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IRANIAN MUSIC CENSORSHIP & INTERNATIONAL HUMAN RIGHTS LAW

INTRODUCTION

In 2019 there were 711 recorded restrictions of artistic freedom by national law across the globe.¹ Thirty-two percent of these restrictions involved musicians, making them the most targeted artists by a significant margin.² Violations included not just censorship of music, but violence against musicians as well, with nine artists killed and seventy-one imprisoned.³ Among the offending states, Iran stands out as particularly aggressive, prosecuting eleven artists in 2019 alone, two thirds of which were musicians or filmmakers.⁴

This Note will examine the ways in which Iran's strict censorship of some music, and outright prohibition of other music, violates the international human right of freedom of expression. Although Iran's persistent cultural censorship and the legal persecution of musicians falls below the standards set by the United Nations (UN), the current approach to protecting artists rights appears ill suited to resolve Iran's systematic violations. Movement toward a new international legal framework to protect artists rights may be able to bring Iran into the fold, but practical legal measures should be taken to mitigate the harsh environment for Iranian musicians in the interim.

Part one of this Note discusses the history of music censorship in Iran, examining how artists and their music have been treated following the 1979 Islamic Revolution into the current day. It will also briefly detail the government structure that allows Iran to monitor and censor artists. Part two looks at the relevant international law with respect to artistic freedom and examines Iran's adherence with the major legal instruments that the international community uses. This section also looks at the steps that the UN is taking to develop a new framework for artists rights and examines if Iran could fit within that framework. Part three briefly examines the on-the-ground legal approaches to protecting artists rights, and the likelihood that

1. FREEMUSE, THE STATE OF ARTISTIC FREEDOM 2020 10 (Srirak Plipat ed., 2020), <https://www.fim-musicians.org/wp-content/uploads/State-of-Artistic-Freedom-2020.pdf>.

2. *Id.* at 12.

3. *Id.* at 10.

4. *Id.* at 79.

these approaches could be employed to mitigate human rights abuses in Iran.

I. BACKGROUND

A. *Origins of Restrictions on Music in Iran*

Iran's 1979 Islamic Revolution marked a sudden shift in cultural policy that resulted in many restrictions on music production within the country.⁵ Prior to the Revolution, there were significant influences of Western music in Iran, with a majority of the music on Iranian radio and television in the seventies consisting of Western pop sung by Iranian musicians.⁶ Iran also saw a surge in interest of regional music prior to the Revolution, with composer Fozieh Majd funding the recording of regional music across the country from 1972 to 1979.⁷ The seventies had a flourishing of concerts and festivals featuring both traditional Iranian and world music.⁸

5. Ameneh Youssefzadeh, *The Situation of Music in Iran since the Revolution: The Role of Official Organizations*, 9 BRIT. J. ETHNOMUSICOLOGY 35, 36, 38 (2000). Iran's Islamic Revolution occurred in 1979 and marked a shift from autocracy to a religious theocracy. Iran was led by the western friendly Shah Mohammad Reza Pahlavi after the U.S. had organized a coup to oust his predecessor, Mohammad Mossadegh. See Krysta Wise, *Islamic Revolution of 1979: The Downfall of American-Iranian Relations*, 11 LEGACY 1, 1–2 (2011). The Shah's regime oversaw increasing relations with the U.S. and subsequent secularization of Iranian society. *Id.* at 2. The Shah also maintained a large military force, the Iranian National Intelligence and Security Organization ("SAVAK"), which frequently target the Shah's political opponents. *Id.* One such dissident was Ayatollah Ruhollah Khomeini, a Shi'a scholar who opposed what he believed was the negative influence of the U.S. and Israel on Islam. *Id.* at 3. Khomeini capitalized on economic and political unrest throughout Iran to obtain a large following and incite revolution against the Shah, resulting in continuous incidents of public violence and military retaliation. *Id.* at 5. Khomeini himself resided in exile but returned to Iran after the Shah fled in January of 1979. *Id.* at 7. Khomeini assumed the position of Supreme Leader and began building the Islamic government he had promised his followers. See *id.* Khomeini sought to completely remove American influence over the country by curtailing oil exports, cancelling arms sales, and executing pro-western dissidents. *Id.* at 8. This straining of relations with the U.S. culminated in the Iranian Hostage crisis and the U.S. implementing a retaliatory embargo in 1980 that would persist for several decades. *Id.* at 10–11.

6. Youssefzadeh, *supra* note 5, at 36.

7. *Id.* at 37.

8. *Id.*

In the years after the Islamic Revolution, Supreme Leader Ayatollah Khomeini led the government to massively restrict musical freedom.⁹ Khomeini represented a turn to hyper-conservative Islamic policy making, which allowed no room for many cultural activities previously enjoyed in pre-Revolution Iran.¹⁰ Khomeini declared that “music is like a drug, whoever acquires the habit can no longer devote himself to important activities We must eliminate music because it means betraying our country and our youth.”¹¹ Khomeini’s leadership pursued aggressive policies toward musicians, which included a ban on the production of instruments and the criminalization of paying musicians.¹² Many Iranian musicians were effectively prevented from creating music altogether as a result of these hard line policies.¹³ Following the death of Khomeini, these restrictions relaxed somewhat through the 1980s with the return of

9. See Heather Rastovac, *Contending with Censorship: The Underground Music Scene in Urban Iran*, 10 INTERSECTIONS 59, 65 (2009). Khomeini believed that to reform the country, one must first reform the culture of the country. *Id.* at 63. To this end, Khomeini’s theocratic government began to pass legislation aimed to confine all artistic and cultural behavior, classifying any given work of art under law to be halal (allowed) or haram (forbidden). *Id.* at 64.

10. *Id.* at 63–64.

11. Youssefzadeh, *supra* note 5, at 38.

12. *Id.* Among the restrictions enacted by the new regime were the banning of public concerts, music classes, solo female singing, and radio or television broadcasts that contained music of nearly any kind. Rastovac, *supra* note 9, at 65. The regime focused on eliminating Iranian pop music which it saw as objectionable both for its promotion by the previous Shah and because of its illicit dance moves and lyrical content. *Id.*

13. See Youssefzadeh, *supra* note 5, at 38. One such musician was Kourosh Yaghmaei, who rose to fame in Iran in the 1970’s by playing a unique blend of western influenced psychedelic rock. Peter Holslin, *From National Star to Enemy of the State: Iranian Rock Pioneer Kourosh Yaghmaei Fights On*, VICE NEWS (Nov. 17, 2016, 2:17 PM), <https://www.vice.com/en/article/bnjp88/from-national-star-to-enemy-of-the-state-iranian-rock-pioneer-kourosh-yaghmaei-fights-on>. Yaghmaei’s musical style made him a large target for the post-Revolutionary government, who prevented him from releasing any music and repeatedly required him to report to the Revolutionary Courts to be tried. *Id.* Yaghmaei was ultimately imprisoned for two years and had his funds seized by the government. *Id.* Unlike many of his friends who fled the country, Yaghmaei remained in Iran and made money by giving guitar lessons against government order. *Id.* Yaghmaei was finally permitted to release another studio album in 1990 after waiting a decade for government permission. *Id.*

instrument sales and public music, so long as they were not offensive to Islamic law.¹⁴

In some respects, cultural reform proved to be a serious difficulty for the post–Revolutionary government, in part because the tenets of Islam stood in contrast to Iran’s pre–Islamic heritage.¹⁵ While Iran has been a Muslim country for most of the modern era, many Iranians during the 1980’s identified with cultural traditions predating the transition to Islam.¹⁶ Music and poetry that drew from Iran’s pre–Islamic cultures were not so easily disposed of and many older Iranians continued to identify with those traditions.¹⁷

B. Iranian Domestic Instruments Concerning Music

The constitution of the Islamic Republic of Iran was established in 1979 and, despite its primary focus being the sovereignty of God and clerical order, it does contain an enumeration of individual rights.¹⁸ Article 56 states that God is the absolute sovereign in the Islamic Republic, and that no one can deprive an individual of the rights bestowed upon them by God.¹⁹ Articles 25 and 27, respectively, guarantee the individual right to

