

International Law and the Right to Global Internet Access: Exploring Internet Access as a Human Right Through the Lens of Iran's Women-Life-Freedom Movement

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International Law and the Right to
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Exploring Internet Access as a Human Right Through
the Lens of Iran’s Women-Life-Freedom Movement
Pegah Banhashemi*

Abstract

The speed of digital transformation creates major challenges for understanding and protecting digital technology-based human rights. While the internet may once have been a nice-to-have amenity, as societies become increasingly dependent on digital infrastructure, it has become a prerequisite to access fundamental human rights. Because the protection of internet access as a human right is lacking, individuals remain vulnerable to abuses, particularly by autocratic leaders.

This Essay uses the still-unfolding Iranian Women-Life-Freedom Movement to examine the consequences of internet deprivation. The Iranian regime’s brutal treatment of its citizens sparked widespread protests which were largely coordinated through social media, highlighting the critical role of the internet in facilitating freedom of expression and assembly. In response to growing dissent, the Iranian regime intensified its internet censorship, including filtering and shutdowns, effectively silencing its citizens.

By analyzing the situation in Iran, this Essay reveals how internet censorship undermines a wide range of human rights enshrined in the U.N.’s Charter, treaties, and declarations with a specific emphasis on non-discrimination, right to development, and freedom of speech and information. This Essay also argues that, in light of the clear and widespread deprivation suffered by Iranian citizens as a consequence of the Iranian regime’s internet tampering, internet access has become so essential to enjoying a broad array of basic human rights that intentional deprivation of the same can be considered a

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Crime Against Humanity under the terms of the Rome Statute of the International Criminal Court. Finally, it lays the foundations of such a case, which could benefit human rights globally.

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I. INTERNET TAMPERING IN THE CONTEXT OF THE IRANIAN REGIME

In recent decades, the international community has given increasing attention to the right to access the internet. Multiple resolutions have reiterated that “the same rights that people have offline must also be protected online.”¹ These resolutions have called particular attention to the right of freedom of expression, which exists “regardless of frontiers and through any media of one’s choice,”² and which is established in Article 19 of the Universal Declaration of Human Rights (UDHR)³ and the legally binding International Covenant on Civil and Political Rights (ICCPR).⁴ A 2016 Human Rights Council resolution directly declared that “measures to intentionally prevent or disrupt access to or dissemination of information online” are in violation of international human rights law.⁵ More recently, the United Nations (U.N.) repeated its condemnation of the same and requested the Office of the High Commissioner to conduct a study of the trend of internet shutdowns, “their causes, their legal implications and their impact on a range of human rights.”⁶ The resulting report, presented in June 2022, acknowledged the growing trend and assessed the status quo in stark terms: “The dramatic real-life effects of shutdowns on the lives and human rights of millions of people are vastly underappreciated and deserve much greater attention from States, international organizations, businesses and civil society.”⁷

The internet may once have been a nice-to-have amenity. However, as societies have become more dependent on digital infrastructure to conduct and support communication, commerce, culture, and even life-saving emergency services and healthcare, the internet has become a prerequisite to access fundamental human rights.

As the U.N. reports, recognition of the urgent need to protect internet access as a human right is, and has been, massively lacking.⁸ This leaves citizens in member states vulnerable to abuses and signals to autocratic leaders that there will be no consequences for depriving their citizens of basic freedoms that are primarily available through the internet, all while the number, severity, and

¹ See, e.g., Human Rights Council Res. 32/L.20., U.N. Doc. A/HRC/32/L.20, at 3 (June 27, 2016).

² *Id.*

³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 19 (Dec. 10, 1948) [hereinafter UDHR].

⁴ International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁵ H.R.C. Res. 32/L.20, *supra* note 1, at 4.

⁶ Human Rights Council Res. 47/L.22, U.N. Doc. A/HRC/47/L.22, at 5 (July 7, 2021).

⁷ Human Rights Council Res. 50/55, U.N. Doc. A/HRC/50/55, at 2 (May 13, 2022).

⁸ *Id.* at 15–16.

sophistication of government-initiated internet shutdowns continue to increase worldwide.⁹

What immediate actions can and should the international community take to prevent further loss of life and liberties occasioned by autocratic internet shutdowns? Is further change to human rights governing documents required, or can governing bodies use existing instruments and language to better protect the most urgently threatened populations at risk of further and continued internet shutdowns? This Essay will examine these questions through the presently unfolding situation surrounding the Women-Life-Freedom Movement in Iran.

Iranian society, which has suffered greatly from the economic, social, and cultural repercussions of its theocratic regime's (the Regime) rule since the Iranian Revolution of 1979, again reached a point of explosion, this time fueled by the visibility of Regime brutality. In response, Iranians inside and outside the country staged large protests with the internet-ready slogan "Women, Life, Freedom."

