

THE UNIVERSAL EFFORT TO CURTAIL PROTESTS

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“Don’t let anybody, anybody convince you this is the way the world is and therefore must be. It must be the way it ought to be.”

– Toni Morrison¹

Protesting is an internationally recognized right that has had a significant impact on the world. Recognizing its importance, governments and nongovernment institutions have set out to codify, promote, and protect protest rights, claiming they value its expression. Unfortunately, those laws and policies may just be empty words as protest rights around the world are regularly infringed on, particularly in a biased manner. At an alarming rate, protesters face life-altering, disastrous consequences if they wish to express this human right—rights countries simultaneously claim to be “supremely precious in our society.” This concerted effort against protesting makes its “free” expression nearly impossible for the average person, reserving this human right for those privileged enough to afford the, sometimes literal, costs. This paper aims to describe the universal effort to curtail protest rights through defining the contradiction between how we purport to treat these rights, and how we actually treat them. Because this inconsistency threatens the validity of these rights, this article offers how we should treat protests to maintain its legitimacy.

INTRODUCTION

بله چشم قربان زندگی نرماله
به جز اینم نمیگیم مبدا که جرم باشه

.....
به معترضاً برچسب اغتشاشگر میزد
به زندان کفایت میکرد؟ نه، جنایت می کرد

– توماج صالحی

Yes! Of course, Sir! Life is normal.

We don’t ask for what is ours, lest it be a crime.

.....

[The government] called the protesters as insurrectionists.

Did it stop at imprisonment? No, it committed atrocities as well.

– Toomaj Salehi²

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¹ TONI MORRISON, THE SOURCE OF SELF-REGARD 72 (2019).

² Toomaj Salehi, *Normal*, YOUTUBE (June 16, 2021), <https://www.youtube.com/watch?v=p6LzYdU81o>

Rapper Toomaj Salehi is widely known by Iranians for his protest songs.³ Similar to other musical artists in this genre,⁴ Toomaj's lyrics span a wide array of societal issues such as his country's poverty, injustices, and corruption.⁵ Like other Iranians of his generation, Toomaj felt the harsh realities of life in Iran are downplayed by the government.⁶ As he has said, "[t]he upper classes have a voice enough. [My] rap is the voice of the suffocated throats."⁷ By many accounts, "his body of music has helped [a] generation find its voice."⁸ Now, that generation's voice has shaken up the government's establishment to a degree not seen since the 1979 revolution.⁹

Perhaps unsurprisingly, the Iranian government has arrested him on multiple occasions for releasing these dissident songs.¹⁰ While Iran is a signatory to international covenants which purport to uphold his right to protest,¹¹ and despite Toomaj otherwise lawfully expressing his rights, the

[<https://perma.cc/S3G6-4462>]; see also Toomaj Salehi, *Toomaj's "Normal" in English*, NUFDI (Sept. 19, 2021), <https://nufdiran.org/toomajs-normal-in-english/> [<https://perma.cc/ZH89-L8FJ>] [hereinafter Salehi, *Normal*]. Toomaj has been arrested, imprisoned in solitary confinement, and rearrested for songs like this and his song "Soorakh Moosh." Toomaj Salehi, *Toomaj "Mouse Hole"/"Soorakh Moosh" with English Subtitles*, YOUTUBE (Sept. 17, 2021), https://www.youtube.com/watch?v=DB_vAtHNgoE [<https://perma.cc/666A-6PGL>] [hereinafter Salehi, *Mouse Hole*]. He continues to be punished for his songs. See *First Time Toomaj Speaks After Release*, YOUTUBE (Nov. 27, 2023), https://www.youtube.com/watch?v=pWIF3i_1K18 [<https://perma.cc/8YXV-4PGQ>] [hereinafter Salehi, *Speaks After Release*].

³ See, e.g., Artemis Moshaghian, *Iranian Dissident Rapper Toomaj Salehi Rearrested Less than Two Weeks After Release from Prison*, CNN (Nov. 30, 2023), <https://www.cnn.com/2023/12/01/middleeast/iranian-rapper-toomaj-salehi-arrested-intl-hnk/index.html> [<https://perma.cc/N2BT-B8XW>]; Elwely Elwely, *Iranian Rapper Toomaj Salehi Arrested Again*, REUTERS (Nov. 30, 2023), <https://www.reuters.com/world/middle-east/iranian-rapper-toomaj-salehi-arrested-again-2023-11-30/>.

⁴ Rappers similar to Salehi include N.W.A., Tupac Shakur, and Morgenshtern. See Kory Grow, *How N.W.A.'s 'Fuck tha Police' Became the 'Perfect Protest Song'*, ROLLING STONE (June 9, 2020), <https://www.rollingstone.com/music/music-features/nwa-fuck-tha-police-protest-song-1010355/>; B.J. Steiner, *Tupac Shakur Drops '2Pacalypse Now' Album: Today in Hip-Hop*, XXL MAG (Nov. 12, 2013), <https://www.xxlmag.com/today-hip-hop-tupac-shakur-releases-2pacalypse-now/> [<https://perma.cc/5WK6-WLFW>]; John Arterbury, *Russia's Biggest Rappers Are Going Hard Against Putin's War*, ROLLING STONE (Mar. 17, 2022), <https://www.rollingstone.com/music/music-news/russia-rappers-putin-war-ukraine-1322497/>.

⁵ See, Salehi, *Normal*, *supra* note 2; Salehi, "Mouse Hole"/"Soorakh Moosh", *supra* note 2; Toomaj Salehi, *Toomaj "Faal" Music Video*, YOUTUBE (Oct. 24, 2022), https://www.youtube.com/watch?v=Jpi7d_uQ5Ec [<https://perma.cc/T4DN-6KSP>].

⁶ Holly Dagres, *A Rapper's Detention Shows Iran's Crackdown is Failing*, N.Y. TIMES (May 31, 2023), <https://www.nytimes.com/2023/05/31/opinion/toomaj-salehi-iran.html> [hereinafter Dagres, *A Rapper's Detention*].

⁷ *Id.*

⁸ *Id.*

⁹ Holly Dagres, *Meet Iran's Gen Z: The Driving Force Behind the Protests*, FOREIGN POL'Y (Nov. 1, 2022), <https://foreignpolicy.com/2022/11/01/iran-protests-gen-z-mahsa-amini-social-media/> [<https://perma.cc/4ZEH-L938>] [hereinafter Dagres, *Iran's Gen Z*].

¹⁰ See, e.g., Moshaghian, *supra* note 3; Elwely, *supra* note 3.

¹¹ See *View the Ratification Status by Country or by Treaty, Ratification Status of CCPR – International Covenant on Civil and Political Rights*, U.N. OFF. OF THE HIGH COMM'R HUM. RIGHTS, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en [<https://perma.cc/JP34-TAWP>] (last visited April 2, 2024) (noting Iran's signature date is April 4, 1968, ratification date is June 24, 1975); *Signatories for Universal Declaration of Human Rights*, DANISH INST. FOR HUM. RTS.,

Iranian government rationalized these arrests by claiming that his music “insult[ed] the leadership,” was “propaganda against the regime,” evidenced “cooperation with hostile governments,” “invite[ed] people to kill and disturb,” and even went so far as to label his music “corruption on Earth.”¹² Rather than upholding its international obligations to protect and promote protest rights,¹³ the Iranian government sought to punish and make an example out of Toomaj.¹⁴ For simply releasing these songs, Toomaj has been subjected to torture, months of solitary confinement, public humiliation, and now a potential death sentence.¹⁵

While Toomaj is a recent, notable example of the Iranian government’s disregard for internationally-recognized protest rights, he is certainly not alone. Indeed, the country is infamous for arresting and exiling many academics and intellectuals for the “crime” of criticizing the regime.¹⁶ In fact, arresting intellectuals is so common that many in the public refer to the prison they are often held in, Evin Prison, as “Evin University.”¹⁷ Within Evin prison, political detainees experience harsher conditions to dissuade any future critique of the regime, thus sending a clear message that the Iranian government will swiftly, and harshly, punish anyone who dares speak out.¹⁸

To be sure, arrests are not the only method used by the Iranian government to suppress protest movements. Indeed, they have even gone so

<https://sdg.humanrights.dk/en/instrument/signees/24> [<https://perma.cc/BYR4-MHVA>] (noting Iran ratified the Declaration).

¹² Dages, *supra* note 6.