14. See Youssefzadeh, *supra* note 5, at 39. Ayatollah Khomeini was succeeded in the Supreme Leader position by Ayatollah Khamene’i. *Id.* In 1992 Khamene’i instituted a campaign against the cultural influence of the West which subsequently emphasized the importance of domestic music and led to renewed production of traditional Iranian music on physical media. *Id.*

15. Rastovac, *supra* note 9, at 64.

16. *Id.* Prior to the invasion by Iran of Arab Muslims in the 6th century, the predominant religion was Zoroastrianism. Myles Hudson, *How Have Zoroastrians Been Treated in Muslim Iran?*, BRITANNICA, <https://www.britannica.com/story/how-have-zoroastrians-been-treated-in-muslim-iran> (last visited Oct. 24, 2021). Zoroastrianism experienced a sharp decline in Persian practitioners following the invasion, though practice of the religion was still tolerated. *Id.* Over the course of the 7th and 8th centuries Zoroastrians faced increasing persecution from the government and many Zoroastrians left Iran in response. *Id.* When Iran later fell under the rule of the British empire, Zoroastrianism saw more toleration, ultimately experiencing a renaissance under Reza Shah Pahlavi. *Id.* Pahlavi and his predecessors sought to focus Iran’s culture on its ancient Zoroastrian roots, enacting several reforms to enhance the status of Zoroastrianism. *Id.* This tolerance and social reforms were ended completely in the wake of the Revolution of 1979. *Id.*

17. Rastovac, *supra* note 9, at 64.

18. MEHRAN TAMADONFAR, ISLAMIC LAW AND GOVERNANCE IN CONTEMPORARY IRAN: TRANSCENDING ISLAM FOR SOCIAL, ECONOMIC, AND POLITICAL ORDER 21, 23–24 (2015).

19. *Id.* at 24.

freedom of speech and assembly, with the caveat that the expressions do not exceed the limitations of Islamic law.²⁰ These proclamations of sovereignty and individual rights have an inherently contradictory nature because, in reality, the interpretation of these rights is determined by a body of Shia clerics.²¹

Iran's constitution creates a clerical rule by enshrining legal authority in two bodies: The Supreme Leader and the Council of Guardians (COG).²² Principle 110 of the Iranian Constitution establishes the Supreme Leader of Iran as the leading jurist of Islam.²³ This principle further tasks the Supreme Leader with appointing members of the COG, which functions as Iran's highest judicial authority.²⁴ The COG consists of twelve members, six of whom are religious officials.²⁵ It is these religious members of the COG that are tasked with determining if any legislation stands opposite to the principles of Islam.²⁶

The government body through which the clerical order delegates this review power over the artistic media produced within its borders is the Ministry of Culture and Islamic Guidance, colloquially known as the *Ershad*.²⁷ The *Ershad* operates on a permit system, with its various bureaus reviewing applications and determining if the art in question adheres to the principles of Islamic Law before the work can be publicly displayed.²⁸ In order to distribute music, teach music, or perform publicly, artists must register with the *Ershad* and apply for a permit known as a *mujawwiz*.²⁹ The *Ershad* contains eight internal bureaus devoted to different forms of media, all of which are accountable to

20. *Id.* at 25–26. There is no clear understanding of when music is acceptable under the teachings of Islam. Many Muslim countries have storied musical traditions but the general sentiment toward music is one of suspicion. Youssefzadeh, *supra* note 5, at 40. Islam views music as having a seductive power that brings out the worst in some individuals and causes them to veer from their duties. *Id.* Despite this, the Quran contains no direct prohibition of music. Rastovac, *supra* note 9, at 64.

21. TAMADONFAR, *supra* note 18, at 24.

22. Marvin Zonis, *The Rule of the Clerics in the Islamic Republic of Iran*, 482 ANNALS AM. ACAD. POL. & SOC. SCI. 85, 91–92 (1985).

23. *Id.* at 93.

24. *Id.*

25. *Id.*

26. *Id.*

27. Babak Rahimi, *Censorship and the Islamic Republic: Two Modes of Regulatory Measures for Media in Iran*, 69 MIDDLE E. J. 358, 363 (2015).

28. *Id.*

29. See Rastovac, *supra* note 9, at 69.

the Minister of Culture and Islamic Guidance.³⁰ Each of these departments are further divided to units which are assigned specific tasks, and each department is subject to the scrutiny of an internal reviewing body.³¹ The Ershad maintains a massive bureaucracy and as a result, the process of approval is often slow.³²

In granting *mujawwiz* for works of music, the Ershad's Council of Music Evaluation reviews and classifies the type of music submitted as one of the following: traditional, regional, educational, modified, new, global or international, western classical, and pop.³³ This council has traditionally consisted of Persian classical musicians who are asked to rank the quality of the music on a scale of one to four.³⁴ This system is believed to be inherently obtuse in order to allow the Iranian government to exert a larger amount of influence over the types of music produced and consumed.³⁵

C. Current Censorship of Iranian Music

Today, there are generally three types of music allowed in Iran under national law: Iranian folk, Iranian classical, and Iranian pop.³⁶ Iranian pop music is relatively new to this list and the addition is largely attributable to the 1997 election of President Muhammad Khatami, whose platform rested on significant cultural reforms.³⁷ By permitting domestically produced pop music, the Iranian government provides a local alternative to imported pop music and thus brings pop music further under its control.³⁸

Despite government restrictions, foreign and western-influenced music remain intensely popular in Iran.³⁹ Before the 1997 reforms following President Khatami's election, pop music was imported on pirated tapes, primarily created by a group of

30. Rahimi, *supra* note 27, at 363, 365.

31. *Id.* at 365–66.

32. *See id.* at 367.

33. Rastovac, *supra* note 9, at 70.

34. *Id.*

35. *See* Rahimi, *supra* note 27, at 367.

36. *Iranians Pump Up the Volume for Banned Tunes*, THE GUARDIAN (May 7, 2013, 9:46 AM), <https://www.theguardian.com/world/iran-blog/2013/may/07/iranians-pump-volume-banned-tunes>. It should be clarified that Iranian pop is not typical of modern global pop music and instead reflects a sound more evocative of seventy's romantic ballads. *Id.*

37. Rastovac, *supra* note 9, at 67.

38. *Id.* at 68.

39. *See* *Iranians Pump Up the Volume for Banned Tunes*, *supra* note 36.

Iranian artists living in Los Angeles.⁴⁰ A similar shadow market still exists today, with many record shops throughout Tehran selling illegal music and displaying posters for American bands.⁴¹ Domestically produced Iranian rock and rap music are popular with the youth of Iran, often played openly from their car speakers as they drive around Tehran.⁴² In recent decades, electronic and experimental musicians have experienced an explosion in popularity, with the government even approving a travel visa for one artist to tour Europe.⁴³

Despite greater toleration by the government, playing music in public is still under strict legal scrutiny in Iran.⁴⁴ In 2019, Iranian police shut down 547 restaurants and arrested eleven individuals in an operation designed to prevent the obstruction of Islamic principles.⁴⁵ A number of these closures included violations in the form of playing “illegal music.”⁴⁶ Violations were apparently determined based on footage obtained from State mandated video cameras that were installed in public areas, and by citizen reporting.⁴⁷

Restrictions on the creation and release of certain types of music are also still quite severe in Iran.⁴⁸ Legal prosecution of those

40. Rastovac, *supra* note 9, at 65.

41. *Iranians Pump Up the Volume for Banned Tunes*, *supra* note 36.

42. *Id.*

43. Alastair Shuttleworth, ‘It Will Rock Your House!’ Inside the Iranian Electronic Underground, THE GUARDIAN (Mar. 25, 2019, 6:00 AM), <https://www.theguardian.com/music/2019/mar/25/inside-the-iranian-electronic-underground-ata-ebtekar-set-festival-mahdyar>.

44. See Rick Noack, *Iranian Children are Dancing to Pop Music, and the Government is Furious*, WASH. POST (May 22, 2019), <https://www.washingtonpost.com/world/2019/05/22/iranian-children-are-dancing-pop-music-government-is-furious/>; see also Alijani Ershad, *Iran Bans Pop Group After Female Guitarist Sings Solo Before Mixed Crowd*, THE OBSERVERS (Feb. 2, 2019, 10:39 AM), <https://observers.france24.com/en/20190213-iranian-pop-group-was-banned-because-its-guitarist-sang-12-second-solo>; *Music Censorship on the Rise*, IRANWIRE (Oct. 21, 2015), <https://iranwire.com/en/features/1411>.

