’s most adequate features. These were passages that encouraged the person to peer beyond the walls of the text itself in search for his or her God-given rights and duties. The hope that he attached to the Declaration text was not, in other words, that every single item therein one day would be universally implemented through the laws and mechanisms of enforcement, but that the text would function as a kind of wake-up call for individuals; as a reminder of their divine origins and their true missions as human persons.¹⁹⁷

Malik was an advocate of the right to change religious beliefs. He thought that an essential component of freedom was the human capacity to change ideas.¹⁹⁸ He viewed the Universal Declaration of Human Rights not only as a normative instrument but also as a text that could influence people’s consciences and lifestyles. Regarding this, Linde Lindkvist wrote: “The Universal Declaration also promised to empower persons to ‘change your belief from the good to the better and better as the truth progressively reveals itself to you.’”¹⁹⁹

¹⁹³ UDHR, *supra* note 20, art. 1.

¹⁹⁴ GLENDON, *supra* note 185.

¹⁹⁵ LINDKVIST, *supra* note 186, at 47–48.

¹⁹⁶ *Id.* at 57–58.

¹⁹⁷ *Id.* at 56–57.

¹⁹⁸ *Id.* at 87.

¹⁹⁹ *Id.*

The normative ideas of the main authors of the Universal Declaration of Human Rights are as relevant today as they were in 1948.²⁰⁰ Despite the progress made in the codification of international human rights law norms and principles and the establishment of international courts for the implementation of human rights law,²⁰¹ widespread violations of human rights continue in many countries. One of the main targets of totalitarian regimes is religious minority groups. When addressing the widespread human rights violations of these communities, it is necessary to have an integrative approach that includes international human rights law and bioethics.

Many of the norms of international legal instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, are consistent with natural human rights ideas.²⁰² Many of its norms are international standards that reflect norms of customary international law that all sovereign states have the legal obligation to follow.²⁰³ One of these norms is the right to access health care, which in times of the global COVID-19 pandemic is particularly relevant.²⁰⁴ A bioethical analysis of this topic should include the rejection of the use of medicine and health care discourses to justify violations of fundamental

²⁰⁰ GLENDON, *supra* note 185, at xvi.

²⁰¹ The Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, and the European Court of Human Rights are example of efforts to establish institutions for the implementation of international human rights law.

²⁰² WOLTERSTORFF, *supra* note 78, at 352. Regarding the philosophical foundations of human rights, he wrote:

What we need, for a theistic grounding of natural human rights, is some worth-imparting relation of human beings to God that does not in any way involve a reference to human capacities. I will argue that being loved by God is such a relation; being loved by God gives a human being great worth. And if God loves equally and permanently each and every creature who bears the *imago dei*, then the relational property of being loved by God is what we have been looking for. Bearing that property gives to each human being who bears it the worth in which natural human rights inhere.

Id. at 352–53.

²⁰³ For an analysis of the need of global human rights norms and its relation to *jus cogens* and customary international law, see Filip Spagnoli, *The Globalization of Human Rights Law: Why Do Human Rights Need International Law*, 14 TEX. WESLEYAN L. REV. 317 (2008).

²⁰⁴ For a brief analysis of global responses to COVID-19, see Heather Casey, *COVID-19 and Its International Response*, 28 AUSTL. L. LIBR. 96 (2020).

human rights, including the right to religious freedom.²⁰⁵ Regarding the interrelations between the Universal Declaration of Human Rights and public health, Professor Annas wrote:

I suggested that the declaration itself sets forth the ethics of public health, given that its goal is to provide the conditions under which humans can flourish. This is also the goal of public health, making it reasonable for public health to adopt the Universal Declaration of Human Rights as its code of ethics.²⁰⁶

In times of globalization, it is essential to consider the integration of human rights law and bioethics. It is specifically important to properly analyze the topic of religious liberty and the right to health in the context of the global COVID-19 pandemic. Regarding globalization and health, Professor Annas wrote:

The challenge facing medicine and health care is to develop a global language and a global strategy that can help to improve the health of all of the world's citizens. Clinical medicine is practiced one patient at a time, and the language of medical ethics is the language of self-determination and beneficence: doing what is in the best interests of the patient with the patient's informed consent. This is powerful but has little direct application in countries where physicians are scarce and medical resources very limited.²⁰⁷

It is important to remember how the Nazi regime used medicine for political objectives. Under the Stalinist regime, medicine, including psychiatry, was also used as an instrument of political persecution.²⁰⁸ Contrary to totalitarian uses of medicine, the international human rights law system recognizes all people's right to health care. According to Article 25.1 of the Universal Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care."²⁰⁹

²⁰⁵ See generally GEORGE J. ANNAS, *AMERICAN BIOETHICS: CROSSING HUMAN RIGHTS AND HEALTH LAW BOUNDARIES* (2005).

²⁰⁶ *Id.* at 24 (footnote omitted).

²⁰⁷ *Id.*

²⁰⁸ For an analysis of psychiatry in the Soviet Union including its use for political ends, see Sidney Bloch, *Psychiatry as Ideology in the USSR*, 4 *J. OF MED. ETHICS* 126 (1978).