¹³ See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹⁴ *First Time Toomaj Speaks After Release*, YOUTUBE (Nov. 27, 2023), <https://www.youtube.com/watch?v=pWIF3i> [<https://perma.cc/6SHB-9AVK>] (describing his horrific treatment by Iranian government officials, which included being severely beaten, blindfolded, and then forced into an apology on state-wide media); see *Imprisoned Dissident Rapper Toomaj Salehi, Voice of Iran’s Protests, Faces Possible Execution*, CTR. FOR HUM. RTS. IN IRAN (Apr. 6, 2023), <https://iranhumanrights.org/2023/04/imprisoned-dissident-rapper-toomaj-salehi-voice-of-irans-protests-faces-possible-execution/> [<https://perma.cc/SW78-TGUZ>].

¹⁵ Dages, *A Rapper’s Detention*, *supra* note 6; Dages, *Iran’s Gen Z*, *supra* note 9.

¹⁶ To be clear, these are only some of the many reports of academic crackdown that has gone on for over fifty years. See, e.g., *More Iranian Students Barred From Studies Over Protest Activities as Crackdown Continues*, RADIO FREE EUR./RADIO LIBERTY (Feb. 8, 2024), <https://www.rferl.org/a/32810340.html> [<https://perma.cc/993E-46VZ>]; Maryam Sinaiee, *Authorities in Iran Continue Harsh Crackdown in Universities*, IRAN INT’L (Dec. 15, 2023), <https://www.iranintl.com/en/202312152758> [<https://perma.cc/A5DK-5VMZ>].

¹⁷ Steve Inskeep, *Iran’s Evin Prison Likened to Torture Chamber*, NAT’L PUB. RADIO (July 19, 2007), <https://www.npr.org/templates/story/story.php?storyId=12091966> [<https://perma.cc/JP75-9T9A>] (“So many intellectuals have spent time there that it is nicknamed Evin University. Human rights lawyer Mehrangiz Kar was thrown in prison after giving a speech that the government disliked.”).

¹⁸ This reputation has been documented for decades. *Torture, Detention, and the Crushing of Dissent in Iran*, HUM. RTS. WATCH (2004), <https://www.hrw.org/reports/2004/iran0604/5.htm> [<https://perma.cc/S8LD-Z65Z>]; Kian Tajbakhsh, *Iran Has Become a Prison*, ATLANTIC (Nov. 1, 2022), <https://www.theatlantic.com/international/archive/2022/11/iran-mahsa-amini-protest-evin-prison-fire/671950/> [<https://perma.cc/3E29-RTDM>]; Farnaz Fassihi, *Protest Chants, a Riot and Gunshots: How a Prison Fire Unfolded in Iran*, N.Y. TIMES (Oct. 21, 2022), <https://www.nytimes.com/2022/10/21/world/middleeast/iran-prison-fire-protest.html>.

far as to severely limit internet access across the entire country.¹⁹ While a lack of internet may initially seem as a slight inconvenience, scholars have noted that “internet shutdowns must be understood as an extension of the violence and repression that is happening in physical space.”²⁰ To be sure, internet access is crucial to mobilizing protests and it amplifies acts of resistance.²¹ Moreover, cutting off internet access can also endanger activists by making it particularly difficult for protesters to communicate and warn one another about when they are in danger.²²

Unfortunately, Iran is but one example of what appears to be a universal effort to curtail protests. Indeed, while the world has repeatedly claimed to uphold protest rights,²³ studies indicate that 75% of countries regularly violate these rights.²⁴ Further, other reports suggest that non-government institutions often violate their own internal policies which purport to promote these rights.²⁵ This research suggests that, while we claim to value protesting, in reality we consistently seek to dissuade people from its lawful expression, subjecting them to numerous, costly consequences.²⁶

This article aims to expose this universal effort to curtail protest rights despite an overwhelming consensus which purports to protect those rights. Part I illustrates the international consensus to codify, promote, and protect the right to protest. In turn, Part II discusses the various ways that governments and institutions regularly violate these rights, often in a biased manner. Finally, Part III considers potential long-term impacts of preventing

¹⁹ Weronika Strzyżyńska, *Iran Blocks Capital's Internet Access as Amini Protests Grow*, THE GUARDIAN (Sept. 22, 2022), <https://www.theguardian.com/world/2022/sep/22/iran-blocks-capitals-internet-access-as-amini-protests-grow> [<https://perma.cc/H53X-BAZV>]; Vivian Yee, *Despite Iran's Efforts to Block Internet, Technology has Helped Fuel Outrage*, N.Y. TIMES (Sept. 29, 2022), <https://www.nytimes.com/2022/09/29/world/middleeast/iran-internet-censorship.html>; Press Release, U.S. Dep't of State, Joint Statement on Internet Shutdowns in Iran (Oct. 20, 2022), <https://www.state.gov/joint-statement-on-internet-shutdowns-in-iran/> [<https://perma.cc/Q9GU-SD4U>].

²⁰ Strzyżyńska, *supra* note 19.

²¹ *Id.*

²² *Id.* (“During the last protests [2017–2019], the government cut off internet for days at a time. During that time, protesters were killed and arrested. . . . [Protesters often used the internet to] call each other and say when they are in danger or warn each other.” (quoting Shaghayegh Norouzi, an Iranian campaigner against gender-based violence)).

²³ Such as signing treaties that explicitly hold the right to protest. See, e.g., ICCPR, *supra* note 13, at art. XIX.

²⁴ CIVICUS Monitor tracks fundamental freedoms in 197 countries and territories and reports on whether they uphold these rights. Their Global Assessment on Protest Rights reports shows violations in over 75% of countries where protests were recorded. *Global Summary: Key Findings on Protests and Restrictions (1 October 2019 – 30 September 2022)*, CIVICUS, <https://protestrights2022.monitor.civicus.org/> [<https://perma.cc/MZ46-29X8>] (last visited Apr. 2, 2024).

²⁵ Charlotte Garden, *Was it Something I Said?*, ECON. POL'Y INST. (May 5, 2022), <https://files.epi.org/uploads/215894.pdf>; *Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association*, HUM. RTS. WATCH (Apr. 30, 2007), <https://www.hrw.org/report/2007/05/01/discounting-rights/wal-marts-violation-us-workers-right-freedom-association> [<https://perma.cc/M28F-6C9W>].

²⁶ See discussion *infra* Part II.

protests and offers some preventative measures to ensure protest rights retain the respect they deserve.

I. HOW WE CLAIM TO TREAT PROTESTS

Toomaj, like the rest of the world, has a human right to protest. The world recognizes protesting's ability to lead to significant change.²⁷ From independence²⁸ to individual freedoms,²⁹ economic reform³⁰ to racial justice,³¹ protests are an effective way for people to express grievances to their leaders. In fact, protests are *at least* as important as other political involvement, such as voting,³² particularly when considering its broad accessibility.³³ At least theoretically, governing bodies and institutions appreciate its importance by enacting measures to codify, promote, and protect these rights.

A. Efforts to Codify Protest Rights

The right to protest is not a singular right. Rather, it is a combination of a number of other well-recognized rights, including the freedoms of speech, association, assembly, and expression.³⁴ Throughout the world, governing bodies have codified all these rights,³⁵ establishing a global consensus that there is an implicit right to protest.³⁶

²⁷ Michael Hamilton, *The Meaning and Scope of 'Assembly' in International Human Rights Law*, 69 INT'L & COMPAR. L. 1, 3 (2020).

²⁸ James A. Ferguson et al., *Haitian Revolution*, BRITANNICA (Mar. 16, 2024, 4:30 PM), <https://www.britannica.com/place/Haiti/The-Haitian-Revolution> [<https://perma.cc/6MZU-3G2M>].

²⁹ *Women of Protest: Photographs from the Records of the National Woman's Party*, LIBR. OF CONG., <https://www.loc.gov/collections/women-of-protest/articles-and-essays/historical-timeline-of-the-national-womans-party/1918-to-1920/> [<https://perma.cc/65Q8-B84T>].

³⁰ Benjamin Dodman, *A Year of Insurgency: How Yellow Vests Left 'Indelible Mark' on French Politics*, FRANCE24 (Nov. 16, 2019), <https://www.france24.com/en/20191116-a-year-of-insurgency-how-yellow-vests-left-indelible-mark-on-french-politics> [<https://perma.cc/ZG5K-765X>].

³¹ *The June 16 Soweto Youth Uprising*, S. AFR. HIST. ONLINE, <https://www.sahistory.org.za/article/june-16-soweto-youth-uprising> [<https://perma.cc/VYT6-D42U>]; Savannah Smith et al., *Map: George Floyd Protests Around the World*, NBC NEWS (June 9, 2020), <https://www.nbcnews.com/news/world/map-george-floyd-protests-countries-worldwide-n1228391> [<https://perma.cc/P8SD-YWMD>].