45. Agence France-Presse, *Tehran Closes 547 Restaurants for Breaking ‘Islamic Principles’*, THE GUARDIAN (June 8, 2019, 10:04 PM), <https://www.theguardian.com/world/2019/jun/09/tehran-closes-547-restaurants-for-breaking-islamic-principles>.

46. *Id.*

47. *See id.*

48. Rastovac, *supra* note 9, at 72. Rastovac explains that the types of music that remain most targeted are the genres of rap, rock and alternative. *Id.* Although no law specifically prohibits these genres, they have been functionally

who publicly play certain types of music have forced a significant portion of Iranian musicians to hold rehearsals and concerts in the basements of Iranian apartment blocks for fear of being discovered by authorities.⁴⁹ There is also a notable lack of female vocalists in Iranian music because government permission is rarely granted for them to perform.⁵⁰ In August of 2020, artist Mehdi Rajabian was arrested for collaborating with female singers on his forthcoming album, after having previously been imprisoned twice for his music.⁵¹ During his hearing, Rajban was told by the judge that he was being detained because his music “encouraged prostitution.”⁵²

One music genre that garners particular scrutiny from the Iranian government is heavy metal music.⁵³ In 2015, both members of the Iranian metal band *Confess* were arrested and imprisoned for blasphemy, and in 2019 they were finally sentenced to five years of prison and seventy-four lashes⁵⁴ on charges of

relegated to the underground due to the inability of artists to obtain permits from the Ershad to publicly release music or perform. *Id.*

49. See generally Laudan Nooshin, *Underground, Overground: Rock Music and Youth Discourses in Iran*, 38 IRANIAN STUD. 463 (2005) (for an in-depth discussion on how the literal underground of Iranian rock music developed as a grassroots movement in the early 2000's).

50. Mark Savage, *Iranian Musician Mehdi Rajabian Arrested for Working with Women*, BBC NEWS (Aug. 26, 2020), <https://www.bbc.com/news/entertainment-arts-53907674>.

51. *Id.*

52. *Id.*

53. Chris Krovatin, *74 Lashes: What It's Like To Be A Metal Band In Iran*, KERRANG.COM, <https://www.kerrang.com/features/74-lashes-what-its-like-to-be-a-metal-band-in-iran/> (last visited Aug. 10, 2021). Krovatin suggests that metal music is specifically targeted because of its rebellious and angry nature. *Id.* This article informs that most metal bands have a difficult time acquiring government permission to record and perform their music. *Id.* Metal bands, which incorporate more palatable sounds and avoid references to the government or Islam, have a much easier time. *Id.* Even for the more digestible bands, the performance is generally limited to crowds of no more than two hundred. *Id.*

⁵³ *Id.* Lashes are a form of corporal punishment for offenders in Iran that consists of flogging. See *Iran: Wave of Floggings, Amputations and Other Vicious Punishments*, AMNESTY INT'L (Jan. 18, 2017), <https://www.amnesty.org/en/latest/news/2017/01/iran-wave-of-floggings-amputations-and-other-vicious-punishments/>. In Iran, lashes are routinely used to punish those who break the law. *Id.* Iran currently has over one hundred offences for which lashes can be ruled a suitable punishment. *Id.* The use of lashes in Iran as legal punishment stands in violation of the International Covenant on Civil and Political Rights' (ICCPR) prohibition on the use of torture and cruel punishment. *Id.*

propaganda against the Islamic regime and insulting the sanctity of Islam.⁵⁵ Norway subsequently granted asylum to the band after their initial release from imprisonment pending trial.⁵⁶ In early 2020, another Iranian metal band, *Arsames*, was sentenced to fifteen years in prison after their arrest at their rehearsal studio in 2017.⁵⁷ Much like *Confess* before them, the members of *Arsames* fled the country in response to their sentencing.⁵⁸

II. LEGAL ANALYSIS

A. International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights

The Universal Declaration of Human Rights (UDHR) is the framework from which the main human rights instruments issued by the UN flow.⁵⁹ The UDHR is a declaration made by the United Nations General Assembly (UNGA) in 1948.⁶⁰ As a declaration of the UN, this instrument is not legally binding upon Member States,⁶¹ although its principles have been given a sort of legal status in subsequent decades.⁶² Article 19 of the UDHR reads, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁶³ The UDHR is

55. *Freemuse Calls on Iranian Authorities to Repeal Metal Band's Extreme Sentence*, FREEMUSE (July 12, 2019), <https://freemuse.org/news/freemuse-calls-on-iranian-authorities-to-repeal-metal-bands-extreme-sentence/>.

56. *Id.*

57. Graham Hartmann, *Metal Band Arsames Escape Iran After Being Sentenced to 15 Years in Prison*, LOUDWIRE (Aug. 12, 2020), <https://loudwire.com/arsames-escape-iran-sentenced-15-years-prison/>.

58. *Id.*

59. See Hilary Charlesworth, *Universal Declaration of Human Rights (1948)*, in MAX PLANCK ENCYC. PUB. INT'L L. ¶ 13 (2021).

60. *Id.* ¶ 1.

61. Oliver Dörr, *Declaration*, in MAX PLANCK ENCYC. PUB. INT'L L. ¶ 8 (2021). Declarations in International Law are mostly considered non-binding instruments intended only to have political effects. *Id.* As per the UN Charter, the UNGA can only adopt non-binding instruments and so none of its recommendations are legally binding. *Id.* The legally binding nature of the UDHR was a topic of fierce debate during its drafting. Charlesworth, *supra* note 59, ¶ 7.

62. Charlesworth, *supra* note 59, ¶ 13.

63. G.A. Res. 217(III) A, Universal Declaration of Human Rights, art. 19 (Dec. 10, 1948).

elaborated by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which are treaties that legally bind Member States.⁶⁴

Iran became a signatory to both the ICCPR and the ICESCR in 1975.⁶⁵ It is important to note that Iran did not withdraw from the conventions after the 1979 Revolution, and in fact has subsequently signed on to the Convention on the Rights of the Child and Convention on the Rights of Persons With Disabilities.⁶⁶ Article 19(2) of the ICCPR guarantees freedom of expression in the form of print, writing, art or any other media.⁶⁷ As per Article 19(3) of the ICCPR, the only permissible limitations to these freedoms are those which are “provided by law” and “are necessary: (a) for the respect of rights or reputation of others;” or “(b) for the protection of national security or of public order, or of public health or morals.”⁶⁸ The ICESCR also contains explicit protections for creative expression, as Article 15(c) of the ICESCR recognizes the right of all individuals to “benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”⁶⁹ ICESCR Article 15(3) further implores States to respect the freedom of creative activity.⁷⁰

In interpreting the ICCPR, the United Nations Human Rights Committee (UNHRC)⁷¹ has held that States must show that any limitation to a provision of the ICCPR must be necessary and sufficiently narrow to achieve the desired goal of protecting

64. Charlesworth, *supra* note 59, ¶ 13.

65. SHABNAM MOINPOUR, COGENT SOC. SCI., UN TREATY-BASED BODIES AND THE ISLAMIC REPUBLIC OF IRAN: HUMAN RIGHTS DIALOGUE (1990–2016) 5 (2018).

66. *Id.* at 3, 6.

67. G.A. Res. 220A (XXI), International Covenant on Civil and Political Rights, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171, art. 19(2) (Dec. 16, 1966).

68. *Id.* art. 19(3).

69. G.A. Res. 220A (XXI), International Covenant on Economic, Social and Cultural Rights, S. Treaty Doc. No. 95-19, 993 U.N.T.S. 3, art. 15(c) (Dec. 16, 1966).

70. *Id.* art. 15(c)(3).