²⁰⁹ UDHR, *supra* note 20, art. 25(1).

In the context of the global COVID-19 pandemic, the right to health care is even more important.²¹⁰ Totalitarian regimes, such as those of Iran, South Korea, and Myanmar, are not only systematically violating the right to religious freedom of minority religious communities, but they are also denying them their human right to medical care.²¹¹ In Iran, Myanmar, and North Korea, religious minority groups are among the poorest. Therefore, they do not have adequate access to health care.²¹² Regarding the interrelation between health and income, Professor George J. Annas wrote: “The strongest predictive indicator of health is income, which is another way to say that poverty has a strong correlation with disease and disability, and one way to attack disease and improve health internationally is to redistribute income.”²¹³

Iran, Myanmar, and North Korea have an international legal obligation to implement the right to access health care as an imperative (*jus cogens* norm) of international law.²¹⁴ This legal obligation should be reflected in individual nations’ laws and fulfilled in every nation’s practice. Regarding the importance of domestic remedies for the implementation of the right to health, Professor Annas wrote: “The strength is that the right to health is a legal right, and since there can be no legal right without a remedy, this means that courts will provide a remedy for violations of the right to health.”²¹⁵

It is essential that the governments of Iran, Myanmar, and North Korea understand that, as members of the international community, they have legal responsibilities under international treaty law and customary international law to implement the right to health, which includes addressing the effects of the COVID-19 pandemic. This obligation extends to religious minority groups within their territories. Regarding this legal obligation, Article 12.1 of the International Covenant on Economic, Social and Cultural Rights

²¹⁰ For an analysis of the function of the law in preventing global pandemics, see Belinda Bennett & Terry Carney, *Trade, Travel and Disease: The Role of Law in Pandemic Preparedness*, 5 ASIAN J. WTO & INT’L HEALTH L. & POL’Y 301 (2010).

²¹¹ See *supra* Part B.

²¹² See *supra* Part B.

²¹³ See ANNAS, *supra* note 205, at 22.

²¹⁴ For an analysis of human rights law norms, as part of *jus cogens*, including the right to life, the prohibition of torture, the prohibition of genocide, and others, see Karen Parker & Lyn Beth Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT’L & COMPAR. L. REV. 411 (1989). Parker and Neylon restated the definition of *jus cogens* norms given by Mr. Suarez, Mexican delegate to the U.N. Conference on the Law of Treaties: “The rules of *jus cogens* [are] those rules which derive from principles that the legal conscience of mankind deem[s] absolutely essential to coexistence in the international community.” *Id.* at 415 (citation omitted).

²¹⁵ ANNAS, *supra* note 205, at 66.

declared that, “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²¹⁶ Article 12.2 of the ICESCR specifically stated the necessary steps that parties to the treaty should take to fulfill their obligations.²¹⁷ Article 12.2(c) applies to global pandemic cases such as COVID-19.²¹⁸ According to Article 12.2(c), sovereign states should take measures for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases.”²¹⁹ Article 12.2(d) required the establishment of “conditions which would assure to all medical service and medical attention in the event of sickness.”²²⁰

Besides the ICESCR, there are other international treaties that also recognize the right to health: the International Convention on the Elimination of All Forms of Racial Discrimination,²²¹ the Convention on the Elimination of All Forms of Discrimination against Women,²²² the Convention on the Rights of the Child,²²³ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,²²⁴ and the Convention on the Rights of Persons with Disabilities.²²⁵

The existence of the inherent human rights of all human beings is the foundation for international human rights law and bioethics. The lessons of history demonstrate the moral and political power of normative ideas that challenge the inhumane actions of totalitarian regimes. The inherent power of the discourses on human rights and bioethics transcends the norms of positive law. The founders of the international human rights law system recognized the strength of the norms of the Universal Declaration of Human Rights, because of its influence in the consciences of human beings, who are able to recognize the normative imperative of respecting the dignity of their fellow human beings.

In the twenty-first century, unlike in previous historical contexts, technological transformations have enabled the dissemination of normative

²¹⁶ ICESCR, *supra* note 17, art. 12.1.

²¹⁷ *Id.* art. 12.2.

²¹⁸ *Id.* art. 12.2(c).

²¹⁹ *Id.*

²²⁰ *Id.* art. 12.2(d).

²²¹ CERD, *supra* note 15, art. 5(e)(iv).

²²² CEDAW, *supra* note 64, arts. 11.1(f), 12, 14.2(b).

²²³ CRC, *supra* note 18, art. 24.

²²⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 28, 43.1(e), 45.1(c), Dec. 18, 1990, 2220 U.N.T.S. 3.

²²⁵ CRPD, *supra* note 19, art. 25.

ideas regarding respect for human rights and human dignity around the world— including in Iran, North Korea, and Myanmar. When people in these countries understand their rights and duties as human beings to follow the norms of the law of conscience, then they will demand that their governments end violations of the human rights of all communities, including religious minorities.