In the final days of the summer of 2022, Mahsa Amini was apprehended and killed by Tehran's infamous Morality Police.¹⁰ Amini, who was twenty-two years old at the time of her arrest, was brutally beaten by the police—not for resisting Iran's oppressive hijab dictates but for the minor infraction of "improperly" wearing a hijab in a way in which her hair was visible.¹¹ She died three days later in a hospital in Tehran.¹² Her story unfolded internationally on social media, and in a rare event following the days of her death, Amini's hashtag garnered millions of tweets and retweets.¹³

Many people took to the streets in most Iranian cities and shouted Amini's name, and at the same time demanded extensive changes to the government. In these protests, coordinated movements of high school and university students formed quickly, and most of these movements were planned in social media environments.¹⁴ People used social networks and messenger services to inform each other about the time and place of protests and circulate pictures of police brutality against Iranian protestors. Iranians abroad were also following the news

⁹ *Weapons of Control, Shields of Impunity: Internet Shutdowns in 2022*, ACCESS NOW (Feb. 28, 2023), <https://perma.cc/HSG2-VJW9>.

¹⁰ Rana Rahimpour, *Fury in Iran as Young Woman Dies Following Morality Police Arrest*, BBC (Sept. 16, 2022), <https://perma.cc/GLP8-2SFS>.

¹¹ Maziar Motamedi, *Iran Denies Mahsa Amini, Woman Who Died in Custody, Was Beaten*, AL JAZEERA (Sept. 19, 2022), <https://perma.cc/GS83-EJQ6>.

¹² Anisha Kohli, *What to Know About the Iranian Protests over Mahsa Amini's Death*, TIME (Sept. 24, 2022), <https://perma.cc/T7ZG-5LE2>.

¹³ *Id.*

¹⁴ Feranak Amidi, *Hashtags, A Viral Song and Memes Empower Iran's Protesters*, BBC WORLD SERV. (Nov. 2, 2022), <https://perma.cc/3M9G-49NV>.

inside Iran through the internet, and global demonstrations of thousands of people took place in solidarity.¹⁵

Meanwhile, the Regime, which heard people openly requesting a change of government and sharing slogans opposing Ayatollah Khamenei, realized that control of the situation was becoming precarious; the Regime therefore reduced internet speeds throughout Iran and filtered many important applications such as Instagram, WhatsApp, LinkedIn, Google Play, and the Apple App Store.¹⁶ Many important applications such as Twitter and Facebook and even important parts of the Google search engine were filtered years before.¹⁷

As a result, many people were not able to access the internet even with the use of VPN, as the Iranian government continually blocked access to new VPN services as they came online.¹⁸ In the early days of the protests, even sending simple messages was not possible.¹⁹

But the story did not end there. On January 25, 2023, the internet (including mobile internet access) throughout Iran was completely cut off.²⁰ International websites announced the complete disconnection of the internet in Iran, and in this period, the connection between the people inside and outside Iran was completely disconnected.²¹ Some government officials have blamed the outage on a cyberattack,²² but none of the related authorities and institutions have accepted responsibility for the outage that day.

In these recent protests after the death of Mahsa Amini, at least 500 people were killed by the police, more than 500 people were intentionally blinded by being shot in the face, and many more were seriously injured.²³ At least four

¹⁵ See Karmel Melamed, *Thousands Descend on L.A. as Support for Iranian Freedom Endures*, L.A. MAG. (Feb. 13, 2023), <https://perma.cc/S5S7-C86Q>.

¹⁶ See *Joint Statement on Internet Shutdowns in Iran*, U.S. DEP'T OF STATE (Oct. 20, 2022), <https://perma.cc/X3HD-TCX5>; *Internet Blackout in Iran Threatens 400,000 Professions, Risks Unemployment of 1 Million Iranians*, ASHARQ AL-AWSAT (Sept. 31, 2022), <https://perma.cc/8U2E-LHKA>.

¹⁷ AL-AWSAT, *supra* note 16.

¹⁸ Deniz Kılıç & Aisling Ní Chúláin, *How Iranians Are Hopping Between VPNs to Stay Connected and Break Through Internet Censorship*, EURONEWS (July 11, 2022), <https://perma.cc/WP4C-3EVW>.

¹⁹ *Id.* (discussing how WhatsApp and other messaging services were blocked).

²⁰ Arsala Shahla, *Iran's Internet Network Cut Off Briefly on Wednesday: Tasnim*, BLOOMBERG (Jan. 25, 2023), <https://www.bloomberglaw.com/ms/document/RP19NODWLU68>.

²¹ *Id.*

²² Patrick Sykes, *Iran Blames Cyberattack for Internet Disruption, ISNA Says*, BLOOMBERG (Feb. 2, 2023), <https://www.bloomberg.com/news/articles/2023-02-02/iran-blames-cyberattack-for-internet-disruption-isna-says#xj4y7vzkg>.