71. The UNHRC was established in 1977 as the body responsible for monitoring the States who had ratified the ICCPR for compliance. *See About*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last visited Aug. 10, 2021).

national security, public order, or public health or morals.⁷² Iran most commonly offers the justification of protecting national security when questioned on their imprisonment or censorship of artists.⁷³ Iranian officials often point to the protection of Islamic principles as espoused in Article 4 of their constitution as a national security matter, a justification which is suspect in the international arena.⁷⁴ The UN Special Rapporteur in the field of cultural rights, Farida Shaheed, has expressed that even when these limitations are justified, States should not implement them overzealously.⁷⁵ Shaheed advocates that limitation by criminal sanction should be a rarely employed measure, and that States should only employ these measures when justification is absolutely clear.⁷⁶ Additionally, the UNHRC has generally found that any limitation that is predicated on traditional, religious, or customary law to be incongruous with the principles of the ICCPR.⁷⁷

Although Iran is a signatory to both the UDHR and the ICCPR, its government's adherence to international human rights scheme has been inconsistent since the Islamic Revolution.⁷⁸ The initial post-Revolution regime was incredibly hostile to the UDHR, with the Iranian ambassador to the UN openly proclaiming to the Commission on Human Rights in 1985 that Iran did not pretend to respect human rights principles.⁷⁹ At the

72. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, 193 (July 9). The court in this decision noted that the exceptions to the rights enumerated in the ICCPR "must be necessary for the attainment" of the ends they seek. *Id.* The court further elaborated that these exceptions must be both proportional and must be the "least intrusive instrument among those which might achieve the desired result." *Id.* Accordingly, if Iran wishes to claim an exception to ICCPR rights on the basis of national security or otherwise, it must adhere to the guidelines the court explained in this opinion.

73. ARTICLE19, UNVEILED: ART AND CENSORSHIP IN IRAN 10 (Agnes Callamard, Bethan Grillo & Sophie Redmond eds., 2006), <https://www.article19.org/data/files/pdfs/publications/iran-art-censorship.pdf>.

74. *Id.*

75. Farida Shaheed (Special Rapporteur in the Field of Cultural Rights), *The Right to Freedom of Artistic Expression and Creativity*, U.N. Doc. A/HRC/23/24, ¶ 31 (Mar. 14, 2013).

76. *Id.* ¶ 32.

77. U.N. HRC General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 24 (Sept. 12, 2011).

78. UNVEILED: ART AND CENSORSHIP IN IRAN, *supra* note 73, at 10.

79. *Id.*

same time, many of Iran's elite did not share the later popularized conservative views of the Iranian government, and leaders such as Grand Ayatollah Montazeri protested against the pro-Revolution regime.⁸⁰

In 2011, the UNHRC conducted its most recent review of Iran's compliance with the ICCPR.⁸¹ In some of its final comments, the UNHRC briefly commended Iran for joining some optional human rights conventions.⁸² The entirety of the remaining comments listed "principal matters of concern and recommendations" where the UNHRC viewed Iran as failing to adhere to the principles of the ICCPR.⁸³ Among this laundry list of shortcomings, the UNHRC lamented that "the right to freedom of assembly and association is severely limited," and gatherings are "conditional upon compliance with 'principles of Islam' which are not defined under national legislation."⁸⁴

Throughout the past several decades, Iran's government has been in a constant state of back and forth between the conservative and reformist political factions.⁸⁵ The conservative wing desires to follow Ayatollah Khomeini's beliefs on Islamic law closely, which would mean an incredibly hostile environment for any artists, especially musicians.⁸⁶ Reformers, on the other hand, see more room for interpretation of Islamic principles, although they are by no means liberal by Western standards.⁸⁷ These battling ideologies have given Iran no certain direction in the implementation of human rights and have left artists weary of the constantly shifting boundaries of acceptable behavior.⁸⁸ Complicating matters further is that Iran's COG has effective veto power over the parliament, meaning that even if

80. Ayatollah Montazeri was a leading figure in the Islamic Revolution but was ultimately placed on house arrest in 1997 after he became outspoken about the government's combination of religion and politics. *Id.* at 11.

81. U.N. HRC, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, U.N. Doc. CCPR/C/IRN/CO/3, ¶ 2 (Nov. 29, 2011).

82. *Id.* ¶ 4.

83. *Id.* § C. These concerns range from failure to prevent human trafficking to suppression, to arbitrary detention of human rights defenders, to suppression of the cultural and religious beliefs of Baha'i, Sunni and Kurd communities. *Id.* ¶ 18–26.

84. *Id.* ¶ 26.

85. UNVEILED: ART AND CENSORSHIP IN IRAN, *supra* note 73, at 11.

86. *Id.*

87. *Id.*

88. *Id.* at 12.

progressive candidates secure seats, any legislation they pass that stands contrary to the COG's interpretation of Islam is likely to fail.⁸⁹ In the past, this has generally resulted in a rebuke of any significant human rights reforms, including banning torture, raising the legal marriage age from nine years old, and enacting legislation to protect the press.⁹⁰

While it is a signatory to the UDHR, the ICCPR, and the ICESCR, Iran has an inconsistent, at best, track record of adhering to the legal principles of those instruments.⁹¹ Iran's volatile political climate and inherently combative governmental structure stand as huge obstacles to implementing recommendations to improve human rights on all fronts.⁹² Those that do wish to change the legislative landscape to reflect international norms are frequently thwarted by the COG and an adherence to the proclaimed principles of Islam.⁹³ As a result, artists in Iran are afforded relatively little protection, and their freedom of expression is largely reliant on whether their art adheres to the judiciary's understanding of Islamic principles.⁹⁴ In short, the UN's overarching legal instruments to promote the protection of artistic rights are uniquely ill positioned to have any effect in Iran, despite their legally binding status on the country.⁹⁵

B. 1980 UNESCO Recommendation Concerning the Status of the Artist

One of the most important legal instruments expounding the broad artistic rights laid out by the ICCPR and the ICESCR is the Recommendation by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) on the Status of the Artist. Recommendations issued by the General Conference of UNESCO are not legally binding on Member States but are

89. In the 2000 Iranian parliamentary elections, reformists won close to seventy-five percent of seats, but still saw one hundred of their proposed bills vetoed by the COG. *Id.*

90. *Id.*

91. See Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, *supra* note 81, § C.

92. See UNVEILED: ART AND CENSORSHIP IN IRAN, *supra* note 73, at 11, 12.

93. *Id.*

94. See Rastovac, *supra* note 9, at 70.

95. See UNVEILED: ART AND CENSORSHIP IN IRAN, *supra* note 73, at 10.

instead considered standard-setting instruments.⁹⁶ Standard-setting instruments are invitations to Member States to implement the policies recommended and serve as a guide for national policy making.⁹⁷ Member States that take actions based on these recommendations are thereafter required to issue reports to UNESCO.⁹⁸

Adopted in 1980, the Recommendation on the Status of the Artist (the Recommendation) was intended to elaborate upon Articles 22–28 of the UDHR and Articles 6 and 15 of the ICESCR.⁹⁹ The Recommendation's stated goal is to encourage the creation of policy that will assist Member States in promoting and protecting artists and their right to freedom of expression.¹⁰⁰ The third guiding principle of the Recommendation specifically mentions that Member States have "a duty to protect, defend and assist artists and their freedom of creation."¹⁰¹ To this end, the Recommendation implores Member States to create institutions by which artists can be socially venerated and to ensure artists have the opportunity to make a livelihood from their art.¹⁰² Some of the specific methods the Recommendation suggests include: promoting artistic education, protecting artists' intellectual property, allowing for artists trade unions, and creating opportunities for public works.¹⁰³

Following its adoption in 1980 by the General Conference, the UNESCO Executive Board received three consolidated reports on implementation of the Recommendation.¹⁰⁴ These

96. Roland Bank & Friederike Foltz, *United Nations Educational, Scientific and Cultural Organization (UNESCO)*, in MAX PLANCK ENCYC. PUB. INT'L L. ¶ 29 (2021). The General Conference also issues Conventions, which are legally binding but require a higher approval by Member States than Recommendations. *Id.* Conventions are only ratified with a two thirds majority while recommendations only require a simple majority. *Id.*

97. *Id.* ¶ 30.

98. *Id.* ¶ 29.

99. See UNESCO Res. of the Twenty-First Session, 21C/Res. 15.1, at 147 (Sept. 28, 1980).

100. *Id.*

101. *Id.* at 149.