When religious minority communities understand that they have inherent worth, which is the foundation of their natural human rights, they will also understand that the totalitarian regimes of Iran, North Korea, and Myanmar cannot take away their fundamental human rights, including the right to freedom of conscience and religion. When citizens from diverse nations understand their influence on their own governments and on the international community, then they will demonstrate their solidarity with their fellow human beings in their struggle for human rights in places like Iran, North Korea, and Myanmar. As a result, they will demand their governments take political and legal action to transform the situation in these countries. But more importantly, they will be able to engage in global efforts to spread the ideas of the Universal Declaration of Human Rights and demand its implementation in countries around the world.

E. *International Human Rights Law, Religious Freedom, and International Organizations*

As in the Nazi and Soviet regimes, Iran, Myanmar, and North Korea systematically violate fundamental human rights. During the Nazi and Soviet regimes, lawyers and doctors participated in violations of fundamental human rights of religious communities, including the right to life. Nazi doctors used Jewish people as subjects of medical experiments that resulted in death or extreme bodily harm.²²⁶ Nazi judges and lawyers created and justified unjust laws to sustain the systematic persecution of and discrimination against Jewish people and other religious and ethnic minority groups.²²⁷

²²⁶ See generally ANNAS & GRODIN, *supra* note 124.

²²⁷ For an analysis of the persecution against the Jewish community and their daily resistance and responses to the Nazis, see THE LAW IN NAZI GERMANY, *supra* note 131, at 4–5, 9–10. Describing the beginning of the persecution of the Jewish people, using the law, Francis R. Nicosia wrote:

Between April 1933 and end of 1935, the regime enacted laws depriving Jews of their rights as equal citizens and removing them from every facet of German life except the economy. The “Law for the Restoration of the Professional Civil Service,” enacted on 7 April 1933, eliminated Jews, for the most part, from the civil service. On the same day, the “Law

Under the Nazi regime, the Jewish community was not only subjected to cruel and inhumane treatment, but the Jewish people were also denied their human rights to religious freedom and freedom of expression.²²⁸ Widespread violations of the right to life, the right to religious freedom, the right to freedom of expression, the right to freedom of assembly, and others were part of genocidal acts of the Nazi regime. The Nazi regime used the discourse of racial supremacy as one of the main foundations of Nazi ideology to justify violating the human dignity of minority communities.²²⁹ Contrary to this worldview, the international human rights discourse recognizes the equality and inherent dignity of all human beings.²³⁰ International normative instruments, including the Universal Declaration of Human Rights, recognize this fact and were created to prevent and punish barbaric actions against human dignity such as the ones committed by the Nazi regime.²³¹

The principle of non-discrimination is one of the foundations of the international human rights normative system. Totalitarian regimes, including those in power in North Korea, Myanmar, and Iran, systematically violate the principle of non-discrimination by denying equal treatment to

Concerning Admission to the Legal Profession” prohibited so-called Aryan Germans from retaining Jewish lawyers, and Aryan lawyers from representing Jewish clients. The “Decree Regarding Physicians’ Services with the National Health Service” of 22 April separated Jewish physicians from their non-Jewish patients by denying health insurance to Aryans who continued to see their Jewish doctors. In 1933, some 16 percent of independent lawyers in Germany were Jewish, as were about 10 percent of all practicing physicians; thus, restricting the relatively large number of Jewish lawyers and physicians to the relatively small Jewish community forced many out of their professions and eventually out of Germany. The “Law Against Overcrowding of German Schools,” enacted on 25 April, was designed to drive Jewish students from German schools through the imposition of strict quotas and the incorporation of Nazi racial doctrine into the curriculum. With the “Denaturalization Law” of 14 July 1933, aimed primarily at the thousands of *Ostjuden* who had fled anti-Semitic violence in Eastern Europe after World War I, the regime could revoke the citizenship of those who had settled in Germany after November 1918.

Francis R. Nicosia, *Introduction* to *JEWISH LIFE IN NAZI GERMANY: DILEMMAS AND RESPONSES* 1, 4–5 (Francis R. Nicosia & David Scrase eds., 2010) (footnotes omitted).

²²⁸ See generally *JEWISH LIFE IN NAZI GERMANY*, *supra* note 227.

²²⁹ For an analysis of racist theories and antisemitism that contributed to the persecution and killing of the Jewish people in Nazi Germany, see *HOW WAS IT POSSIBLE?: A HOLOCAUST READER* (Peter Hayes ed., 2015).

²³⁰ For a philosophical and theological analysis of the foundations of international human rights law, see *WOLTERSTORFF*, *supra* note 78.

²³¹ See *GLENDON*, *supra* note 185, at xvi.

religious minorities. The United Nations General Assembly expressed deep concern regarding violations of fundamental human rights in North Korea, “such as discrimination based on the *songbun* system, which classified people on the basis of State-assigned social class and birth and also included consideration of political opinions and religion.”²³² The United Nations Human Rights Council believes that one of the main causes of systematic discrimination against the Rohingya people in Myanmar is the official sanction of discrimination in the form of laws that deny political rights to the Rohingya people.²³³ Cultures that normalize systematic and widespread religious and ethnic discrimination dehumanize entire groups of people and create conditions that lead to extreme violations of fundamental human rights.