³² Andrew M. Perry & Carl Romer, *Protesting is as Important as Voting*, BROOKINGS (Aug. 28, 2020), <https://www.brookings.edu/articles/protesting-is-as-important-as-voting/> [<https://perma.cc/QG3P-SCU9>].

³³ See generally MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* (2012).

³⁴ See, e.g., *Protect the Protest*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/freedom-of-expression/protest/> [<https://perma.cc/U7Q7-G2YK>] (last visited Apr. 2, 2024).

³⁵ See, e.g., G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. XIX, XX (Dec. 10, 1948) [hereinafter UDHR].

³⁶ *United States Ratification of International Human Rights Treaties*, HUM. RTS. WATCH (July 24, 2009, 12:24 PM), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties> [<https://perma.cc/AU4W-Y3AK>].

1. International Efforts to Codify Protest Rights.

Internationally, protest rights have been codified in a number of treaties and are considered some of the more fundamental human rights. The 1948 Universal Declaration of Human Rights (“UDHR”) explicitly codified methods of expression which are directly correlated to the right to protest: “Everyone has the right to freedom of thought,”³⁷ “the right to freedom of opinion and expression . . . without interference,”³⁸ “the right to freedom of peaceful assembly and association,”³⁹ the right to equal work without discrimination,⁴⁰ and “the right to form and to join unions for the protection of [their] interest.”⁴¹ Most importantly, the UDHR ends by prohibiting any state from acting in a way “aimed at the destruction of *any* of [these] rights and freedoms.”⁴²

While the UDHR is not a treaty, and therefore does not directly create legal obligations for countries,⁴³ it still had profound influence on international law, giving rise to additional agreements that are legally binding on countries that ratify them. The 1966 International Covenant on Civil and Political Rights (“ICCPR”) is one such example.⁴⁴ The ICCPR commits its 173 party nations⁴⁵ to respect various individual rights, and it notably includes an explicit statement that “[t]he right of peaceful assembly *shall* be recognized.”⁴⁶ The treaty further enumerates the various rights associated with protesting, including “the right to freedom of thought,”⁴⁷ “to hold opinions without interference,”⁴⁸ to peacefully assemble,⁴⁹ and the “freedom of association.”⁵⁰ These rights are to be upheld “without any

³⁷ *Id.* at art. XVIII.

³⁸ *Id.* at art. XIX.

³⁹ *Id.* at art. XX.

⁴⁰ *Id.* at art. XXIII.

⁴¹ *Id.*

⁴² *Id.* at art. XXX (emphasis added).

⁴³ *Declaration on Human Rights Defenders*, U.N. OFF. OF THE HIGH COMM’R HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (last visited Mar. 19, 2024).

⁴⁴ ICCPR, *supra* note 13.

⁴⁵ *View the Ratification Status by Country or by Treaty, Ratification Status of CCPR – International Covenant on Civil and Political Rights*, U.N. OFF. OF THE HIGH COMM’R HUM. RTS., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx [<https://perma.cc/55S3-42NC>] (last visited Mar. 19, 2024).

⁴⁶ ICCPR, *supra* note 13, at art. XXI (emphasis added).

⁴⁷ *Id.* at art. XVIII.

⁴⁸ *Id.* at art. XIX.

⁴⁹ *Id.* at art. XXI.

⁵⁰ *Id.* at art. XXII.

discrimination,”⁵¹ and with “[n]o restrictions . . . placed on [their] exercise.”⁵²

While the plain meaning of both the Universal Declaration of Human Rights and the ICCPR classifies protest rights as human rights, the U.N.’s Human Rights Committee (“UNHRC”) has nevertheless interpreted international law to avoid any ambiguity in its stance. In its General Comment No. 37, the UNHRC provided a comprehensive overview on the importance of the right to peacefully assemble:

Domestic law *must* recognize the right of peaceful assembly, clearly set out the duties and responsibilities of all public officials involved, be aligned with the relevant international standards[,] and be publicly accessible. States *must* ensure public awareness about the law and relevant regulations, including any procedures to be followed by those wishing to exercise the right, who the responsible authorities are, the rules applicable to those officials, and the remedies available for alleged violations of those rights.⁵³

In other words, the UNHRC holds protest rights as human rights and reiterates each country’s obligation to codify, promote, and protect these rights. To ensure that obligation is met, the U.N.’s Office of the High Commission on Human Rights monitors compliance, working to prevent and address violations, ensure accountability, and act as a deterrent to potential violations.⁵⁴

Other more regional, but still cross-border, bodies have also clearly enumerated the right to protest, affirming that the right must be codified, promoted, and protected. The European Convention on Human Rights (“ECHR”) is one such example of a cross-border, regional effort. Notably, this effort upholds protest rights: “Everyone has the right to freedom of thought,”⁵⁵ “freedom to hold opinions,”⁵⁶ “freedom of peaceful assembly and association,”⁵⁷ “secured without discrimination,”⁵⁸ and requires that “[n]o restrictions shall be placed on the exercise of these rights.”⁵⁹

⁵¹ *Id.* at art. XXIV.

⁵² *Id.* at arts. XXI–XXII.

⁵³ Human Rights Committee, Gen. Comment No. 37, ¶ 28, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020) (emphasis added).

⁵⁴ *Human Rights*, UNITED NATIONS, <https://www.un.org/en/global-issues/human-rights> [https://perma.cc/S2PP-ESMH] (last visited Mar. 29, 2024).

⁵⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, art. IX, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221.

⁵⁶ *Id.* at art. X.

⁵⁷ *Id.* at art. XI.

⁵⁸ *Id.* at art. XIV.

⁵⁹ *Id.* at art. XI.

Accordingly, individual states have generally followed these international mandates, to clearly codify the right to protest.⁶⁰ While so-called Western countries—such as the United States,⁶¹ the United Kingdom,⁶² and France⁶³—have codified these rights, there is also an overwhelming, international consensus for the codification of these rights. Indeed, these rights can be found in many countries throughout the world, including Afghanistan,⁶⁴ Cambodia,⁶⁵ Ethiopia,⁶⁶ Haiti,⁶⁷ Lebanon,⁶⁸ South Africa,⁶⁹ and Russia.⁷⁰ As a specific example, Title II of the Moroccan Constitution guarantees a number of protest rights, including “freedoms of thought,” “opinion,” “expression,” “reunion,” of “assembly,” and “peaceful demonstration,” without discrimination.⁷¹

⁶⁰ See, e.g., QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980]. For an English translation, see *Iran (Islamic Republic of) 1979 (rev. 1989)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Iran_1989 [https://perma.cc/XGP3-X2YE] (last visited Apr. 8, 2024).

⁶¹ U.S. CONST. amend. I.

⁶² See *UK Protest Rights*, NAT'L LEGAL SERV., <https://nationallegalservice.co.uk/uk-protest-rights/> [https://perma.cc/ZA37-K5MU] (last visited Mar. 29, 2024).

⁶³ *President Macron: Allow People to Protest Peacefully*, AMNESTY INT'L, <https://www.amnesty.org/en/petition/france-right-to-protest-freedom-of-expression/> [https://perma.cc/4Q2B-R2VB] (last visited Mar. 29, 2024) (“In 2017, President Macron committed to protect the right to peaceful assembly.”).

⁶⁴ ASSASI QANUN [CONSTITUTION] 2004, art. XXXVI (Afg.). For an English translation, see *Constitution of Afghanistan*, UN REFUGEE AGENCY, <https://www.refworld.org/legal/legislation/natlegbod/2004/en/35107> [https://perma.cc/KK25-QF43] (last visited Apr. 4, 2024) (“The people of Afghanistan shall have the right to gather and hold unarmed demonstration, in accordance with the law, for attaining legitimate and peaceful purposes.”).

⁶⁵ CONST. OF THE KINGDOM OF CAMBODIA, arts. XXXVII, XLI. For an English translation, see *The Constitution of the Kingdom of Cambodia*, UN HUM. RTS., OFF. OF THE HIGH COMM'R, https://cambodia.ohchr.org/sites/default/files/Constitution_ENG.pdf [https://perma.cc/9YJ5-E8GF] (last visited Apr. 4, 2024) (allowing the right to non-violent demonstration “in the framework of a law,” and noting that “Khmer citizens shall have freedom of . . . assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.”).