102. *Id.*

103. *Id.* at 150.

104. UNESCO Executive Board, *Implementation of Standard-Setting Instruments, Part VI: Implementation of the 1980 Recommendation Concerning the Status of the Artist – Consolidated Report of the Implementation of the Recommendation*, U.N. Doc. 207 EX/23.VI, at 1 (Aug. 7, 2019) [hereinafter UNESCO, *Implementation of Standard-Setting Instruments, Part VI*].

consolidated reports are an amalgamation of the reports provided by individual States that took actions in furtherance of the Recommendation, including both active legislative schemes and reforms.¹⁰⁵ Participation has been low throughout the reporting periods, with only 52 Member States responding to the most recent questionnaire issued by UNESCO in 2019.¹⁰⁶ Iran has not submitted a report on the recommendation in the reviews that took place in 1983, 2015, or 2019.¹⁰⁷

In an effort to combat the low participation rates on reporting for the Recommendation, in 2015, UNESCO bundled reporting with monitoring the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the Convention).¹⁰⁸ The change was made to better incorporate the Recommendation into the Convention so that resources could be more effectively directed to States that wished to change their legislation.¹⁰⁹ Participation in the reporting of the Recommendation has actually decreased in the only two reporting periods since this change, down from 58 Member States in 2015 to 52 Member States in 2019.¹¹⁰

It is notable that while Iran is a member of UNESCO at large, it never accepted the 2005 Convention.¹¹¹ This is concerning

105. See generally UNESCO, *Initial Special Reports Submitted by Member States on the Action Taken by them upon the Recommendation Concerning the Status of the Artist*, U.N. Doc. 22 C/22 (Oct. 21, 1983). (This is a listing of all of the reports from twenty-five member States which range from responses of having taken no specific measures (in the case of Chile) and specific labor legislation being introduced to protect artists (from France)) [hereinafter UNESCO, *Initial Special Reports*].

106. UNESCO, *Implementation of Standard-Setting Instruments, Part V*, *supra* note 104, at 1.

107. UNESCO, *Initial Special Reports*, *supra* note 105; UNESCO Executive Board, *Implementation of Standard-Setting Instruments, Part III: Application of the 1980 Recommendation Concerning the Status of the Artist*, U.N. Doc. 197 EX/20 Part III, at 1 (Aug. 4, 2015) [hereinafter UNESCO, *Implementation of Standard-Setting Instruments, Part III*]; UNESCO, *Implementation of Standard-Setting Instruments, Part V*, *supra* note 104, at 1.

108. See UNESCO, *Implementation of Standard-Setting Instruments, Part V*, *supra* note 104, at 1.

109. *Id.*

110. UNESCO, *Implementation of Standard-Setting Instruments, Part III*, *supra* note 107, at 1; UNESCO, *Implementation of Standard-Setting Instruments, Part V*, *supra* note 104, at 1.

111. See list of States which have accepted, accessed or ratified the Convention at <https://pax.unesco.org/la/convention.asp?KO=31038&language=E&order=alpha>.

because it appears that the efforts by UNESCO to forward the agenda of 1980 Recommendation are now inextricably linked with the 2005 Convention.¹¹² Indeed, the executive board has stated that in response to the low participation rates of Member States it intended to increase its efforts to synergize the two legal instruments.¹¹³ It seems unlikely that this linkage will assist in increasing legal protections for artists in Iran. While UNESCO might see increased participation from those States legally bound by the Convention, Iran and others who are not bound have no obligation to respond. In creating the Recommendation and the Convention, the UN has made it clear that its preferred method for protecting artistic freedom is by elaborating on the ICCPR. So long as Iran continues to ignore its international legal obligations under the ICCPR, the UN cannot hope to improve the situation by creating instruments that further elaborate on it.

C. A New UN Framework and Human Rights Defenders

At the 40th Session of the UNHRC, Poets, Essayists, Novelists International (PEN International),¹¹⁴ along with Artists at Risk Connection¹¹⁵ and several other organizations, issued a joint

112. GARRY NEIL, UNESCO, FULL ANALYTIC REPORT ON THE IMPLEMENTATION OF THE 1980 RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST 2, 4 (2015). The report speaks at length about the importance of the 2005 Convention as an expounding document to the Recommendation. *See id.* The report suggests the Convention provides a guideline for how States should interpret and implement the standards of the Recommendation and advocates for synergy between the two documents moving forward. *Id.* at 2–6. *See also* GARRY NEIL, UNESCO, CULTURE & WORKING CONDITIONS FOR ARTISTS: IMPLEMENTING THE 1980 RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST (2019). In this report it is explained that the reporting efforts of both the Recommendation and the Convention have been “aligned and streamlined.” *Id.* at 10. The report also explains at length the measures UNESCO could take to further the goals of the Recommendation through work in States which are bound to abide by the 2005 Convention. *Id.*

113. *See* UNESCO, *Implementation of Standard-Setting Instruments, Part V*, *supra* note 104, at 1.

114. PEN International, standing for “Poets, Essayists, Novelists”, is a non-governmental organization founded in 1921 to promote the freedom of expression and protect literature in the international arena. *Our History*, PEN INT’L, <https://www.pen-international.org/who-we-are/history> (last visited Aug. 10, 2021).

115. Artists at Risk Connection is an affiliate organization of PEN International. Artists at Risk Connection assists artists all over the globe by providing

statement regarding the protection of artists rights.¹¹⁶ The statement implored the UNHRC to take action to develop a UN-wide framework to protect these rights, stating its worry that there was no specific legal mechanism with which to defend them currently.¹¹⁷ To this effect the UNHRC emphasized the importance of supporting the current Special Rapporteur in the Field of Cultural Rights, Karima Benoune, to develop such a framework.¹¹⁸

As a first step to developing this framework, in January 2020, Benoune issued a report to the Human Rights Council detailing a specific plan to increase legal recognition for cultural rights defenders.¹¹⁹ Cultural rights defenders are “individuals, groups and associations that contribute to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”¹²⁰ These defenders specifically pursue “the elimination of violations of cultural rights and promote respect for and protection and fulfilment of these rights.”¹²¹ Cultural rights defenders range from experts to ordinary citizens, and their actions include everything from working to secure rights of others to using their own creative works to expand awareness of cultural rights.¹²² Benoune implores the UN to create a status for cultural rights defenders that equals defenders of human rights in in the civil and political arena.¹²³ This emphasis is particularly important because of the traditional treatment of economic, social and cultural rights as being outside the realm of human rights.¹²⁴

legal assistance, emergency funds, and temporary relocation programs. *About, ARTISTS AT RISK CONNECTION*, <https://artistsatriskconnection.org/about-arc> (last visited Aug. 10, 2021).

116. LAURENCE CUNY, UNESCO, FREEDOM AND CREATIVITY: DEFENDING ART, DEFENDING DIVERSITY 20 (2005), <https://unesdoc.unesco.org/ark:/48223/pf0000373357>.

117. *Joint Statement at the 40th Session of the United Nations Human Rights Council*, ARTISTS AT RISK CONNECTION, <https://artistsatriskconnection.org/story/joint-statement-at-the-40th-session-of-the-united-nations-human-rights-council> (last visited Aug. 10, 2021).

118. *Id.*

119. Karima Benoune, (Special Rapporteur in the Field of Cultural Rights), *Cultural Rights Defenders*, U.N. Doc. A/HRC/43/50 (Jan. 20, 2020).

120. *Id.* at 2.

121. *Id.*

122. *Id.* at 3.

123. *Id.* at 16.

124. *See id.* at 20.