²³ Karmel Melamed, *supra* note 15; Cora Engelbrecht, *Hundreds of Protesters in Iran Blinded by Metal Pellets and Rubber Bullets*, N.Y. TIMES (Nov. 23, 2022), <https://perma.cc/T3BS-TTEL>.

protestors have been executed²⁴ and over 100 have been sentenced to death,²⁵ though all these numbers must be questioned due to the throttling of access to information.

The issue of internet filtering and interruption for Iranians is not only limited to the experience of recent months. In another bitter experience, on November 25, 2019, under the order of the Supreme National Security Council, the Iranian government shut down the country's access to the global internet for five days to contain ongoing protests.²⁶ Only access to some internal sites was possible. During these five days, the Iranian government killed at least 1,500 people.²⁷ Iranians inside the country and some human rights groups estimate these numbers to be much higher, with claims that the Regime slaughtered thousands of people during the shutdown.²⁸ People were being killed while no one outside Iran knew about the reality inside Iran. At the same time, the U.S., Germany, France, and several other countries protested this situation, and the U.S. sanctioned the Iranian Minister of Communications, Mohammad Javad Azari Jahormi.²⁹

Iran has now experienced more than one total internet outage and the ongoing filtering of social networks and apps. Moreover, some observers believe that the Iranian authorities are testing new methods to restrict the internet.³⁰ In recent years, the Regime has repeatedly talked about a kind of national and Islamic internet that will completely replace the global internet.³¹

Further, the recent internet interference has been unevenly applied to provinces according to their majority cultural and political allegiances, exacerbating the amount of discrimination exacted by the Regime through its internet interference. For example, Mahsa Amini came from Iran's Kurdistan

²⁴ Associated Press, *Iran Acknowledges it Has Detained 'Tens of Thousands' in Recent Protests*, NPR (Feb. 5, 2023), <https://perma.cc/PG6J-CV7A>.

²⁵ Engelbrecht, *supra* note 23.

²⁶ *See Iran: No Justice for Bloody 2019 Crackdown*, HUM. RTS. WATCH (Nov. 17, 2020), <https://perma.cc/QS9A-GHF7>.

²⁷ *'Whatever It Takes': Iran Crackdown Killed 1,500*, REUTERS (Dec. 23, 2019), <https://perma.cc/E4BB-Y6MM>.

²⁸ *Comprehensive Report of 2019 "Bloody November" Iranian Protests. Study of the Data of 3000+ Murdered and 19000+ Detained. Includes the Names of 850+ Murdered.*, MIDDLE E. HUM. RTS. (Feb. 21, 2021), <https://perma.cc/3EAX-2ZRW>.

²⁹ *Treasury Designates Iran's Minister of Information and Communications Technology in View of the Regime's Repressive Internet Censorship*, U.S. DEP'T OF TREASURY (Nov. 22, 2019), <https://perma.cc/L4D3-N9D3>.

³⁰ *Freedom on the Net 2022: Iran*, FREEDOM HOUSE (2022) [hereinafter *2022 Iran Freedom on the Net*], <https://perma.cc/F5D9-352X>.

³¹ Dipayan Ghosh & Loully Saney, *The Isolating Effects of Iran's Proposed "National Internet"*, CTR. FOR INT'L GOVERNANCE INNOVATION (Jan. 27, 2021), <https://perma.cc/5HSW-6QZ2>.

province, and this province suffered some of the most complete shutdowns.³² And even though it was not a locus of protest, Baluchistan province, which is majority Sunni (while the Regime is Shia), was also deprived of access.³³ The government of Iran deliberately provides Internet with more restrictions in the impoverished south-eastern provinces where Sunni residents already face more oppression³⁴ from the Shia Regime.³⁵

The Regime filters and restricts access to the internet more seriously whenever there are protests. This matches how countries with totalitarian governments (such as China, Russia, and many others) limit the internet to control their citizens easily.³⁶

Therefore, a question that worries many Iranians is what would happen if one day the Regime completely cuts off the internet and replaces it with a separate “National Internet” that is very limited. If this happened, what would the consequences be for banking, trade, food, medical supplies, communications, and freedom of association and expression? Would there be any support in international law to reestablish a connection with each other and the rest of the world? Would global laws and governing structures provide a path for the people of Iran to reclaim their access to this necessity?

This Essay explores how this situation might be interpreted through the lens of existing international law. First, it examines how internet censorship impinges on a staggeringly wide array of basic human rights named in the UDHR and associated Conventions. Second, it takes stock of what resolutions have been made to address this peril so far, how they have fallen short, and what might need to change before Iranian citizens can expect a modicum of protection and redress for the repeated threats to life, freedoms, and livelihood that interference with the internet represents for them.