⁶⁶ CONST. OF ETH. art. XXX (“Everyone has the right to assemble and to demonstrate together with other peaceably and unarmed, and to petition.”).

⁶⁷ CONST. OF HAITI art. XXXI (“Freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purposes is guaranteed.”).

⁶⁸ LEB. CONST. art. XIII. For an English translation, see *Lebanon 1926 (rev. 2004)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Lebanon_2004 [https://perma.cc/KAA8-7NRL] (last visited Apr. 4, 2024) (“Freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association, are all guaranteed within the scope of the law.”).

⁶⁹ CONST. OF S. AFR. ch. 2 § 17 (“Everyone has the right to assemble with other people, hold a demonstration, picket or present petitions.”).

⁷⁰ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [CONSTITUTION] art. 31 (Russ.). For an English translation, see *Russian Federation 1993 (rev. 2014)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Russia_2014 [https://perma.cc/Q7L8-7G4T] (last visited Apr. 4, 2024) (“Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, mass meetings and demonstrations, marches and pickets.”).

⁷¹ LA CONSTITUTION art. XXV (Morocco). For an English translation, see *Morocco 2011*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Morocco_2011 [https://perma.cc/Z3C7-U4P5] (last visited Apr. 4, 2024).

2. Non-Governmental Efforts to Enact Protest Rights.

What's more, similar protections for protest rights are also found in the policies of nongovernmental institutions.⁷² While they do not have the legal force that governments enjoy, internal policies demonstrate additional support for the right to protest. Interestingly, these policies often don't refer to a protest as a "protest." Rather, they coin phrases such as "dissenting opinion," "diversity of thought," or it will refer to the assembly itself by a different word, such as a "strike," to describe what is practically a protest.⁷³

While the particulars can vary, the substance of these policies are largely consistent. Most recognize that "freedom of expression and free intellectual inquiry and debate are vital to [their] mission[s] and must be protected, even when the views expressed are unpopular or controversial."⁷⁴ These policies are often lumped into commitments to diversity and the like to preserve robust discussion while maintaining respect of everyone in the community.⁷⁵ Some organizations, such as law firms, will take this one step forward by publicly advertising that they "participate in protest protection work."⁷⁶

Academic institutions are a prime example of a category of non-governmental organizations which decidedly protect protest rights. Take for example the University of Louisville.⁷⁷ Throughout its policies, the school states that it "supports and is committed to open, free and robust discussion, debate[,] and exchange of ideas," viewing these principles "as an indispensable part of its educational mission, especially when the ideas

⁷² Ben Fletcher, et al., *Into All Problem-Solving, A Little Dissent Must Fall*, MCKINSEY & CO. (Feb. 15, 2023), <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/into-all-problem-solving-a-little-dissent-must-fall/#> [<https://perma.cc/H2PN-AL7S>] ("In today's interconnected business environment, companies won't be able to solve problems effectively without encouraging 'contributory dissent'—a healthy approach to gathering diverse perspectives that should be taught to team members, modeled by leaders, and supported by culture."); *The Right to Strike*, NLRB, <https://www.nlr.gov/strikes> [<https://perma.cc/GSM7-XPQX>] (last visited Apr. 4, 2024) ("Employees shall have the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Strikes are included.").

⁷³ Fletcher, et al., *supra* note 72; NLRB, *supra* note 72.

⁷⁴ See, e.g., *Wellesley College Policy on Demonstrations and Free Expression*, WELLESLEY COLL., <https://www.wellesley.edu/administration/policies/demonstrationsandfreexpression/> [<https://perma.cc/7YDR-L48B>] (last visited Apr. 4, 2024).

⁷⁵ See *Why You Need Diversity of Thought on Your Team*, CAPITAL ONE, <https://www.capitalonecareers.com/why-you-need-diversity-of-thought-on-your-team/> [<https://perma.cc/D4SN-NQUX>] (last visited Apr. 4, 2024); Ella F. Washington, *How Diversity of Thought can Fit into your DEI Strategy*, HARV. BUS. REV. (Sept. 26, 2022), <https://hbr.org/2022/09/how-diversity-of-thought-can-fit-into-your-dei-strategy> [<https://perma.cc/5A9H-ZWG5>].

⁷⁶ See, e.g., *Protest Protection*, FOLEY & LARDNER LLP, <https://www.foley.com/sectors/racial-justice-equity/protest-protection/> ("Foley attorneys participate in protest protection.") [<https://perma.cc/YY7K-URMS>] (last visited Mar. 30, 2024).

⁷⁷ *Free Speech FAQs*, UNIV. OF LOUISVILLE, <https://louisville.edu/freespeech/faq> [<https://perma.cc/3R2N-QLPZ>] (last visited Mar. 30, 2024) [hereinafter UofL Free Speech].

expressed are controversial and unpopular.”⁷⁸ In other words, the University of Louisville’s policies clearly indicate that people have a right to, and are encouraged to, publicly express dissent.⁷⁹ Other academic institutions have similar policies⁸⁰ and provide various public forums to provide avenues to express, such as designated school installations⁸¹ and committees.⁸²

In short, even absent legal force, these policies still create an environment where a person cannot, or at least should not, be punished for having particular views, for expressing a dissenting opinion, or for sharing grievances.

B. Efforts to Protect Protest Rights

Given their importance to societies across the globe, oversight bodies have generally protected and fortified the right to protest.⁸³ Governments are strictly prohibited from using certain actions to dispel protesters.⁸⁴ For example, there is an explicit prohibition on the jailing, firing at, or killing dissenters for exercising their right to protest. Indeed, this general prohibition on excessive force means any forceful measure may only be used as an absolute last resort.⁸⁵ Moreover, jailing, firing at, and killing dissenters

⁷⁸ *Id.* (“The time, place, and manner of persons exercising their rights of free expression, speech, assembly, and religious worship are subject to campus regulation.”).

⁷⁹ *Freedom of Expression*, UNIV. OF LOUISVILLE, <https://louisville.edu/freespeech/expression> [<https://perma.cc/535P-63H8>] (last visited Mar. 30, 2024) (“UofL is dedicated to affording all members of the UofL community the protections for free speech, expression, [and] assembly.”); UofL Free Speech, *supra* note 77 (“UofL encourages active listening, dissent, and is committed to cultivating an educational environment to allow for the ‘processes of learning’ as a condition for fulfilling the [Supreme] Court’s directions concerning the ‘more speech’ solution.”).

⁸⁰ These are across private and public universities alike. *See generally Policy on Protests and Demonstrations*, KENYON COLL. (SEPT. 23, 2019), <https://www.kenyon.edu/offices-and-services/office-of-human-resources/policies-handbooks/staff-handbook-2/other-policies/policy-on-protests-and-demonstrations/> [<https://perma.cc/G7ZR-6U6E>]; *Civil Protest*, UNIV. OF IOWA, <https://critical-incident-plan.sites.uiowa.edu/civil-protest> [<https://perma.cc/PJ77-JKGY>] (last visited Mar. 30, 2024).

⁸¹ For instance, UT-Dallas’s, now removed, Spirit Rocks. *Spirit Rocks*, UNIV. OF TEX. AT DALL., <https://sg.utdallas.edu/spiritrock/> [<https://perma.cc/CM59-8QH8>] (last visited Mar. 30, 2024).

⁸² Such as University of Chicago’s 2014 Ad Hoc Committee on Protest and Dissent. *See Report of the Ad Hoc Committee on Protest and Dissent*, UNIV. CHI. (Jan. 13, 2014), <https://provost.uchicago.edu/sites/default/files/documents/reports/Report%20Protest%20and%20Dissent.pdf> [<https://perma.cc/Q2GZ-KG6A>].

⁸³ *See* G.A. Res. 34/169 Code of Conduct for Law Enforcement Officials (Dec. 17, 1979) [hereinafter Law Enforcement Code of Conduct]; U.N. Human Rights Office of the High Commissioner, *Guidance on Less-Lethal Weapons in Law Enforcement*, U.N. Doc. HR/PUB/20/1 (2020), https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf [<https://perma.cc/9PHK-W9WQ>] [hereinafter OHCHR Guidance on Less-Lethal Weapons].

⁸⁴ *See* Law Enforcement Code of Conduct, *supra* note 83; OHCHR Guidance on Less-Lethal Weapons, *supra* note 83 at ¶ 6.3.4 (“The use of firearms to disperse an assembly is always unlawful.”); Human Rights Comm’n, Gen. Comment No. 37, art. IV, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020) (“Practices of indiscriminate mass arrest prior to, during or following an assembly are arbitrary and thus unlawful.”).