As a result of this disparity in legal status, defenders of cultural rights often have difficulty in receiving support from international organizations, funding from non-governmental organizations, and garnering media attention for their cause.¹²⁵ Consider the previously mentioned UNHRC comment on Iran's adherence to the ICCPR. While the comment does lament a lack of freedom of expression in violation of Article 19, the main concern for the UNHRC is journalists and political dissidents.¹²⁶ Creating more recognition for cultural rights defenders could have the intended effect of bringing cultural rights into the perspective of the UNHRC. Defenders of artistic expression have been attempting to fill this gap of official support, with organizations such as Avant-Garde Lawyers,¹²⁷ carrying out casework and documentation of violations.¹²⁸ Benoune stresses that effort such as these are essential and must be magnified by other human rights groups.¹²⁹

Benoune's report also stresses that for cultural rights defenders to be effective, the UN must legitimize and amplify their voices.¹³⁰ This is currently achieved under a UN mandate, which (1) establishes a Special Rapporteur for Human Rights Defenders and (2) allows defenders to bring attention to State violations through reports submitted to the Special Rapporteur.¹³¹ The Cultural Rights Rapporteur and the Human Rights Defenders Rapporteur have worked together to issue twenty-five communications addressing cultural rights violations and have received replies in thirteen cases.¹³² Submission of more reports from defenders on cultural rights is one of Benoune's primary recommendations.¹³³ In closing the report, Benoune recommends

125. *Id.*

126. Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, *supra* note 81, ¶ 27.

127. Avant-Garde Lawyers is a non-governmental organization that provides legal services to artists who are censored or prosecuted for their work. *About AGL*, AVANT-GARDE LAWYERS, <https://avantgardelawyers.org/about/about-agl/> (last visited Aug. 10, 2021). The organization works to provide legal assistance to artists who could not otherwise afford it and create a network of lawyers that may assist in art related cases. *Id.*

128. Benoune, *supra* note 119, at 5.

129. *Id.*

130. *Id.* at 19.

131. *Id.* at 11.

132. *Id.*

133. *Id.*

UNESCO to increase the amount of monitoring for attacks on artists and adopt an official “decision on the safety and support of cultural rights defenders through the UNESCO Executive Board.”¹³⁴

Incorporating cultural rights defenders into the scheme of human rights defenders recognized by the UN could have significant repercussions for Iran. Currently Iran receives extensive attention from both the UN and nongovernmental organizations such as Amnesty International for its targeting of human rights defenders.¹³⁵ Since 2013, Iran has pursued an increasingly aggressive campaign of arresting and imprisoning human rights defenders ranging from minority rights activists, to trade unionists, to anti-death penalty campaigners.¹³⁶ One of the ways in which the government has accomplished this is by lowering the judicial threshold for criminal activity to include actions as simple as making human rights-related posts on Facebook.¹³⁷ Human rights defenders are often physically abused while in custody and frequently are denied a fair trial.¹³⁸

To combat these abuses, the UN regularly calls upon Iran to release prisoners the UN considers human rights defenders.¹³⁹ Most recently these calls have carried with them the additional urgency of COVID-19 restrictions.¹⁴⁰ In February 2020, the Iranian judiciary arranged for the release of approximately 120,000 prisoners, however it excluded those imprisoned for a period of more than five years on charges of posing a “national security threat.”¹⁴¹ A common thread among these appeals is that they

134. *Id.* at 19.

135. AMNESTY INT'L, CAUGHT IN A WEB OF REPRESSION: IRAN'S HUMAN RIGHTS DEFENDERS UNDER ATTACK 7 (2017), <https://www.amnesty.org/download/Documents/MDE1364462017ENGLISH.PDF>.

136. *Id.* at 6.

137. *Id.* at 17.

138. *Id.* at 18.

139. See *U.N. Human Rights Council Condemns Situation In Iran*, RADIO FORA (Sept. 26, 2020), <https://en.radiofarda.com/a/u-n-human-rights-council-condemns-situation-in-iran/30859455.html>; see also *Iran Must Stop Using Long-Term Detention to Silence Human Rights Defenders, Says UN Expert*, OHCHR (July 6, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27271&LangID=E>.

140. *UN Rights Chief Urges Iran to Release Jailed Human Rights Defenders, Citing COVID-19 Risk*, UN NEWS (Oct. 6, 2020), <https://news.un.org/en/story/2020/10/1074722>.

141. *Id.*

primarily focus on those civil and political rights that are considered first generation human rights, as opposed to cultural rights under the second generation of human rights.¹⁴² For example, the most recent report to the UN General Assembly on human rights in Iran focuses almost exclusively on the fallout from nationwide protests that began in November 2019.¹⁴³ Any mention of freedom of expression in the report is inextricably linked to the protection of political dissent and its manifestation in journalism.¹⁴⁴

If the UN were to adopt a new framework for human rights defenders that included cultural rights defenders, it could lead to both increased public recognition of cultural rights and a greater focus on the freedom of expression for artists.¹⁴⁵ While this might encourage more legal assistance for Iranian artists who are censored and prosecuted, it could also spur greater targeting of human rights defenders. Iran has shown no hesitance to prosecute, imprison, and mistreat those who speak out for civil and political rights,¹⁴⁶ and the result would likely be the same for those speaking out for cultural rights.

D. Case Law Concerning Musician's Rights

The UN has relatively few cases specifically concerning artistic freedom.¹⁴⁷ As per the First Optional Protocol of the ICCPR, the UNHRC is tasked with hearing individual complaints against States for human rights violations.¹⁴⁸ In order to bring

142. Spasimir Domaradzki, Margaryta Khvostova, & David Pupovac, *Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse*, 20 HUM. RTS. REV. 423, 424 (2019). This framework for conceptualizing Human Rights was conceived by Karl Vasak in the 1970s and has been criticized as not so neatly categorizing modern human rights schemes. *Id.* It can be used as a guideline to understand why the vast majority of human rights discourse focuses on civil and political rights. *Id.*

143. U.N. Secretary General, *Situation of Human Rights in the Islamic Republic of Iran*, U.N. Doc A/75/213, at 3 (July 21, 2020). The report focuses primarily on nationwide protests that were sparked by an announcement of increasing petrol prices. *Id.* Although the protests were peaceful in nature the Iranian government responded with police violence and arrests of prominent voices of political dissent. *Id.*

144. *Id.* at 17.

145. Benoune, *supra* note 119, at 19.

146. See AMNESTY INT'L, *supra* note 135, at 6.

147. Shaheed, *supra* note 75, ¶ 15.

148. Christian Tomuschat, *Human Rights Committee*, in MAX PLANCK ENCYC. PUB. INT'L L. ¶ 13 (2021).

an individual complaint against a State, the UNHRC requires that the State be a signatory to the First Optional Protocol.¹⁴⁹ Iran has neither signed nor ratified the First Optional Protocol.¹⁵⁰ There have been no individual complaints filed against Iran, and thus no complaints concerning artistic censorship.¹⁵¹

The body of case law gets even narrower when looking at musicians' rights, however there are adjacent decisions that can shed light on how international courts may interpret these rights. In 2011, the Human Rights Council's Working Group on Arbitrary Detention¹⁵² (the Working Group) found the detention of Cameroon musician Lapiro de Mbanga to be in violation of the UDHR and the ICCPR.¹⁵³ Mbanga was detained and sentenced to three years imprisonment on charges of aiding and abetting violent and destructive protests in 2008.¹⁵⁴ Mbanga produced music that voiced discontent with a constitutional amendment to extend the president's term of office and expand the privilege of presidential immunity, as proposed by the current president Paul Biya.¹⁵⁵ Although evidence existed that Mbanga had assisted authorities in peacefully deescalating riots, the Cameroon government insisted that it was the content of Mbanga's music that inspired the riots in the first place.¹⁵⁶ The Working Group found that Mbanga's imprisonment was an arbitrary violation of

149. *Human Rights Treaty Bodies – Individual Communications: Procedure for Complaints by Individuals under the Human Rights Treaties*, U.N. HUM. RTS., <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx> (last visited Aug. 10, 2021).

150. *See* Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

151. *See UN Human Rights Committee Caselaw Database*, REFWORLD.ORG, <https://www.refworld.org/publisher,HRC,CASELAW,IRN,,0.html#SRTop21> (last visited Aug. 10, 2021) (Refworld is a repository for UN documents; if a UNHRC decision exists, it is uploaded here. None of the search results for Iran return an action filed against them).

152. The Working Group on Arbitrary Detention was created by the Human Rights Council in 2007 to hear complaints from individuals who have been detained in violation of the UDHR and ICCPR. U.N. Human Rights Council, *Arbitrary Detention*, Res. 6/4, at 1(a) (Sept. 28, 2007). The working Group's mandate entitles it to review individual complaints and issue communications to the offending States in order to request release of the detained person. *Id.*

153. *Mr. Pierre Roger (alias Lapiro) et al. v. Cameroon*, Working Grp. on Arbitrary Det., No. 32/2011, U.N. Doc. A/HRC/WGAD/2011/32 (2011).