The most important and fundamental human right, without which all other rights are meaningless, is the right to life. Article 3 of the Universal Declaration of Human Rights states: “Everyone has the right to life, liberty and the security of person.”²³⁴ Article 6.1 of the International Covenant on Civil and Political Rights also states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²³⁵ Often this right is denied to Christians in North Korea, to the Rohingya people in Myanmar, and to Bahá’is in Iran, among other groups.²³⁶ For example, the U.N. Special Rapporteur on North Korea identified widespread violations of the right to life, including “public executions, secret executions in political detention camps, and the continuing use of public executions to intimidate the public.”²³⁷ Regarding widespread violations of the right to life in Iran, the U.N. High

²³² Hum. Rts. Council, Working Grp. on the Universal Periodic Rev., Compilation on the Democratic People’s Republic of Korea Report of the Office of the United Nations High Commissioner for Human Rights, ¶ 22, U.N. Doc. A/HRC/WG.6/33/PRK/2 (Feb. 26, 2019).

²³³ Hum. Rts. Council, Report of the Independent International Fact-finding Mission on Myanmar, ¶¶ 20–21, U.N. Doc. A/HRC/39/64 (Sep. 12, 2018).

²³⁴ UDHR, *supra* note 20, art. 3.

²³⁵ ICCPR, *supra* note 16, art. 6(1).

²³⁶ See *supra* at *passim*.

²³⁷ Hum. Rts. Council, Working Grp. on the Universal Periodic Rev., Compilation prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea, ¶ 19, U.N. Doc. A/HRC/WG.6/6/PRK/2 (Sep. 18, 2009) (footnote omitted).

Commissioner for Human Rights highlighted the fact that “since January 2014, the Government had already executed more than 200 individuals.”²³⁸

Because of widespread violations of fundamental human rights—especially the right to life—and the intent to destroy a group of people, the actions of the government of Myanmar against the Rohingya people can be considered genocidal.²³⁹ In addition to the individual protection of fundamental human rights for religious minority communities, international law recognizes legal protections for ethnic, racial, and religious groups. Such protection is expressed in the Convention on the Prevention and Punishment of the Crime of Genocide. According to Article II:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.²⁴⁰

In its analysis of genocide in Myanmar, the U.N. Human Rights Council focused on the intent element of the crime. The Council said:

Factors pointing to such intent include the broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition of Rakhine State; the level of organization indicating a plan for

²³⁸ Hum. Rts. Council, Working Grp. on the Universal Periodic Rev., Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Islamic Republic of Iran, ¶ 19, U.N. Doc. A/HRC/WG.6/20/IRN/2 (Aug. 18, 2014).

²³⁹ For a systematic analysis of the reasons why the government of Burma is responsible for genocide against the Rohingya people, see Maung Zarni & Alice Cowley, *The Slow-Burning Genocide of Myanmar's Rohingya*, 23 PAC. RIM L. & POL'Y J. 683 (2014).

²⁴⁰ CPPCG, *supra* note 62, art. II.

destruction; and the extreme scale and brutality of the violence committed.”²⁴¹

The International Court of Justice (ICJ) has also addressed the situation in Myanmar. The ICJ, as the main judicial organ of the United Nations, helps resolve international disputes.²⁴² The ICJ has settled disputes and given advisory opinions, and it applies diverse areas of international law, including international human rights law and international humanitarian law.²⁴³ In the case, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*,²⁴⁴ the Republic of Gambia requested that ICJ find Myanmar guilty for violations of the Convention on the Prevention and Punishment of the Crime of Genocide.²⁴⁵ According to D. Wes Rist, Gambia asked the ICJ to require Myanmar to “hold individuals who committed acts in violation of the Genocide Convention criminally accountable within its domestic legal system . . . [and to] pay reparations to the victims of the Rohingya, . . . undertaking protection of the group’s human rights.”²⁴⁶ This is a very important case regarding the international legal responsibility and attribution of the crime of genocide to Myanmar. The ICJ’s preliminary decision to recognize its *prima facie* jurisdiction on the case and the granting of provisional measures are important first steps to address widespread human rights violations in Myanmar.²⁴⁷

According to Article 7 of the International Covenant on Civil and Political Rights, “[n]o one shall be subjected to torture or to cruel, inhuman or

²⁴¹ Hum. Rts. Council, Report of the Independent International Fact-Finding Mission on Myanmar, ¶ 85, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018).

²⁴² See Malcolm N. Shaw, *The International Court of Justice: A Practical Perspective*, 46 INT’L & COMPAR. L.Q. 831 (1997).

²⁴³ See *id.*

²⁴⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), 2020 I.C.J. Pleadings 2 (May 18, 2020).

²⁴⁵ Both Gambia and Myanmar have ratified the Genocide Convention and have recognized the jurisdiction of the I.C.J.