II. NON-DISCRIMINATION

Internet access can be viewed through a human rights lens in multiple ways. First, it can be seen as a prerequisite to broad and existing human rights

³² Hanna Kreitem, *Multiple Internet Disruptions Observed in Iran*, INTERNET SOC'Y (Sept. 27, 2022), <https://perma.cc/GJ93-9W7L>.

³³ *Iran: Near Total Internet Shutdown in Khuzestan as Food Protests Continue*, ARTICLE 19 (May 12, 2022), <https://perma.cc/KMN7-DKEG>.

³⁴ Fatemeh Aman, *Iran's Uneasy Relationship with Its Sunni Minority*, MEI@75 (Mar. 21, 2016), <https://perma.cc/GG2H-Y7EZ>.

³⁵ Isabel Debre, *Iran Shuts Down Internet in Southeast Province Amid Protests, Harsh Crackdown*, TIMES OF ISR. (Feb. 28, 2021), <https://perma.cc/R2Z3-6SZW>.

³⁶ *A Web of Impunity: The Killings Iran's Internet Shutdown Hid*, AMNESTY INT'L (Nov. 16, 2021), <https://perma.cc/2FL5-EGKG>.

already agreed upon by the international community. Second, it can be seen as a much newer fundamental human right in and of itself.

Supporting the first interpretation is the Charter of Human Rights and Principles for the Internet (the IRPC Charter),³⁷ which was created at the U.N. Internet Governance Forum (IGF) by the Internet Rights & Principles Dynamic Coalition (IRPC), a body of global experts from numerous fields that was formed in 2008. The IRPC Charter, along with its previous drafts, based its conclusions and recommendations on the human rights enumerated in the UDHR and its two main associated treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁸ and the ICCPR. Therefore, its provisions and findings can be interpreted as binding on states, even though the IRPC Charter itself is not a binding resolution.³⁹ Findings in the IRPC Charter clearly illustrate that the internet is a prerequisite to enumerated human rights across all three foundational documents comprising the International Bill of Human Rights. For instance, UDHR Article 19⁴⁰ protects freedom of opinion and expression, while the ICCPR contains protections such as freedom from discrimination, right to life, freedom of movement, right of peaceful assembly, and freedom of association,⁴¹ all of which can be heavily impacted without free and unrestricted access to the internet. Reading the additional list of rights protected by the ICESCR, which includes the right to work, right to form trade unions, right to education, right to take part in cultural life, and the right to enjoy benefits of science, among others, it is difficult to find a single right that would not be deeply affected or completely nullified without a free and unfettered internet.

The IRPC Charter contains a list of ten Internet Rights and Principles, including “Accessibility” and “Expression and Association.”⁴² The IRPC Charter further enumerates nineteen other rights and freedoms specific to the internet.⁴³

Subsequent to this Charter, and due in part to the findings it presents, the U.N. General Assembly’s Human Rights Commission passed a resolution making a more conclusive addition to Article 19 of the UDHR.⁴⁴ This resolution

³⁷ INTERNET RTS. & PRINCIPLES COAL., THE CHARTER OF HUMAN RIGHTS AND PRINCIPLES FOR THE INTERNET (4th ed. 2014) [hereinafter IRPC CHARTER], <https://perma.cc/V2HL-EVEK>.

³⁸ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

³⁹ IRPC CHARTER, *supra* note 37.

⁴⁰ UDHR art. 19.

⁴¹ ICCPR arts. 6, 12, 21, 22, 26.

⁴² IRPC CHARTER, *supra* note 37.

⁴³ *Id.*

⁴⁴ Article 19 of the UDHR states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and import information and ideas through any media and regardless of frontiers.” UDHR art. 19.

was adopted on July 1, 2016 without a vote and “[a]ffirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with article 19 of the [UDHR] and of the [ICCPR].”⁴⁵ Furthermore, the resolution “condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures.”⁴⁶

With both the IRPC Charter and the UDHR resolution in place, it is easier to identify rights violations when they pertain to Internet access and services and for governing bodies to subsequently monitor, report, recommend, and pressure states who fall short of protecting and providing these essential rights to their citizens.

Examining the IRPC Charter, Article 1 clearly refers to the quality of internet services, specifying that the exchange of information should take place without any discrimination.⁴⁷ When it comes to nondiscrimination, we can focus on two aspects. First, we can examine the privileges that a government gives to its agents and people close to it. Article 2 of the IRPC Charter sets the precedent for and protection of the “Right to Non-Discrimination in Internet Access, Use and Governance.”⁴⁸ This provision cites Article 2 of the UDHR, which recognizes that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁹ The IRPC Charter further states that the right to nondiscrimination in the context of the internet includes: (1) equality of access, (2) marginalized groups; and (3) gender equality.⁵⁰ This text states that when certain groups in society systemically experience more limited or restricted internet access, it is a violation of their human rights.⁵¹

Considering Iran as an example, nondiscrimination is routinely violated. For example, on social networks, many Iranian government officials post to defend their sovereignty and actions at the international level, providing a platform for the Regime to express itself. Meanwhile, the people inside Iran are

⁴⁵ Human Rights Council Res. 32/13, U.N. Doc. A/HRC/RES/32/13, ¶ 1 (July 1, 2016).