154. *Id.*

155. *Id.*

156. *Id.*

his right to expression because it was politically motivated and ample evidence existed that his music was simply a political expression and not a call to violence.¹⁵⁷ In response the Supreme Court of Cameroon ordered Mbanga released pending a retrial, however Mbanga was subsequently granted asylum by the United States, where he passed away in 2014.¹⁵⁸

The result of Mbanga's case is encouraging because the Working Group has also received complaints from individuals detained in Iran. For example, in 2017 the Working Group issued a comment on the complaint of Dr. Ahmadreza Djalali who was arrested and imprisoned in 2016 for allegedly spying for the State of Israel.¹⁵⁹ Despite this, as of 2020, Djalali remains imprisoned,¹⁶⁰ an indication that it is unlikely Iran would comply if the Working Group were to issue comments on Iranian musicians who are detained.

Given the lack of international precedent, it may be useful to consider the importance of domestic courts in enforcing human rights. In 2018, filmmaker Wanuri Kihiu had her film denied for screening by the Kenyan Film Classification Board because it contained lesbian content, which was prohibited by Kenyan law.¹⁶¹ Kihiu appealed to the High Court of Kenya, arguing that the restriction infringed her right to freedom of expression as provided by Article 33 of Kenya's Constitution.¹⁶² In opposition, the Attorney General argued that this right was limited by Article 24 of the Kenyan Constitution, which provides that the restriction must be substantially related to an important State

157. *Id.*

158. Joe Dinga Pefok, *Supreme Court Orders Retrial Of Lapiro Case*, CAMEROON MIRROR (June 26, 2013), <https://web.archive.org/web/20140319191352/http://cameroonmirror.com/supreme-court-orders-retrial-of-lapiro-case/>; Maran Turner, *Sad News: We Mourn the Passing of Lapiro de Mbanga*, FREEDOM NOW (May 17, 2014), <http://www.freedomnow.org/news/sad-news-we-mourn-the-passing-of-lapiro-de-mbanga/>.

159. U.N. Human Rights Council, Opinion No. 92/2017 Concerning Ahmadreza Djalali (Islamic Republic of Iran), U.N. Doc. A/HRC/WGAD/2017/92, ¶ 6, 7 (Dec. 20, 2017).

160. *Release Dr. Ahmadreza Djalali Amidst Concerns of COVID-19*, SCHOLARSATRISK.ORG (Mar. 23, 2020), <https://www.scholarsatrisk.org/2020/03/release-dr-ahmadreza-djalali-amidst-concerns-of-covid-19/>.

161. *Kihiu v. Mutua* (2020) 313 K.L.R. 2 (Kenya) available at <http://kenyalaw.org/caselaw/cases/view/158712/>. Kihiu's film was nominated for a best Foreign Film Academy Award but was ruled ineligible because it was not publicly screened in Kenya. *Id.*

162. *Id.* at 3.

purpose.¹⁶³ The Kenyan High Court ultimately ruled that the film could be screened for a period of seven days, stating it was “not convinced that Kenya is such a weak society whose moral foundation will be shaken by simply watching a film depicting a gay theme.”¹⁶⁴ The Court stressed that these matters require a careful balance of restricting freedom of expression and protecting moral values, and it openly weighed considerations for both sides.¹⁶⁵

III. PRACTICAL LEGAL SOLUTIONS

A. *Blasphemy Law Repeal/Reform*

One way the UN has attempted to promote freedom of expression is through urging States to repeal blasphemy laws that they might still have.¹⁶⁶ As of 2017, seventy-one States had blasphemy laws on the books.¹⁶⁷ Most of these blasphemy laws employ ambiguous language both in the nature of the crime and the requisite sentencing.¹⁶⁸ All of the blasphemy laws in existence stood in violation of international human rights principles, and most of the laws specifically violated the freedom of expression.¹⁶⁹ In delivering a 2019 report to the Human Rights Council, Ahmed Shaheed, the Special Rapporteur on freedom of religion or belief, emphasized the repeal of blasphemy and apostasy laws

163. *Id.*

164. *Id.* at 9.

165. *Id.*

166. U.N. Human Rights Office of the High Commissioner, *18 Commitments on “Faith for Rights,”* (Mar. 29, 2017), <https://www.ohchr.org/Documents/Press/21451/18CommitmentsonFaithforRights.pdf>. Blasphemy, as defined by the United States Commission on International Religious Freedom, is “the act of insulting or showing contempt or lack of reverence for God or sacred things.” Kristen Lavery, *Legislation Factsheet: Blasphemy*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM (April 2020), <https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20Blasphemy%20April%202020.pdf> (last visited Sept. 12, 2021). Blasphemy laws, therefore, are those laws which “punish expression or acts deemed blasphemous, defamatory of religions, or contemptuous of religion or religious symbols, figures, or feelings.” *Id.*

167. JOELLE FISS & JOCELYN GETGEN KESTENBAUM, *US COMM’N ON INT’L RELIGIOUS FREEDOM, RESPECTING RIGHTS? MEASURING THE WORLD’S BLASPHEMY LAWS 1* (2017).

168. *Id.*

169. *Id.*

as crucial to freedom of expression.¹⁷⁰ These laws are so restrictive because not only do they expressly censor others, they encourage self-censorship as well.¹⁷¹

In its 2017 study of international blasphemy laws, the U.S. Commission on International Religious Freedom ranked Iran as the most in violation of international human rights principles.¹⁷² The study analyzed States with blasphemy laws on eight parameters: Freedom of Opinion and Expression, Freedom of Religion, Vagueness of the Law, Severity of Penalty, Discrimination, State Religion Protections, Speech and Forum Limitations, and Hierarchy of the Law.¹⁷³ Iran ranked near the top in all of these categories, scoring particularly high on the indexes of Severity of Punishment,¹⁷⁴ Discrimination, and State Religion Protections.¹⁷⁵ Despite the widespread use of blasphemy by the State to censor and punish its citizens, Iran only has a few specific blasphemy laws in its Penal Code.¹⁷⁶ Article 513 of the Iranian penal code punishes the insulting of the sacred values of Islam with one to five years imprisonment, escalating the punishment to death if the insult constitutes an affront to the Prophet Muhammad.¹⁷⁷ Article 514 punishes anyone who insults the Supreme Leader of the country or the founder of the Islamic Republic with six months to two years of imprisonment.¹⁷⁸ Iran usually charges those who have committed blasphemy with *mofsed-e-filarz*, translating to “spreading corruption on earth.”¹⁷⁹

170. Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *Rep. on Freedom of Religion or Belief*, U.N. Doc. A/HRC/40/58, at 25 (Mar. 5, 2019).

171. *Id.* at 12.

172. FISS & KESTENBAUM, *supra* note 167, at 18.

173. *Id.* at 7–12.

174. Iran’s laws permit the use of the death penalty for blasphemy. *Id.* at 25.

175. *Id.* at 21.

176. See THE LAW LIBRARY OF CONGRESS, *BLASPHEMY AND RELATED LAWS IN SELECTED JURISDICTIONS* 33 (2017), <https://www.loc.gov/item/2016590066/>.

177. ISLAMIC PENAL CODE, Nov. 28, 1991, art. 513 (Iran), <http://www.ref-world.org/docid/4d384ae32.html>. The previously mentioned band, *Confess*, faced the possibility of execution when they were arrested if they were found to have committed blasphemy. *BLASPHEMY AND RELATED LAWS IN SELECTED JURISDICTIONS*, *supra* note 176, at 34.

178. ISLAMIC PENAL CODE, *supra* note 177, art. 514.

179. *National Laws on Blasphemy: Iran*, GEORGETOWN UNIVERSITY: BERKLEY CENTER FOR RELIGION, PEACE & WORLD AFFAIRS, <https://berkeley-center.georgetown.edu/essays/national-laws-on-blasphemy-iran> (last visited Sept. 12, 2021).