²⁴⁶ D. Wes Rist, *What Does the ICJ Decision on The Gambia v. Myanmar Mean?*, AM. SOC’Y OF INT’L L. (Feb. 27, 2020), <https://www.asil.org/insights/volume/24/issue/2/what-does-icj-decision-gambia-v-myanmar-mean>.

²⁴⁷ *Id.* Regarding the decision of the ICJ, D. Wes Rist wrote:

Having reviewed the submissions from both states and the independent evaluations of the situation on the ground in Myanmar, the Court held that “there is a real and imminent risk of irreparable prejudice to the rights invoked by The Gambia.” Accordingly, the Court found that it was justified in issuing provisional measures.

Id.

degrading treatment or punishment.”²⁴⁸ In violation of this *jus cogens* norm, Iran, North Korea, and Myanmar often torture people belonging to religious minority groups.²⁴⁹ Regarding torture during interrogations by the Ministry of State Security, the U.N. Special Rapporteur on North Korea said that “beatings were reportedly common during interrogations, and various interviewees had confirmed having been subjected to ill-treatment, beaten, tortured or threatened with torture if they did not reveal information that Ministry officers considered to be true.”²⁵⁰ The Special Rapporteur on the Islamic Republic of Iran indicated in relation to Iranian torture that “consistent reports suggested a pattern of physical or mental pressure applied upon prisoners to coerce confessions, some of which were broadcast.”²⁵¹

In countries such as Iran, North Korea, and Myanmar, the protection of fundamental human rights, including the right to life, non-discrimination, and freedom from torture, are essential for the survival and well-being of religious communities. Considering that human beings find meaning for their existence in their religious beliefs, the right to religious freedom is one of the most important human rights.²⁵² Regarding the interaction and interrelation between the protection of human rights, in general, and religious freedom, in particular, Nathan A. Adams, IV, wrote:

International legal instruments also suggested that the international community will never ensure free association without permitting religious minorities to meet, free speech without allowing religious speech, nondiscrimination and due process without granting religious minorities equal substantive and procedural rights under the law, democracy without allowing religious minorities to vote and run for office, indigenous rights without protecting indigenous religions, the rights of parents and children without protecting their right to sectarian education, and women's

²⁴⁸ ICCPR, *supra* note 16, art. 7.

²⁴⁹ See Johan D. van der Vyver, *Torture as a Crime under International Law*, 67 ALB. L. REV. 427 (2003).

²⁵⁰ Hum. Rts. Council, Working Grp. on the Universal Periodic Rev., Compilation on the Democratic People's Republic of Korea Report of the Office of the United Nations High Commissioner for Human Rights, ¶ 30, U.N. Doc. A/HRC/WG.6/33/PRK/2 (Feb. 26, 2019).

²⁵¹ Hum. Rts. Council, Compilation on the Islamic Republic of Iran: Report of the Office of the United Nations High Commissioner for Human Rights, ¶ 26, U.N. Doc. A/HRC/WG.6/34/IRN/2 (Aug. 30, 2019).

²⁵² For an analysis of the importance of the right to religious freedom and its relation to the preservation of peaceful coexistence between states, see David Little, *Human Rights, Religious Freedom, and Peace*, 2016 BYU L. REV. 1215 (2016).

rights without ensuring their freedom to follow or reject religious teachings and customs.²⁵³

Consistent with this reality, international legal instruments recognize the historical importance of protecting the rights of religious minority communities against governmental abuses.²⁵⁴ For instance, Article 27 of the International Covenant on Civil and Political Rights states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practi[c]e their own religion, or to use their own language.”²⁵⁵

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments recognize the universality of the right to religious freedom. This fundamental norm of international law is consistent with natural law principles that acknowledge the inherent freedom of all human beings to express religious ideas deeply held in their consciences.²⁵⁶ According to Article 18 of the Universal Declaration of Human Rights, “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”²⁵⁷

Article 18 of the Universal Declaration of Human Rights contains diverse aspects of the right to religious freedom. The right to religious freedom includes freedom of conscience, the right to change a religious belief, and the right to express religious worldviews. This norm is also recognized in Article 18.1 of the International Covenant on Civil and Political Rights, which states:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others

²⁵³ Nathan A. Adams, IV, *A Human Rights Imperative: Extending Religious Liberty Beyond the Border*, 33 CORNELL INT’L L.J. 1, 64 (2000).

²⁵⁴ See David Llewellyn & H. Victor Conde, *Freedom of Religion or Belief Under International Humanitarian Law and International Criminal Law*, 12 TRINITY L. REV. 39 (2004).

²⁵⁵ ICCPR, *supra* note 16, art. 27.

²⁵⁶ See Llewellyn & Conde, *supra* note 254, at 73–74.