⁴⁶ *Id.* ¶ 10.

⁴⁷ IRPC CHARTER, *supra* note 37, art. 1(a), (d).

⁴⁸ *Id.* art. 2.

⁴⁹ UDHR art. 2.

⁵⁰ IRPC CHARTER, *supra* note 37, art. 2.

⁵¹ *Id.*

not even able to open an attachment file or send a WhatsApp message to their children abroad.⁵²

Second, IRPC Charter Article 2 support the proposition that the right of public access to the internet should include all citizens.⁵³ Article 2(b) particularly refers to marginalized groups, specifying that “[s]pecial attention must be paid to the needs of marginalized groups including the elderly, young people, ethnic and linguistic minorities, and indigenous peoples, persons with disabilities and all sexuality and gender identities.”⁵⁴

In Iran, the two provinces of Kurdistan and Sistan-Baluchestan were very active in the recent protests, and the people of both provinces are facing considerable difficulties. These two provinces are made up of Sunni minorities who speak a local language. According to reports, both provinces were experiencing lower internet speeds compared to other provinces during this period, which is entirely related to the security situation there.⁵⁵

III. RIGHT TO DEVELOPMENT

Many small businesses in Iran have started economic activities through the internet. Especially within the traditional business market in Iran, which is governed by patriarchal rules, many women started home businesses using the internet.⁵⁶ In recent years, when the economic pressure on the Iranian people has been very high due to sanctions and inflation, internet businesses have been an important resource for this group.

In Iran, many businesswomen sell their products on Instagram.⁵⁷ More than two million Iranian businesses are active on Instagram, and only 19% of them have face-to-face sales.⁵⁸ An estimated 64% of Instagram businesses are owned by women, and Instagram filtering is impacting these businesses.⁵⁹ However, since September 2022, when the Mahsa Amini protests began, the

⁵² *Cf.* AL-AWSAT, *supra* note 16.

⁵³ IRPC CHARTER, *supra* note 37, art. 2(a). This subsection provides:

Equality of access[:] Certain groups in society systematically have more limited or restricted Internet access and the means and opportunities for effective use than others. This can amount to de-facto discrimination in terms of their ability to enjoy the human rights that the Internet supports. Thus efforts to increase access and effective use must recognize and address these inequalities.

⁵⁴ *Id.* art. 2(b).

⁵⁵ Debre, *supra* note 35.

⁵⁶ Holly Dages, *Iranians on #SocialMedia*, ATLANTIC COUNCIL (Dec. 15, 2021), <https://perma.cc/A4Q2-LWAR>.

⁵⁷ *Id.*

⁵⁸ *Women Victims of Filtering*, DONYA-E-EQTESAD (Nov. 1, 2022), <https://perma.cc/3FJU-SYC4>.

⁵⁹ *Id.*

reduction and interruption of the internet, along with the filtering of social networks, has inflicted severe disruptions upon these businesses.⁶⁰

Article 4 of the IRPC Charter references the right to development through the internet.⁶¹ The general right to development is also mentioned in the 1986 Declaration on the Right to Development.⁶² Internet restrictions by the Iranian government work against the goals of development and poverty reduction.⁶³ For example, NetBlocks, the nongovernmental organization overseeing the global internet, estimated the damage caused by Iran's latest internet outage at around \$1.5 million per hour.⁶⁴

Iran's business statistics in the last five years show that the number of online businesses has grown rapidly, and that 5% of the country's business has been done online.⁶⁵ If this trend continues, more people will be deprived of the right to development as time passes.

Those involved in the field of online services find that some of the most severe economic damage from internet outages is to small businesses and their activities on Instagram.⁶⁶ Some experts believe that the amount of damage resulting from this outage is not possible to quantify, but estimates suggest the losses amount to hundreds of trillions of rials.⁶⁷

Reports have tied economic and job losses directly to Iran's extensive internet and social network restrictions.⁶⁸ Statistics showed 20% of people lost

⁶⁰ *Id.*

⁶¹ IRPC CHARTER, *supra* note 37, art. 4. This Article provides:

All UDHR human rights require economic, social, cultural and political development in order to be fully realized, as recognized in the UN Declaration on the Right to Development, 1986. The Internet has a vital role to play in helping to achieve the full realization of human rights, in particular in eradicating poverty, hunger, and diseases and promoting gender equality and empowerment of women. The right to development includes the full enjoyment of all rights related to the Internet and set out in this Charter. On the Internet, the right to development includes:

a) Poverty reduction and human development[:] Information and communication technologies shall be designed, developed and implemented to contribute to sustainable human development and empowerment.

b) Environmental sustainability[:] The Internet must be used in a sustainable way. This relates to the disposal of e-waste and to the use of the Internet for the protection of the environment.