This is an incredibly broad charge and is often subject to whatever interpretation suits the State, allowing for a wide range of crimes and penalties.¹⁸⁰

In the past few years, several countries have worked to repeal blasphemy laws, including Ireland and Greece.¹⁸¹ Both States removed blasphemy as a crime in their Constitution after increasing attention from human rights groups and media outlets.¹⁸² In Ireland, the prohibition of blasphemy was repealed via referendum.¹⁸³ Unfortunately, it is not so certain that the solution of repeal could translate to Iran. Several States that have repealed blasphemy laws appear to have done so after pressure from activist groups and media, two things to which Iran has proven largely immune.¹⁸⁴ The ambiguous nature of Iran's blasphemy law, or lack thereof, makes it difficult to target any specific legislation for repeal.¹⁸⁵ Further complicating matters is the judiciary, which contravenes legislation by virtue of its role in being the sole interpreter of the principles of Islam. To this end that it may be useful for Iran to codify its blasphemy laws by drafting legislation with approval from the COG, so that they may provide a more concrete target for reformers.¹⁸⁶ It may also

180. *Id.*

181. CUNY, *supra* note 116, at 12. Other countries have made strides toward decriminalizing blasphemy. Malta's blasphemy laws were repealed by its parliament in 2016. *Repealing Blasphemy Law a Victory for Freedom of Speech*, says *Humanist Association*, TIMES OF MALTA (July 14, 2016), <https://timesof-malta.com/articles/view/repealing-blasphemy-law-a-victory-for-freedom-of-speech-says-humanist.618859>.

182. CUNY, *supra* note 116, at 14.

183. *Id.*

184. *See id.* Canada repealed its blasphemy laws in response to a campaign by several Human Rights groups. *Id.* The United Kingdom abrogated some of its in response to a public appeal by television personality and comedian Stephen Fry. *Id.* *See also* Jason Rezaian, *In Iran, Bad News is Becoming Journalism's Biggest Obstacle*, WASH. POST (Mar. 2, 2020), <https://www.washingtonpost.com/opinions/2020/03/02/iran-bad-news-is-becoming-journalisms-biggest-obstacle/> (explaining that Iran's response to their slipping grasp on state-controlled media has largely been to jail political dissidents and increased control upon news outlets).

185. *See* Meghan Fischer, *Hate Speech Laws and Blasphemy Laws: Parallels Show Problems with the U.N. Strategy and Plan of Action on Hate Speech*, 35 EMORY INT'L L. REV. 177, 191 (2021). Fischer explains that the ambiguous nature of most existing blasphemy laws makes them difficult for the existing UN framework to address, as they can be interpreted in a wide variety of ways. *Id.*

186. *Id.* Fischer points out that no country with successfully repealed blasphemy laws meets the United States Commission on International Religious

assist musicians charged with blasphemy in crafting a legal defense, substituting the vague charges of violating Islamic values with actual legal code. This solution is far from ideal, but with artistic rights so far from being realized in Iran it could serve as a vital first step to improving protections.

B. Temporary Relocation Schemes

One of the more promising approaches for protecting musicians against prosecution is temporary relocation schemes. Temporary International Relocation Initiatives (TIRI) are programs that seek to offer immediate safety to those facing human rights violations by relocating them in partnered countries or cities.¹⁸⁷ TIRI have increased in popularity in recent decades, partially because they function to protect a larger variety of individuals than the official refugee networks provided by international bodies.¹⁸⁸ Because TIRI do not offer permanent asylum, they are able to relocate individuals, such as musicians, who would not otherwise qualify for asylum but face repression nonetheless.¹⁸⁹

One of the most prominent TIRI operating to protect musicians is SafeMuse, a Norwegian nonprofit which has been offering residencies for artists in the city of Harstad since 2014.¹⁹⁰ Sina Winter, an Iranian metal musician, was SafeMuse's first artist in residency.¹⁹¹ Winter continues to reside in Norway and has produced several albums, as well as worked with prominent Norwegian metal musicians.¹⁹² SafeMuse has also hosted Frazane Zamen, who as a woman was not permitted to have her music

Freedom's requirement that legislation be written in a concrete manner which prevents abusive interpretation by the government. *Id.*

187. MARTIN ROTH-INITIATIVE, TEMPORARY SHELTER AND RELOCATION INITIATIVES: PERSPECTIVES OF MANAGERS AND PARTICIPANTS 7 (Maik Muller ed., 2019). The earliest known TIRI was the Council for At Risk Academics established in 1938 to offer temporary shelter for German scientists and educators looking to escape the Nazi regime. *Id.* at 11.

188. Martin Jones, *Protecting Human Rights Defenders at Risk: Asylum and Temporary International Relocation*, 19 INT'L J. HUM. RTS. 935, 945 (2015).

189. See TEMPORARY SHELTER AND RELOCATION INITIATIVES, *supra* note 187, at 12.

190. *Our Story*, SAFEMUSE, <https://safemuse.org/our-story/> (last visited Oct. 24, 2021).

191. *Sina Winter Artist Bio*, SAFEMUSE, <https://www.safeseries.no/copy-of-artists-bio-eng-sn> (last visited Oct. 24, 2021).

192. *Id.*

published in Iran.¹⁹³ Zamen relocated to Norway in 2016 and now resides in Glasgow where she continues to perform and record.

The International Cities of Refuge Network (ICORN) also works to relocate musicians at risk.¹⁹⁴ Founded in 2006, ICORN comprises of seventy member cities that have hosted over 200 artists seeking refuge.¹⁹⁵ To date ICORN cities have hosted over two dozen artists from Iran, ranging from poets, to cartoonists, to musicians.¹⁹⁶ One such musician is Arash Chakeri, who faced constant harassment from Iranian authorities after he published songs critical of the Islamic Republic without permission from the Ershad.¹⁹⁷ With the assistance of ICORN, Chakeri left Iran in 2015 and was hosted by the city of Brussels in 2016.¹⁹⁸

As has been examined at length, the traditional channels of human rights have proved largely ineffective at protecting musicians in Iran. TIRI represent an alternative solution that operates on the principal of internal human rights but manages to be more inclusive by remaining more informal. ICORN has shown that TIRI can offer an effective route for artists to escape persecution by authorities and relocate to an environment where they will be free to create and publish their music. ICORN has also shown that this can work for musicians specifically in Iran. While this is not a permanent solution, it provides vital assistance to musicians under immediate threat of repression and censorship.

CONCLUSION

Iran stands as a unique challenge to the common adage that music is an international language. While it is clear that Iran

193. *Farzane Zamen Artist Bio*, SAFEMUSE, https://www.safeseries.no/copy-of-artists-bio-eng-hem-2?fbclid=IwAR0jhy57YwosGFUI8y039r8TBQDo0y_bfQxN8fxkgHo_Md6JRK77Ds_WUVI (last visited Oct. 24, 2021).

194. CUNY, *supra* note 116, at 19.

195. *About ICORN*, ICORN, <https://www.icorn.org/about-icorn> (last visited Aug. 10, 2021). ICORN is a philanthropic successor to the Parliament of Writers network that was in response to Iran's fatwa against Salman Rushdie. *Id.*

196. For a full listing of Iranian artists that have been given shelter along with short biographies *see Iran*, ICORN, https://www.icorn.org/search/content/iran?f%5B0%5D=field_country%3A46 (last visited Aug. 10, 2021).

197. *Arash Chakeri*, ICORN, <https://www.icorn.org/writer/arash-chakeri> (last visited Aug. 10, 2021).

198. *Id.*

has much to offer the world of music, a wall of censorship and violence stands between the two. At current, the ICCPR and the other instruments available to the UN appear inadequate to combat the decades of human rights suppression in Iran. While the UN is making strides to improve the situation in Iran, the focus has been primarily on the rights of civil and political dissidents. This failure to address the censorship of music in Iran, among many other countries, is symptomatic of a larger failure by the UN to create a robust system to defend against cultural rights abuses. Recent developments to elevate the status of cultural rights defenders may assist in filling the gaps, but it is unclear that a new regime of cultural rights can be constructed. It may also be the case that Iran is simply impervious to traditional legal remedies for human rights abuses. In either case, the international community should strive to immediately increase support for the repeal of blasphemy law and bolster temporary relocation schemes as a means to alleviate the suffering of artists in Iran.

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