²⁵⁷ UDHR, *supra* note 20, art. 18.

and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.²⁵⁸

Another essential international normative source for the protection of religious freedom is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. According to Article 1.1 of this normative instrument, “[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice.”²⁵⁹

The right to religious freedom expresses the necessity of protecting a deeply held personal understanding of reality.²⁶⁰ It is the foundation of worldviews that justifies human existence and explains the meaning of life. Because of this, it is essential to have freedom of conscience. Regarding this, Ambassador Malik said:

If we have any contribution to make, it is in the field of fundamental freedom, namely, freedom of thought, freedom of conscience and freedom of being. And there is one point on which we wish to insist more than anything else, namely that it is not enough to be, it is not enough to be free to be what you are. You must also be free to become what your conscience requires you to become in the light of your best knowledge. It is therefore freedom of becoming, of change that we stress just as much as freedom of being.²⁶¹

Iran, Myanmar, and North Korea should not excuse violations of religious freedom on any ground, including national security and public health. The governmental policies of Iran, Myanmar, and North Korea are designed to coerce religious minorities into giving up their religious worldviews. These policies are contrary to international human rights norms, which recognize the illegality of coercive practices. For example, Article 18.2 of the International Covenant on Civil and Political Rights states: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”²⁶² Regarding this topic, Article 1.2 of the Declaration on the Elimination of All Forms of Intolerance and of

²⁵⁸ ICCPR, *supra* note 16, art. 18.1.

²⁵⁹ G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 1.1 (Nov. 25, 1981).

²⁶⁰ For a Christian perspective of religious freedom, see JOHN WARWICK MONTGOMERY, HUMAN RIGHTS AND HUMAN DIGNITY 171–73 (1986).

²⁶¹ See THE CHALLENGE OF HUMAN RIGHTS, *supra* note 187, at 16–17.

²⁶² ICCPR, *supra* note 16, art. 18.2.

Discrimination Based on Religion or Belief states: “No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”²⁶³ In its interpretation of Article 18.2 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee opined that this norm “bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.”²⁶⁴ Consistent with the Committee’s interpretation, it is essential that the governments of Iran, North Korea, and Myanmar implement international normative standards regarding freedom of religion and end coercive practices designed to undermine religious beliefs.

International governmental entities, such as the United Nations Human Rights Council, are important venues to promote the implementation of human rights law and hold governments accountable for violations of international norms, including the right to religious freedom.²⁶⁵ Non-governmental organizations (NGOs), such as Amnesty International, Christian Solidarity Worldwide, Human Rights Watch, and Alliance Defending Freedom, contribute to fact-finding processes in countries such as Iran, Myanmar and North Korea, where it is very difficult to gain access to evidence of violations of fundamental human rights.²⁶⁶ Both intergovernmental entities, such as the United Nations Human Rights Council, and NGOs, such as Christian Solidarity Worldwide (CSW), have provided evidence of Iran’s, North Korea’s, and Myanmar’s violations of religious minorities’ human rights. For example, CSW believes that the rights

²⁶³ G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 1(2) (Nov. 25, 1981).

²⁶⁴ Off. of the High Comm’r for Hum. Rts., CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993). According to the Committee,

Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.

Id.

²⁶⁵ See generally John P. Humphrey, *The Implementation of International Human Rights Law*, 24 N.Y.L. SCH. L. REV. 31 (1978).

²⁶⁶ See generally Vaibhav Goel & Manoj Kr. Tripathi, *The Role of NGOs in the Enforcement of Human Rights: An Overview*, 71 INDIAN J. POL. SCI. 769, 782, 787–88 (2010).

to freedom of thought, conscience, and religion do not exist in North Korea.²⁶⁷ The Council stated:

The veneration of the Kim dynasty and the religious nature of their personality cult had allegedly led to intolerance of religious belief. There were at least four state-sanctioned churches in Pyongyang, and a new Protestant seminary, but it was widely believed that they existed primarily for the benefit of foreigners and to present a false image of the situation. . . . [O]wnership of bibles or other religious materials was reportedly illegal and might be punished by imprisonment and execution.²⁶⁸

For example, regarding violations of the religious freedom of Christians in North Korea, Alliance Defending Freedom stated: “Christians and their family members were typically in the lowest ‘hostile’ class of the *songbun* system, and that people were punished for praying, singing hymns, worshiping, possessing Bibles or crosses, or coming in contact with missionaries or Christians from foreign countries.”²⁶⁹ Regarding violations of the right to religious freedom in Myanmar, Ms. Yanghee Lee, U.N. Special Rapporteur, stated that Christians are continuously discriminated against through efforts to convert them to Buddhism using coercive methods. For example, she stated that “Christians from Ann township, Rakhine State, were forced to sign documents by village officials and local monks verifying their conversion to Buddhism after being threatened with eviction from the village tract should they refuse.”²⁷⁰ In her report, she indicated that parents of children of Christian families are forced to send their children to Buddhist boarding schools (Na Ta La schools).²⁷¹

²⁶⁷ Hum. Rts. Council, Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Democratic People’s Republic of Korea, ¶ 42, A/HRC/WG.6/19/PRK/3 (Jan. 23, 2014).

²⁶⁸ *Id.*

²⁶⁹ Hum. Rts. Council, Summary of Stakeholders’ Submissions on the Democratic People’s Republic of Korea: Report of the Office of the United Nations High Commissioner for Human Rights, ¶ 50, A/HRC/WG.6/33/PRK/3 (Feb. 18, 2019).