⁶² G.A. Res. 41/128, [X] (Dec. 4, 1986).

⁶³ *Iranians Sustain Huge Losses Due to Government Internet Shutdowns*, IRAN INT'L (Mar. 18, 2023), <https://perma.cc/WQ4K-S8ZY>.

⁶⁴ AL-AWSAT, *supra* note 16.

⁶⁵ *Iranians Sustain Huge Losses Due to Government Internet Shutdowns*, *supra* note 63.

⁶⁶ Maryam Sinaee, *Small Businesses, Farmers Bear Brunt of Iran's Internet Disruptions*, IRAN INT'L (Oct. 18, 2022), <https://perma.cc/7H5X-AH88>.

⁶⁷ *Iranians Sustain Huge Losses Due to Government Internet Shutdowns*, *supra* note 63.

⁶⁸ *Id.*

their online jobs in the last four months of 2022.⁶⁹ Additionally, 46% of organizations significantly cut their recruitment, and 45% of Internet businesses cut or delayed wage payments.⁷⁰

IV. FREEDOM OF SPEECH AND INFORMATION

Internet censorship also impinges on freedom of speech and the right to access free information. The Regime's constant and highly oppressive deprivation of these rights is largely accomplished through internet throttling, filtering, and interference.

Iranian constitutional law grants the right to peaceful and non-violent protest in Article 27.⁷¹ However, those who participated in any kind of street protests following Mahsa Amini's murder were subject to police brutality, and according to some human rights organizations, estimates of the number arrested range between 19,600 to over 22,000.⁷² Many of them have not even been named and their families have not been informed of their whereabouts.⁷³ The throttling and limiting of internet communications have left families without the ability to discover where their missing loved ones are, either because they fear asking the government directly (and would otherwise have been able to send and receive messages on apps like Instagram, WhatsApp and Telegram), or because internet shutdowns prevent them from sending messages.

While the UDHR and the IRPC Charter both mention the right to freedom of expression,⁷⁴ Article 6 of the IRPC Charter particularly recognizes the "Freedom of Religion and Belief on the Internet," and cites UDHR Article 18's assertion that "everyone has the right to freedom of thought, conscience and religion."⁷⁵ IRPC Charter Article 6 adds that "[t]his right includes freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief in teaching, practice, worship and observance. This right also includes freedom from religion."⁷⁶

There is an alternative argument that a separate charter or additional enforcement method for internet rights is unnecessary because the internet is merely a channel by which people enjoy their core human rights, rather than a

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ QANUNI ASSASSI JUMHURII ISLAMAI IRAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 27.

⁷² Associated Press, *supra* note 24.

⁷³ Patrick Wintour, *Almost 12,500 People Arrested in Iran Protest Crackdown, Says Rights Group*, GUARDIAN (Oct. 21, 2022), <https://perma.cc/WB57-Q964>.

⁷⁴ UDHR art. 19; IRPC CHARTER, *supra* note 37, art. 5.

⁷⁵ IRPC CHARTER, *supra* note 37, art. 6.

⁷⁶ *Id.*

right itself.⁷⁷ Indeed, as the internet has become more integrated into basic human needs, internet deprivation becomes a threat, even to survival. What freedom of association, assembly, or expression is possible when the internet is the gateway to much societal activity? What right to take part in cultural life or to enjoy the benefits of science is possible without internet access? Today's deep societal reliance on the internet means we frequently rely on uninterrupted internet to exercise the right to work, health, education, and even freedom from hunger (with complicated and heavily digitized global food supply chains).

Finally, the recognition of internet rights is a relatively new issue. Many democratic countries support the right to access the internet, and this is an important priority for residents of those countries.⁷⁸ But it is still unclear how less-democratic countries that do not adhere to the basic standards of human rights or to the UDHR can be committed to protecting internet rights, and whether the world will one day be able to have a legally enforceable guarantee for this demand.⁷⁹

In fact, there is an important contradiction here. Governments that fall short of providing relatively unobstructed access to information via the internet are usually totalitarian governments.⁸⁰ In such cases, when a government restricts the internet, it usually asserts that national security and public order interests justify that action.⁸¹ For this reason, when the Iranian government cuts off the internet, it generally points to interference of foreign forces that intend to use the internet to influence the Iranian government and harm its citizens; in other words, it claims the internet restrictions are for the protection of the public.⁸² This kind of rhetoric has been successful for the Regime in previous instances, such as in 2009 and 2018, when Iranians engaged in mass protest movements and the Regime throttled the internet⁸³—the international community was unwilling to do more than express concern.⁸⁴

⁷⁷ See Laura Villadiego, *Internet Access: A New Human Right?*, EQUAL TIMES (Jan. 17, 2022), <https://perma.cc/M5W2-ZU4H>.