⁸⁵ *See* Law Enforcement Code of Conduct, *supra* note 83; U.N. Congress on the Prevention of Crime and the

simply because they expressed their right is strictly prohibited.⁸⁶

However, because protest rights intersect with speech, they are not absolute. To be sure, these rights can be limited by governments to the extent that a restriction provides for the protection of the rights of others.⁸⁷ Moreover, any restriction must be reasonable, necessary, and proportionate to reach a legitimate objective.⁸⁸ For instance, international law permits governments to disrupt a protest and take action, such as make arrests, if the protest becomes dangerous and violent.⁸⁹

Yet, limiting protests must strike a balance. Because governments must presume peace⁹⁰—and the overwhelming majority of protests are in fact peaceful⁹¹—restricting protests should be a rarity. “[T]he onus is on the authorities to justify any restrictions” so as not to “chill” protest rights.⁹² Notably, any restriction must be shown to be both necessary *and* proportionate.⁹³ While the interests “of national security or public safety” may justify government restriction, that does not mean states can unequivocally act.⁹⁴ Thus, even in the event of a violent protest, states cannot resort to act by any means necessary under the guise of public safety. Such restrictions must be “the least intrusive among the measures that might serve the relevant protective function.”⁹⁵ This ultimately “requires a [state to conduct a] value assessment”; if “the detriment outweighs the benefit, [then] the restriction is disproportionate and thus not permissible.”⁹⁶

Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, U.N. Doc. A/CONF. 144/28 /Rev.1 (Sept. 7, 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement> [hereinafter *Basic Principles on Force and Firearms*]; Marta Achler & Martin Scheinin, *International Standards Regarding the Handling of Demonstrations*, JUST SEC. (June 10, 2020), <https://www.justsecurity.org/70683/international-standards-regarding-the-handling-of-demonstrations/> [<https://perma.cc/5B4L-ZEUZ>].

⁸⁶ Law Enforcement Code of Conduct, *supra* note 83; OHCHR Guidance on Less-Lethal Weapons, *supra* note 83; *Basic Principles on Force and Firearms*, *supra* note 85.

⁸⁷ See, e.g., *Press-Enterprise Co. v. Superior Court of California for Riverside County*, 478 U.S. 1, 9 (1986) (discussing the principle that “the rights of the accused” or others may override the First Amendment rights of the press to access and report on certain trial-related information).

⁸⁸ Gen. Comment No. 37, *supra* note 84.

⁸⁹ *Id.*

⁹⁰ *Id.* at ¶ 17 (“There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful.”).

⁹¹ Roudabeh Kishi & Sam Jones, *Demonstrations and Political Violence in America: New Data for Summer 2020*, ARMED CONFLICT LOCATION & EVENT DATA PROJECT (Sept. 3, 2020), <https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/> [<https://perma.cc/4JSA-KU42>] (“The vast majority of demonstration events associated with the BLM movement are non-violent.”).

⁹² Gen. Comment No. 37, *supra* note 84 at ¶ 36 (“Where this onus is not met, article 21 is violated.”).

⁹³ *Id.*

⁹⁴ ICCPR, *supra* note 13, at art. XXII; Gen. Comment No. 37, *supra* note 84.

⁹⁵ Gen. Comment No. 37, *supra* note 84, at ¶ 37 (“Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures.”).

⁹⁶ *Id.* at ¶ 40 (“They must also be the least intrusive among the measures that might serve the relevant protective function. Moreover, they must be proportionate, which requires a value assessment, weighing the nature and

Naturally, this also means that restrictions cannot be enacted or enforced in a discriminatory manner. Biased intervention, as it relates to protesting, would mean that these rights are only available to particular demographics, thus conflicting with protesting being a “human” right. Accordingly, “[t]his requires states to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants.”⁹⁷ Necessarily, this means states must put in “legal and institutional framework[s] within which the[se] right[s] can be exercised effectively.”⁹⁸ “States *must* ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the[se] right[s] . . . [regardless] of race, colour, ethnicity, age, sex, language . . . [or] political [opinion].”⁹⁹

These same principles also apply to protest rights as recognized within nongovernment institutions. To continue a previous example,¹⁰⁰ while the University of Louisville can restrict speech in limited circumstances, “[t]he university cannot prohibit speakers from speaking just because individuals from the campus or surrounding community disagree with the content of the speaker’s presentation or with [their] opinion.”¹⁰¹ In addition to legal boundaries, institutional policies generally protect dissenting opinions as long as it does not “substantially disrupt” operations.¹⁰² Importantly, this does not mean institutions can restrict speech when they don’t agree with the message.¹⁰³ In practice, this means that even in an instance of a strike or a movement to unionize—activities which are often unwelcome and can be upsetting to nongovernmental organizations—employers generally cannot terminate, or otherwise take negative action against, an employee who seeks to exercise their fundamental right to

detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.”); *see also* Damien Gayle, *Just Stop Oil Protesters’ Jail Terms Potentially Breach International Law*, *UN Expert Says*, *GUARDIAN* (Nov. 20, 2023), <https://www.theguardian.com/environment/2023/nov/20/just-stop-oil-protesters-jail-terms-potentially-breach-international-law-un-expert-says> [<https://perma.cc/QA49-97WY>].

⁹⁷ Gen. Comment No. 37, *supra* note 84, at ¶ 8.

⁹⁸ *Id.* at ¶ 24.

⁹⁹ *Id.* at ¶ 25.

¹⁰⁰ *See supra* Part I.A.1.

¹⁰¹ UofL Free Speech, *supra* note 77.

¹⁰² *Id.* (“UofL may reasonably regulate the time, place, and manner of expression on University property and over its communication systems to ensure the expression does not disrupt ordinary University functions and activities.”); *see also* *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

¹⁰³ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Boos v. Barry*, 485 U.S. 312, 322 (1988)) (“Such a risk is unacceptable; ‘in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.”); *see also* UofL Free Speech, *supra* note 77 (“It is not the proper role of the University to attempt to shield persons from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. . . . [C]oncerns about civility and mutual respect are not a justification for closing discussions of ideas, however offensive or disagreeable those ideas may be.”).

protest.¹⁰⁴

Although substantial protections for the right to protest are in place, states and nongovernmental institutions often fail to live up to the lofty ideals which they purport to protect within their respective laws and policies.

II. HOW WE ACTUALLY TREAT MOST PROTESTS

Although Toomaj enjoys a human right to protest, the Iranian government has nonetheless infringed on those rights and punished him, along with many others in the country, for engaging in protected activity.¹⁰⁵ Unfortunately, the international community holistically fails to live up to its promise to protect protest rights.¹⁰⁶ As this section illustrates, violent as well as nonviolent action against protesters aims to dissuade people from expressing these rights. Even more, these actions appear to be concentrated toward certain kinds of protesters, implying there is more concern on the protester's speech and who the protester is, rather than the manner the protest is conducted.¹⁰⁷

A. Violent Governmental Action to Dissuade Protesters

While protest rights have been codified,¹⁰⁸ precedent to protect established, and importance readily recognized, governments still regularly infringe on these rights. Regrettably, this includes violent action.¹⁰⁹

State-sanctioned violence against protesters has a long history and is regularly discussed in academia.¹¹⁰ Historical examples are found all over the world:

- Kent State Shootings in the United States (1970) – Ohio National Guard tear-gassed and indiscriminately shot at unarmed college students who were protesting the

¹⁰⁴ See National Labor Relations Act, 29 U.S.C. §§ 151–69 (2024); see also *Interfering with Employee Rights (Section 7 & 8(a)(1))*, NLRB, <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1> [<https://perma.cc/3AT5-FBAF>] (last visited Mar. 30, 2024).

¹⁰⁵ Moshtaghian, *supra* note 3.

¹⁰⁶ See discussion *infra* Part II.

¹⁰⁷ See *Imprisoned Dissident Rapper*, *supra* note 14.

¹⁰⁸ See discussion *supra* Part I.A.

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., Christian Davenport et al., *Protesting While Black? The Differential Policing of American Activists, 1960 to 1990*, 76 AM. SOCIO. REV. 152 (2011); Aglae Eufrazio, *A Human Rights Crisis Under our Roof*, 23 SCHOLAR: ST. MARY'S L. REV. & SOC. JUST. 201 (2021); Eleni Polymenopoulou, *Expressing Dissent: Gag Laws, Human Rights Activism and the Right to Protest*, 32 FLA. J. INT'L L. 337 (2021).