²⁷⁰ Hum. Rts. Council, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, ¶ 26, U.N. Doc. A/74/342, at 9 (Aug. 30, 2019).

²⁷¹ *Id.* (“These schools operate under the authority of the military-run Ministry of Border Affairs instead of the Ministry of Education, and there are at least 10 in Chin State. These institutions offer free schooling and board to children of poor families who otherwise would have little access to education in rural parts of Chin. Once sent to these schools, children are not able to see their families, use their Christian names, attend church or use Chin dialects.”)

In Iran, Bahá'is, Christians, and others who convert from Islam may face arrest.²⁷² Regarding widespread violations of the right to religious freedom in Iran, the U.N. Secretary-General said that “[r]eligious minorities such as [Bahá'is] and Christians faced violations entrenched in law and in practice. Harassment, home raids, and incitement to hatred were reportedly commonly applied by the authorities to suppress the [Bahá'i] community.”²⁷³ As an example, he mentioned “the seven [Bahá'i] community leaders who were serving 20-year sentences for managing the religious and administrative affairs of their community after trials which did not meet the guarantees for fair trial established by international law.”²⁷⁴ Regarding the situation in Iran, Christian Solidarity Worldwide stated:

Religious minorities were viewed with suspicion and seen as threatening the Islamic integrity of a theocratic system bent on enforcing a strict version of Shia Islam. Despite the country being party to various international covenants, Christians, Bahá'is, Sufi Dervishes, and Sunni Muslims had been killed, tortured and imprisoned on account of their faith.²⁷⁵

The Special Rapporteur on the Islamic Republic of Iran confirmed the existence of widespread violations of the fundamental human rights of religious minority communities, including the fact that a disproportionate number of persons imprisoned and executed belongs to these groups.²⁷⁶ The Committee on the Rights of the Child has often indicated that in Iran, there is a systematic discrimination of children that belong to ethnic and religious minority groups such as Arabs, Azerbaijanis, the Baloch, and Kurds.²⁷⁷ The Committee expressed that it was “particularly concerned about the reports of targeted arrests, detention, imprisonment, killing, torture and execution of

²⁷² Hum. Rts. Council, Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Islamic Republic of Iran, ¶ 42, A/HRC/WG.6/20/IRN/2 (Aug. 18, 2014).

²⁷³ *Id.* ¶ 78.

²⁷⁴ *Id.*

²⁷⁵ Hum. Rts. Council, Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Islamic Republic of Iran, ¶ 45, U.N. Doc. A/HRC/WG.6/20/IRN/3, at 7 (Aug. 7, 2014).

²⁷⁶ Hum. Rts. Council, Compilation on the Islamic Republic of Iran: Report of the Office of the United Nations High Commissioner for Human Rights, *supra* note 251, ¶ 77.

²⁷⁷ *Id.* ¶ 78.

members of such groups by law enforcement and judicial authorities.”²⁷⁸ Non-governmental organizations have also closely followed the situation in Iran.

Regarding the Alliance Defending Freedom’s (ADF) analysis of Iran and religious freedom, the United Nations Human Rights Council said: “ADF International highlighted that religious minorities had been the target of violence, harassment and discrimination. [Bahá’is] were severely discriminated against and Sunni and Sufi Muslim communities also reportedly experienced discrimination because of their beliefs.”²⁷⁹ Regarding the situation in Iran, Amnesty International said that “ethnic minorities, including Ahwazi Arabs, Azerbaijani Turks, Baluchis, Kurds and Turkmen, continued to face entrenched discrimination, curtailing their access to education, employment and adequate housing. . . . Members of minorities who speak out against violations of their rights face arbitrary arrest, torture, unfair trials and imprisonment.”²⁸⁰

Iran, North Korea, and Myanmar have ratified international human rights treaties. Therefore, they have binding legal obligations. Besides their international legal obligations acquired by participating in international treaties, they also have international legal obligations to obey fundamental and customary international law norms, such as respect for the right to life, the right to freedom from torture, and the right to freedom of religion. The international human rights law system has codified norms of customary international law that all sovereign states should follow. Many of these norms are considered *jus cogens*.²⁸¹ This means that they cannot be abrogated because they reflect objectively ascertainable natural law norms that protect all people.²⁸²

The governments of Iran, North Korea, and Myanmar have systematically violated the fundamental human rights of their political and religious opponents. They have justified these actions by dehumanizing their opponents and resorting to legal discourses to justify the unjust use of force. As a response to this shocking reality, the international community should hold Iran, North Korea, and Myanmar responsible for violations of international human rights law. In the twenty-first century, it is not

²⁷⁸ *Id.*

²⁷⁹ Hum. Rts. Council, Summary of Stakeholders’ Submissions on the Islamic Republic of Iran: Report of the Office of the United Nations High Commissioner for Human Rights, ¶ 61, U.N. Doc. A/HRC/WG.6/34/IRN/3 (Aug. 16, 2019).

²⁸⁰ *Id.* ¶ 62.