⁷⁸ See *Is There a Right to Internet Under International Law?*, MEDIA DEFENCE (2022), <https://perma.cc/8FTK-HQRB>.

⁷⁹ *Id.*

⁸⁰ Adrian Shahbaz, *The Rise of Digital Authoritarianism: Freedom on the Net 2018*, FREEDOM HOUSE (2018), <https://perma.cc/FNF9-4398>.

⁸¹ *Internet Restrictions to Continue as Long as Security Threatened: Iranian MP*, IRAN INT'L (Nov. 21, 2022), <https://perma.cc/LGR3-7L3N>.

⁸² See, e.g., Maziar Motamedi, *Iran: Controversial Internet Control Bill Passes Committee Stage*, AL JAZEERA (Feb. 22, 2022), <https://perma.cc/5TET-SJ4V>.

⁸³ See *2022 Iran Freedom on the Net*, *supra* note 30.

⁸⁴ See Laura Smith-Spark, *U.N. Experts Urge Iran to Respect Rights of Protesters, End Internet Crackdown*, CNN (Feb. 5, 2018), <https://perma.cc/ACT2-9APW>.

In reality, the threat arising from the existence of freedom of expression and access to the internet is not related to the security of Iranian citizens. Rather, it is the global exposure of an autocratic regime's continued, unfettered brutal actions.⁸⁵ Therefore, the Regime's fear of its own demise has caused its stalwarts to swiftly limit the internet whenever protests gain momentum so that the people inside cannot unite at critical moments to effect political change.

On the other hand, the members of the Iranian diaspora, who can function as the voice of the people inside Iran with the help of social media and digital communications platforms,⁸⁶ are unable to publish primary source materials such as first-hand photographs during these times of Regime challenge—they usually have limited connections to loved ones inside the country. In such cases, isolated and secondhand accounts of only what is said and heard are not strong enough evidence to convince the world about what is happening in Iran, or to understand at scale as events unfold.

If people could show the world the brutality of the repressive forces' treatment of Iranian citizens at the very moment the protests occur, global support would undoubtedly increase. By failing to take stronger action, the international community (as constituted by signatories to the UDHR) is failing to protect internet freedom not just at a global level, but within individual countries too.

Consider Article 19 of the ICCPR,⁸⁷ which deals with the right to freedom of expression. Paragraph 2 states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁸⁸ The explicit inclusion of the phrase “through any other media of his choice” indicates that the expression of the right to opinion in media and internet contexts is also protected under Article 19.⁸⁹

However, this right to free expression is limited in Paragraph 3, which creates a problematic loophole:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For

⁸⁵ See AMNESTY INT'L, *supra* note 36.

⁸⁶ Over 70% of Iranians use the Telegram app for communications and news. See Ahmed Al-Rawi, *News Loopholing: Telegram News as Portable Alternative Media*, 5 J. COMPUTATIONAL SOC. SCI. 1, 949, 954 (2022).

⁸⁷ ICCPR art. 19.

⁸⁸ *Id.*

⁸⁹ *Id.* ¶ 2.

the protection of national security or of public order (ordre public), or of public health or morals.⁹⁰

Here, one can clearly see how the right to freedom of expression in the second paragraph of Article 19 conflicts with the third paragraph of the same Article. Particularly when the government in power is less inclined toward democratic principles, Paragraph 3 of Article 19 essentially invalidates the existence of rights conferred earlier in the same Article.

V. CREATING AND PROTECTING A RIGHT TO INTERNET

The U.N. has done much work to analyze, recognize, and report on internet rights and violations, yet internet rights remain in peril, even for those not living in outright autocracies. Some U.N. resolutions and instruments, such as Article 19 of the ICCPR, remain weak and open to too much interpretation. Where national security is defined as protecting the indefinite and total power of an autocracy, and where “morals” are defined to scapegoat and oppress citizens, Paragraph 3 can be used to empower and ensure the endurance of autocratic regimes.

Therefore, to protect the freedom of expression through the internet (or other media) more clearly, the right to access the free internet should be expressed in a different way. An overall reexamination of derogation under Article 4 of the ICCPR should be undertaken, with a particular focus on Article 19.⁹¹

Specifically, filtering or shutting down the internet should never be justified by Articles 4 or 19 because the widespread, serious impact of internet shutdowns necessarily punishes those who have not presented any threat alongside those who allegedly have done so. The ICCPR could be strengthened by further clarifying the conditions wherein restrictions to the right of expression may be deemed acceptable or necessary. Adding a criterion that restrictions “shall only be such as are provided by laws that can be shown to align with international human rights law” might give more power to this instrument overall. The right to access the internet, even though acknowledged in U.N. resolutions as a human right, can continue to be strengthened so that the U.N. has stronger,

⁹⁰ *Id.* ¶ 3.