Vietnam War for failing to disperse.¹¹¹ Four people were killed and several others were wounded.¹¹²

- Soweto Uprising in South Africa (1976) – South African police set trained dogs on and shot at Black children protesting apartheid language policies in schools, killing hundreds and wounding thousands.¹¹³
- Tiananmen Square Protests in China (1989) – Chinese military used batons on and shot at students airing grievances on the economy and political participation.¹¹⁴ By some accounts, as many as 10,000 people were subsequently killed.¹¹⁵
- Green Revolution in Iran (2009–2010) – Iranian police and military arrested, beat, and shot at protesters demonstrating against political corruption, killing dozens and wounding several more.¹¹⁶

Unfortunately, these are just a few examples of the numerous instances throughout history where states have used violent action against protesters. However, this is not just a historical occurrence. Indeed, violent government action that kills and injures protesters continue to this day, and a violent state response now appears to be an understood risk.¹¹⁷

Violent action is often rationalized as an appropriate response to maintain law and order,¹¹⁸ but it has been overused in order to quell protests.

¹¹¹ Scholars have noted that the National Guard had no legal authority to declare the protest illegal and order a dispersal. *See, e.g.*, Gregory P. Magarian, *Kent State and the Failure of First Amendment Law*, 65 WASH. U. J. L. & POL'Y 41, 48 (2021).

¹¹² *Id.*

¹¹³ *The June 16 Soweto Youth Uprising*, *supra* note 31; Amy McKenna, *The 40th Anniversary of the Soweto Uprising*, BRITANNICA, <https://www.britannica.com/story/the-soweto-uprising> [<https://perma.cc/UW22-MHEF>] (last visited Apr. 5, 2024).

¹¹⁴ *How Many Really Died? Tiananmen Square Fatalities*, TIME (June 4, 1990), <https://content.time.com/time/subscriber/article/0,33009,970278,00.html> [<https://perma.cc/7J4F-MMRF>].

¹¹⁵ There is no official death toll, so estimates vary from several hundred to several thousand. *Id.*; *Tiananmen Square Protest Death Toll 'Was 10,000'*, BBC (Dec. 23, 2017), <https://www.bbc.com/news/world-asia-china-42465516> [<https://perma.cc/V2HS-KJPX>].

¹¹⁶ Abbas Milani, *The Green Movement*, IRAN PRIMER (Oct. 6, 2010), <https://iranprimer.usip.org/resource/green-movement> [<https://perma.cc/WG53-BN4T>]; Victor H. Sundquist, *Iranian Democratization Part I: A Historical Case Study of the Iranian Green Movement*, 6 J. OF STRATEGIC SEC. 18 (2013).

¹¹⁷ *See, e.g.*, USA: *The World is Watching*, AMNESTY INT'L (2020), <https://www.amnesty.org/en/documents/amr51/2807/2020/en/> [<https://perma.cc/VM3Q-JR7Z>]; Roudabeh Kishi et al., *A Year of Racial Justice Protests: Key Trends in Demonstrations Supporting the BLM Movement*, ARMED CONFLICT LOCATION & EVENT DATA PROJECT (May 2021), https://acleddata.com/acleddatanew/wp-content/uploads/2021/05/ACLEDD_Report_A-Year-of-Racial-Justice-Protests_May2021.pdf [<https://perma.cc/UB8N-UJXK>].

¹¹⁸ *See, e.g.*, Cmty. Oriented Policing Servs. & Nat'l Policing Inst., *21st Century Protest Response: Promoting*

Data for protest movements has indicated that governments often, and unnecessarily, take a “heavy-handed approach” in responding to protests.¹¹⁹ “In demonstrations where authorities [were] present, they use force more often than not.”¹²⁰ What’s more concerning, reports also indicate that the response is not necessarily in response to protester violence.¹²¹ Rather, executive officials were called “weak” unless they “dominate[d]” and “cut through [the protesters] like butter.”¹²² While state action could be used in responding to a non-peaceful protest, reports indicate that police still use a clearly disproportionate use of force.¹²³ Finally, even when governments are explicitly told to avoid using violence to quell protests, police continue to utilize those methods without consequence.¹²⁴

In some instances, governments have also inflicted violence on journalists.¹²⁵ At times, governments have even gone so far as to kill the family members of journalists.¹²⁶ For example, the OHCHR reported that both journalists *and* their family members have been killed while they were covering “the horrors that civilians in Gaza are enduring.”¹²⁷ While “[i]nternational humanitarian law requires that the parties to an armed conflict take all necessary measures to minimize the impact of military operations on civilians, which includes journalists and media workers,” journalists have widely reported claims of threatening phone calls from Israeli security personnel.¹²⁸ Following many of these threats, “Gaza has seemingly become the deadliest place for journalists—and their families—in the world.”¹²⁹

To be clear, violent action does not have to result in deaths. Excessive force, as well as wrongful and unlawful arrests, are also considered violent state action and are rampant.¹³⁰ While there is clear guidance for using “[o]nly the minimum force necessary,”¹³¹ police continue to

Democracy and Advancing Community and Officer Safety, U.S. DEP’T OF JUST. (2022), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p459-pub.pdf> [https://perma.cc/ZZE7-5BNC].

¹¹⁹ Kishi et al., *supra* note 117.

¹²⁰ Kishi & Jones, *supra* note 91.

¹²¹ *Id.*

¹²² Kishi et al., *supra* note 117.

¹²³ *Id.*

¹²⁴ See, e.g., Joint Temporary Stipulated Order, *Akron Bail Fund v. City of Akron*, (N.D. Ohio April 21, 2023) (No. 5:23-cv-837).

¹²⁵ See Press Release, Office of the High Comm’r Human Rights, Killings of Journalists and their Family Members in Gaza – U.N. OHCHR Press Release, (Dec. 14, 2023), <https://www.un.org/unispal/document/killings-of-journalists-and-their-family-members-in-gaza-dec14-2023/> [https://perma.cc/2WB6-6A2M].

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Kishi et al., *supra* note 117.

¹³¹ Gen. Comment No. 37, *supra* note 84.

disproportionately injure protests by using weapons such as tear gas, rubber bullets, and pepper spray on otherwise lawful protesters.¹³² Additionally, governments have increasingly criminalized and over-policed protected conduct,¹³³ leading to mass arrests, many of whom will never be convicted.¹³⁴ The over criminalization is also not limited to the physical act of protesting. Music—like Toomaj’s—can get you arrested,¹³⁵ and people have even been indicted for showing particular support on social media, even passive use.¹³⁶ At best, arrests are made based on vague national security charges.¹³⁷ At times, protesters will be arrested and detained without being charged with a crime.¹³⁸

B. Nonviolent Action to Dissuade Protesters

Though the use of violent action against protesters may dominate headlines, nonviolent action is, at least, just as common. Harassment, smear campaigns, removing public fora, and even the use of cash bail have a similar effect of curtailing protest rights.¹³⁹

While international law requires states to guarantee the right to peaceful protest, states throughout the world repeatedly harass dissenters. Pakistani authorities, for example, repeatedly harassed peaceful protesters during a month-long sit-in for justice for the killing of young Baloch men.¹⁴⁰ During the sit-in, protesters were “surrounded on all sides by police” and endured repeated threats on a daily basis.¹⁴¹ Moreover, Pakistani police placed barbed wire around the sit-in area to block the ability for “food, tents[,]

¹³² *Police Abuse with Less Lethal Weapons in Protests: Our Complaint before the Inter-American Commission on Human Rights*, DEJUSTICIA (Nov. 9, 2023), <https://www.dejusticia.org/en/police-abuse-with-less-lethal-weapons-in-protests> [https://perma.cc/E37B-CSRE].

¹³³ See, e.g., *U.S. Protest Law Tracker*, INT’L CTR. FOR NOT-FOR-PROFIT L., <https://www.icnl.org/usprotestlawtracker/> [https://perma.cc/7CLV-EK74] (last visited Mar. 30, 2024).

¹³⁴ See *infra* Part II for a discussion on nonviolent action against protesters. To be clear, arrests fall under what I would consider “violent” action, but since they can technically occur without bodily harm, they are also included in the discussion of nonviolent action. See also Karen J. Pita Loo, “Hey, Hey! Ho, Ho! These Mass Arrests Have Got to Go!”: *The Expressive Fourth Amendment Argument*, 28 WM. & MARY J. WOMEN & L. 5, 7–13 (2021).

¹³⁵ In Toomaj’s case, also severely tortured. See Salehi, *First Time Toomaj Speaks After Release*, *supra* note 2.