²⁸¹ See Parker & Neylon, *supra* note 214.

²⁸² *Id.*

acceptable to continue to witness widespread violations of fundamental human rights of religious minority groups around the world.

F. Conclusion

Reflecting on the Nazi atrocities and the lack of understanding of nations regarding the extent and urgency of addressing widespread violations of human rights and human dignity, Robert H. Jackson said:

It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be “progress.” The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first.²⁸³

In the twenty-first century, Jackson’s analysis continues to be very relevant. Despite substantial technological progress, increasing global economic integration, and instant access to information from around the world, the human tendency to justify actions of extreme political evil using totalitarian, unjust legal discourse continues to be prevalent around the world. In the current context, Iran, Myanmar, and North Korea are using the discourse of protecting the health of their populations to prevent the spread of COVID-19 as an instrument to discriminate against and persecute religious minority communities, including Christian, Buddhist, Muslim, Bahá’i, and other communities.

This article demonstrates that Iran, North Korea, and Myanmar systematically violate the human rights of religious minority communities, and these violations are committed in a shockingly callous manner. Despite diverse worldviews that sustain the political regimes and legal systems of Iran, Myanmar, and North Korea, each is characterized by a similar use of political discourses to justify the dehumanization of political and religious opponents. This demonstrates that any worldview, including Islam, Atheism, and Buddhism, can be used to justify the killing, torturing, and other extreme violations of human rights of religious minority communities. This article also demonstrates that the law is often used as an instrument to justify the dehumanization, persecution, killing, and other violations of inherent human rights of religious minorities. In the history of humankind, the Nazi and Soviet communist regimes are clear examples of the consequences of

²⁸³ Jackson, *supra* note 181, at 85; *see also* 19 TRIALS OF THE MAJOR WAR CRIMINALS, *supra* note 179.

using the law to deny fundamental human rights of religious communities. This is true today of Iran, Myanmar, North Korea, and other regimes that disrespect the human rights of their citizens or subjects.

The systematic and widespread violations of human rights of religious minority communities in North Korea, Iran, and Myanmar require a systematic and influential response and a renewed national and global commitment to upholding the normative ideas of international human rights law expressed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and other international normative instruments. These ideas include respect for the sanctity of human life, religious liberty, freedom of expression, freedom of assembly, freedom from torture, and others. The text of the Universal Declaration of Human Rights continues to provide not only a normative foundation, as customary international law, but also a powerful philosophical and ethical source for respect for human dignity. The Declaration's preamble recognizes that human dignity, equality, and "inalienable rights of all members of the human family [are] the foundation of freedom, justice and peace in the world."²⁸⁴ The implementation of the Declaration's objectives to ensure respect for "freedom of speech and belief and freedom from fear and want"²⁸⁵ are essential to end the systematic violations of human rights of religious minorities in countries such as Iran, Myanmar, and North Korea.

Rather than embracing a relativistic understanding of human rights that deconstructs their meaning and makes them irrelevant, it is essential to focus on implementing existing norms that are already codified in international human rights law instruments. The never-ending expansion of human rights norms, according to subjective and socially constructed ideas, undermines the current international human rights law system and weakens the cause of religious minority communities that struggle to ensure respect for their inherent human rights. In the twenty-first century context, it is imperative to restore and promote the ideas of the founders of the international human rights system, such as Charles Malik and Rene Cassin, including the concept of inherent human rights as the foundations of the international human rights system.

During the Nazi regime, movements that opposed widespread violations of human rights sustained their strength based on natural law ideas of justice. This was the case because there was not an international positive law system, which could have addressed genocide and other extreme violations of human

²⁸⁴ UDHR, *supra* note 20, at pmb1.

²⁸⁵ *Id.*

rights and human dignity. During the resistance to the communist dictatorship in the Soviet Union, Andrei Dmitrievich Sakharov, Aleksandr Isayevich Solzhenitsyn, and other political dissidents used the Universal Declaration of Human Rights and other international legal instruments to denounce human rights violations by the Soviet Union's government. Like the leaders who resisted the Nazi and Soviet regimes, the courageous leaders and movements that resist and condemn human rights violations in their countries, such as in Iran, North Korea, and Myanmar, have powerful normative sources, including human rights law, to construct compelling discourses to hold their governments accountable for extreme violations of human dignity. Sovereign states, nongovernmental organizations, transnational corporations, and individuals have legal and moral obligations to support these efforts and ensure the triumph of respect for human rights, including religious liberty, in the twenty-first century historical context.

Christians in North Korea, Rohingya Muslims in Myanmar, and Bahá'is in Iran are not only victims of religious and political persecution, but they are also active participants in resistant movements against totalitarian regimes that have denied their fundamental human rights. The historical precedents of successful implementation of human rights norms and the defeat of regimes that have denied the importance of respect for human dignity, including Nazi Germany and the Soviet Union, should serve as inspiration for human rights movements in Iran, Myanmar, and North Korea. The peoples of these countries have an inherent natural right to embrace any religious worldview they choose and express them without fear of imprisonment, torture, or death.