⁹¹ Article 4 of the ICCPR provides in part that

[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

more enforceable mechanisms by which to call on states to respect, protect, and fulfill this ever more urgent human need when it is imperiled.

But it also may be possible to act more urgently and go beyond “strong condemnations” and expressions of “deep concern”. Targeted internet shutdowns arguably constitute a crime against humanity in violation of the Rome Statute. Bringing such a case before the International Criminal Court (ICC) can help establish a precedent of recognition and enforcement of internet rights.⁹² Article 7 of the Rome Statute gives the ICC jurisdiction in “crimes against humanity,” which it defines as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁹³ The list of acts includes murder, torture, rape, apartheid, and “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”⁹⁴

Internet shutdowns, even of a single city, are arguably “widespread” because they inevitably impact all members of a population and not just “bad actors.” An internet shutdown would be systematic in that it is an intentional act that must be orchestrated between the government and infrastructure providers, and entails planning, preparation, and coordination. Additionally, internet shutdowns in Iran are directed at civilian populations and the perpetrators are fully aware of their civilian targets. Consequently, the types of internet shutdowns following Mahsa Amini’s death meet the first half of the definition of a crime against humanity.

Furthermore, a deliberate internet shutdown by a state against its people is arguably “an inhumane act of similar character [to other listed acts] intentionally causing great suffering or serious injury to body or to mental or physical health.” After the Iranian protests of November 2019, reports surfaced that a crackdown was personally ordered by Ayatollah Ali Khamenei, who was quoted saying: “Do whatever it takes to end it. You have my order.”⁹⁵ In the period during which the government shut off the internet, it also closed in on protestors with impunity and carried out a mass slaughter that was hidden from the world. The Wikipedia page describing these events still cites Amnesty International and BBC death toll estimates of 200 to 300, which were based on “official reports.”⁹⁶ But a Reuters

⁹² Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

⁹³ *Id.* art. 7.

⁹⁴ *Id.*

⁹⁵ *Special Report: Iran’s Leader Ordered Crackdown on Unrest: ‘Do Whatever it Takes to End It’*, REUTERS (Dec. 23, 2019) [hereinafter *Special Report*], <https://perma.cc/L8BX-YADV>.

⁹⁶ *2019–2020 Iranian Protests*, WIKIPEDIA (last edited Mar. 19, 2023), <https://perma.cc/K6BM-A2X5>.

investigation uncovered a death toll of over 1,500.⁹⁷ This discrepancy persisted because the internet shutdown cut the Iranian population off from each other and from the rest of the world whilst facilitating mass killings of civilians.⁹⁸

A U.N. OHCHR report describes a series of harms caused by shutdowns including “[h]ospitals being unable to contact their doctors in cases of emergency” and “peaceful protesters who fall under violent attack being unable to call for help.”⁹⁹ Such attacks are also prevalent, with 931 shutdowns in 74 countries between 2016 and 2021.¹⁰⁰ The severity and the significance of the harms caused, along with the frequency of occurrence, might be enough to bring a colorable crimes against humanity case before the ICC. This would set a precedent and increase international attention, engagement, and support for preventing attacks on internet freedoms.

VI. CONCLUSION

The U.N. Human Rights Commission has responded quickly and responsibly to the sweeping societal changes introduced by digital technologies. However, the situation in Iran regarding the Women-Life-Freedom movement shows us that states can continue to violate the now-established human right to the internet in an ongoing fashion and with devastating results to individual life and liberty. Many multinational networks of experts from industry, policy, law, and government have contributed to this work, yet enforcement in this human rights context, as with many others around the world, remains a challenge.

There are opportunities within existing international instruments and treaties to create stronger language, but the U.N. should also look to ensure that member states are adopting and enforcing the practices it has taken the time to research and codify. At the very least, it should go beyond language in resolutions that gently asks member states “to consider formulating . . . and adopting national Internet-related public policies that have the objective of universal access and enjoyment of human rights at their core.”¹⁰¹

The time to *consider* protecting internet freedoms has long passed. If the U.N. as a governing body values democracy, it should make strong recommendations to adopt state-level policies that preserve human rights in the digital environment and be willing to condemn those member states that refuse to enshrine protections.

⁹⁷ *Special Report*, *supra* note 95.

⁹⁸ *Id.*

⁹⁹ Rep. of the Office of the U.N. High Commissioner for Human Rights, *Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights*, ¶ 1, U.N. Doc. A/HRC/50/55 (2022).

¹⁰⁰ *Id.* ¶ 19.

¹⁰¹ Human Rights Council Res. 32/L.20., U.N. Doc. A/HRC/32/L.20, at 4 (June 27, 2016).

Clearly, to ensure free access to one of the world's most crucial technologies, further work and examination is required, not only in internet-specific charters, but in the way the core charters are interpreted, monitored, applied, and enforced when it comes to digital access and expression worldwide.