¹³⁶ Sara Monetta, *Israeli Arabs Arrested over Gaza Social Media Posts*, BBC (Oct. 21, 2023), <https://www.bbc.com/news/world-middle-east-67181582> [https://perma.cc/J3MZ-K9JJ].

¹³⁷ *Hong Kong Places Arrest Bounties on Activists Abroad for Breaching National Security Law*, U.S. NEWS & WORLD REP. (Dec. 13, 2023), <https://www.usnews.com/news/world/articles/2023-12-14/hong-kong-places-arrest-bounties-on-activists-abroad-for-breaching-national-security-law> [https://perma.cc/6R4D-WSES].

¹³⁸ See *Russia: Peaceful Protesters Detained, Abused*, HUMAN RIGHTS WATCH (July 7, 2017), <https://www.hrw.org/news/2017/07/07/russia-peaceful-protesters-detained-abused> [https://perma.cc/5DBU-Q8GK].

¹³⁹ *Id.*; see also *Pakistan: Amnesty International Condemns Harassment Faced by Baloch Protestors in Islamabad*, AMNESTY INT’L (Jan 24, 2024), <https://www.amnesty.org/en/latest/news/2024/01/pakistan-amnesty-international-condemns-harassment-faced-by-baloch-protestors-in-islamabad/> [https://perma.cc/N8EB-Q3Q7].

¹⁴⁰ See AMNESTY INT’L, *supra* note 139.

¹⁴¹ *Id.*

and blankets from reaching the sit-in protesters.”¹⁴² Regrettably, Pakistan’s actions are not unique, other countries also regularly harass human rights advocates for criticizing their respective governments.¹⁴³

Governments often demonize and misrepresent peaceful protesters so as to make them appear as representatives of a violent and immoral movement. For example, while calls for boycotts and sanctions have generally been held to be valid forms of protest,¹⁴⁴ there are numerous examples of governments electing to demonize and criminalize that conduct. For instance, the United States government viewed boycotts and sanctions as a valid form of dissent in response to Russia’s invasion of Ukraine,¹⁴⁵ yet called a similar call for boycott and sanction in response to Israel’s occupation of Palestine antisemitic.¹⁴⁶ Moreover, some members of Congress are attempting to pass measures to explicitly make boycotts and sanctions for that specific movement unlawful.¹⁴⁷ These measures, particularly one that would have the practical effect of equating someone who voices a dissenting viewpoint to being bigoted,¹⁴⁸ aim to dissuade any future protests and dissenters by threatening damage to one’s reputation. In the case of the United States, although participants were engaged in otherwise protected activity—activity that does not automatically make one antisemitic—the United States government’s measures would automatically designate them as antisemitic.¹⁴⁹ Unfortunately, this tactic is nothing new.¹⁵⁰

Governments have also gone so far as to explicitly censor expression

¹⁴² *Id.*

¹⁴³ See, e.g., Press Release, Office of the High Comm’r Human Rights, Israel: Criminalisation and Harassment of Human Rights Defenders in Masafer Yatta Must End, Say UN Experts, U.N. OHCHR Press Release (Aug. 2, 2022), <https://www.ohchr.org/en/press-releases/2022/08/israel-criminalisation-and-harassment-human-rights-defenders-masafer-yatta>.

¹⁴⁴ See, e.g., *Boycott*, BRITANNICA, <https://www.britannica.com/money/boycott> [<https://perma.cc/EQF8-TZH2>] (last updated Feb. 7, 2024) (noting that boycotts were used during the American Civil Rights Movement to influence a company to change its policies that discriminated against Black people).

¹⁴⁵ See *Fact Sheet: United States Bans Imports of Russian Oil, Liquefied Natural Gas, and Coal*, WHITE HOUSE (March 8, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/08/fact-sheet-united-states-bans-imports-of-russian-oil-liquefied-natural-gas-and-coal/> [<https://perma.cc/EQF8-TZH2>].

¹⁴⁶ Sanya Mansoor, *The Trump Administration is Cracking Down Against a Global Movement to Boycott Israel. Here’s What You Need to Know About BDS*, TIME (Dec. 7, 2020), <https://time.com/5914975/what-to-know-about-bds/> [<https://perma.cc/K3SB-XEP5>]; *Biden Draws Ire of Palestinian Activists for Shunning BDS Efforts*, ALJAZEERA (May 21, 2020), <https://www.aljazeera.com/news/2020/5/21/biden-draws-ire-of-palestinian-activists-for-shunning-bds-efforts> [<https://perma.cc/BG2R-6FCJ>].

¹⁴⁷ Press Release Congressman Mike Lawler Heralds Passage of IGO Anti-Boycott Act Through House Foreign Affairs Committee, Office of Congressman Mike Lawler (Dec. 13, 2023), <https://lawler.house.gov/news/documentsingle.aspx?DocumentID=1093> [<https://perma.cc/P3TF-THB3>].

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See Safia Samee Ali, *‘Not by Accident’: False ‘Thug’ Narratives have Long Been Used to Discredit Civil Rights Movements*, NBC NEWS (Sept. 27, 2020), <https://www.nbcnews.com/news/us-news/not-accident-false-thug-narratives-have-long-been-used-discredit-n1240509> [<https://perma.cc/EBW9-CYZF>] (discussing how certain government officials have referred to the overwhelmingly peaceful BLM protesters as “terrorists,” “anarchists,” and “thugs”).

of protest rights. One such example is the decision of the Spanish Prime Minister, Pedro Sánchez, to remove Ione Belarra, the Spanish Minister for Social Rights, “after she criticized the West’s ‘deafening silence’ on Israel’s war crimes in the Gaza Strip.”¹⁵¹ Another example occurred in Iran, where reports indicated that more than two dozen university instructors were dismissed, suspended, forced to retire, or did not have their contracts renewed because they were critical of Iranian government policies.¹⁵² In other instances, governments have even gone so far as to restrict press access to cover and report on these stories unless they send their material to the government to censor beforehand.¹⁵³ Governments have also found methods to indirectly censor those who seek to exercise their protest rights. These indirect methods take the form of administrative fees, curfews, content moderation, restricted internet access, and even how they impose cash bail¹⁵⁴—all of which make it harder for dissenting voices to assemble and be heard, both virtually and in the community. These methods can be incredibly complex and, while appearing neutral, have the practical effect of dissuading protesters from participation.

After arrests, governments also attempt to make it difficult for protesters to obtain adequate legal representation. In some countries, prosecutors have filed lawsuits against lawyers for offering to provide legal assistance to those involved in protest movements.¹⁵⁵ Furthermore, even when protesters are able to obtain legal assistance and prove their innocence,

¹⁵¹See *Spanish Minister Removed After Urging End to Israel’s ‘Genocide’ in Gaza*, PRESS TV (Nov. 21, 2023), <https://www.presstv.ir/Detail/2023/11/21/715014/Spanish-cabinet-minister-sacked-for-criticizing-Israel-genocide-in-Gaza> [https://perma.cc/EGF5-YG5A].

¹⁵² *Iran: Crackdown on Dissent Ahead of Protest Anniversary*, HUM. RTS. WATCH (Sept. 15, 2023), <https://www.hrw.org/news/2023/09/15/iran-crackdown-dissent-ahead-protest-anniversary> [https://perma.cc/9ENJ-SM33].

¹⁵³ See Chris McGreal, *CNN Staff Say Network’s Pro-Israel Slant Amounts to ‘Journalistic Malpractice’*, GUARDIAN (Feb. 4, 2024), <https://www.theguardian.com/media/2024/feb/04/cnn-staff-pro-israel-bias> [https://perma.cc/SRJ5-JPW2].

¹⁵⁴ See *Curfews Give Sweeping Powers to Cops, But are Often Flouted*, PBS NEWSHOUR (June 3, 2020), <https://www.pbs.org/newshour/nation/curfews-give-sweeping-powers-to-cops-but-are-often-flouted> [https://perma.cc/JL96-DWUN]; Steven Feldstein, *Government Internet Shutdowns Are Changing. How Should Citizens and Democracies Respond?*, CARNEGIE ENDOWMENT FOR INT’L PEACE (March 31, 2022), <https://carnegieendowment.org/2022/03/31/government-internet-shutdowns-are-changing-how-should-citizens-and-democracies-respond-pub-86687> [https://perma.cc/3DQH-V4RH]; John Samples, *Why the Government Should not Regulate Content Moderation of Social Media*, CATO INST. (April 9, 2019), <https://www.cato.org/policy-analysis/why-government-should-not-regulate-content-moderation-social-media> [https://perma.cc/6REY-CRV5]. See also Alireza Nourani-Dargiri, *Bailing out the Protester*, 14 COLUMBIA J. OF RACE & L. (forthcoming); see also Timothy Zick, *The Costs of Dissent: Protest and Civil Liabilities*, 89 GEO WASH. L. REV. 233, 241–42 (2021).

¹⁵⁵ Maryam Sinaiee, *Iranian Regime Punishing Lawyers for Supporting Protesters*, IRAN INT’L (May 15, 2023), <https://www.iranintl.com/en/202305150556> [https://perma.cc/3CU6-QQE9] (“Iran’s judiciary has been building cases against dozens of independent lawyers for representing dissidents and supporting the Women, Life, Freedom movement.”).

there is little consequence for the state.¹⁵⁶ This lack of accountability acts as an intimidation tactic used to dissuade anyone from speaking out because some people, quite literally, cannot afford to be arrested.¹⁵⁷ The message is thus clear: if those with dissenting views try to protest, they will be arrested and incarcerated—sometimes for an undisclosed period of time—without fear of consequences for the government if they are ever held to be wrongfully imprisoned.¹⁵⁸

While government action to dissuade protests is wrong and violates various domestic and international laws, protesters also cannot express their rights across various nongovernmental institutions in the manner that they should. Studies indicate that the majority of people are afraid to share political opinions in the workplace, “worried their political views could get them fired or harm their career trajectory.”¹⁵⁹ Moreover, some reports have illustrated that there is a similarly associated fear of social sanction for expressing “controversial” or dissenting views online.¹⁶⁰

Even when the subject of the protest does not directly involve them, the actions of private institutions have made it clear that they do not want protests.¹⁶¹ Employees are fired and applicants have job offers withdrawn for supporting a particular cause,¹⁶² even when doing so is otherwise inconsistent with an organization’s policies. For example, the law firm Foley & Lardner rescinded an associate’s job offer over comments she made regarding Palestine.¹⁶³ The firm stated that her “public statements were inconsistent

¹⁵⁶ See Ali Watkins, *They Were Arrested During the Protests. Here’s What Happened Next*, N.Y. TIMES (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/nyregion/ny-protest-arrests.html> (noting the officers were treating wrongful arrests like a “game”).

¹⁵⁷ See *id.*

¹⁵⁸ There are seemingly no immediate remedies for being wrongfully detained for protesting. See Mark Pratt, *Lawsuit Alleges Excessive Force by Police, False Arrests, During George Floyd Protest*, ASSOCIATED PRESS (June 2, 2023), <https://apnews.com/article/george-floyd-protest-worcester-police-9cc524de3573c70e338ba43942cd1f6b> [<https://perma.cc/LMP6-XJKQ>]. In some instances, however, there are some consequences for government officials, albeit they are much delayed. See, e.g., Elizabeth Nolan Brown, *NYC Agrees to Pay \$13 Million to Activists Arrested in 2020 Racial Justice Protests*, REASON (July 21, 2023), <https://reason.com/2023/07/21/nyc-agrees-to-pay-13-million-to-activists-arrested-in-2020-racial-justice-protests/> [<https://perma.cc/SEV7-6LG2>].

¹⁵⁹ Emily Ekins, *Poll: 62% of Americans Say They Have Political Views They’re Afraid to Share*, CATO SURVEY REPS. (July 22, 2020), <https://www.cato.org/survey-reports/poll-62-americans-say-they-have-political-views-theyre-afraid-share#32-worry-their-political-views-could-harm-their-employment> [<https://perma.cc/9J4Y-TT43>].

¹⁶⁰ Brian E. Weeks, Audrey Halversen & German Neubaum, *Too Scared to Share? Fear of Social Sanctions for Political Expression on Social Media*, 29 J. OF COMPUT.-MEDIATED COMM. 5–6 (2024).

¹⁶¹ See, e.g., Bristhi Basu, *‘Chilling Effect’: People Expressing Pro-Palestinian Views Censured, Suspended from Work and School*, CBC (Dec. 22, 2023), <https://www.cbc.ca/news/canada/chilling-effect-pro-palestinian-1.7064510> [<https://perma.cc/5GVZ-GUNW>].

¹⁶² See *id.* (“Restaurant staff losing their jobs for cheering on a pro-Palestinian protest. A Palestinian Canadian journalist fired for her social media posts calling for a #freepalestine. Medical residents flagged to potential hiring committees for their support of Palestinians.”).

¹⁶³ Debra Cassens Weiss, *Foley & Lardner Rescinds Associate Job Offer Over Comments Following Hamas Attack*, AM. BAR ASS’N J. (Dec. 4, 2023), <https://www.abajournal.com/news/article/foley-lardner-rescinds->

with [Foley & Lardner’s] core values,” though it did not specify as to why.¹⁶⁴ Incongruously, Foley specifically advertises its work in protest protection, designed to “enable people to express their political views without unconstitutional disruption or interference.”¹⁶⁵ Rescinding the associate’s offer, therefore, seems to directly contradict the firm’s stated values. Unfortunately, Foley is not alone, as other companies have acted similarly.¹⁶⁶

To be sure, big law firms are not alone in contradicting themselves. Employers will fire employees seeking to unionize, even though the National Labor Relations Board specifically guarantees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities” of that purpose.¹⁶⁷ Furthermore, service industries have allegedly made customers change their clothes if they believe the clothes tangentially relate to a cause they do not agree with.¹⁶⁸ Reports also demonstrate these efforts are more wide-reaching, such as social media companies systematically censoring content by making certain protest-related information harder to find depending on the stance that the post has.¹⁶⁹

Even academic institutions—that often emphasize diversity of thought and freedom of expression—increasingly seek to prevent protests. While schools have regularly held themselves out as safe spaces for informed, robust debate, reports show that many have actually made it increasingly impossible for such debate.¹⁷⁰ In fact, schools have removed traditional public venues and prevented academic scholarship from reaching publication, largely because they disliked the substance of the messages shared via these respective platforms.¹⁷¹ Moreover, schools have removed or

associate-job-offer-over-comments-following-hamas-attack [https://perma.cc/V97E-2MK5] (“In the EEOC charge, Chehade said she didn’t support the targeting of civilians by either side,” but her posts were taken by the firm as evidence that she supported violence.)

¹⁶⁴ *Id.*

¹⁶⁵ FOLEY & LARDNER LLP, *supra* note 76.

¹⁶⁶ *See, e.g.,* Basu, *supra* note 161 (noting that pro-Palestinian protesters were targeted but that same treatment was not found in cases “relating to expressions of support for Israel”).

¹⁶⁷ Annie Palmer, *Amazon Broke Federal Labor Law by Calling Staten Island Union Organizers ‘Thugs,’ Interrogating Workers*, CNBC (Dec. 1, 2023), <https://www.cnbc.com/2023/12/01/amazon-broke-federal-labor-law-by-rationally-disparaging-union-leaders.html> [https://perma.cc/FM9F-3E2T]; National Labor Relations Act, 29 U.S.C. § 157 (2024).

¹⁶⁸ Martha McHardy, *American Airlines Passenger Claims He was Forced to Hide ‘Palestine’ Sweater on Flight*, INDEP. (Dec. 3, 2023), <https://www.independent.co.uk/travel/news-and-advice/american-airlines-palestine-sweater-rashida-tlaib-b2457637.html> [https://perma.cc/2Y2N-DQY7].

¹⁶⁹ *Meta’s Broken Promises*, HUM. RTS. WATCH (Dec. 21, 2023), <https://www.hrw.org/report/2023/12/21/metabroken-promises/systemic-censorship-palestine-content-instagram-and> [https://perma.cc/5ULT-HNRK].

¹⁷⁰ *See generally* 2024 College Free Speech Rankings, FIRE (2024), https://www.thefire.org/sites/default/files/2023/09/CFSR%202024_final_updated.pdf [https://perma.cc/9QDZ-DSF4].

¹⁷¹ *See, e.g.,* André Averion et al., *Student Affairs Removes Spirit Rocks for Platforming “Extended Political*

pressured to resign professors due to their differing viewpoints.¹⁷² Schools have also removed, disciplined, and disbanded students and student organizations because of their respective stances on “controversial” issues.¹⁷³ In extreme cases, schools have even evicted students who voiced dissenting views.¹⁷⁴

There appears to be a contradiction between what governments and institutions say and how they act. On one hand, they make bold generalizations that dissent is welcome and necessary for society, yet, in the same breath, attempt to silence any kind of speech that goes against the grain.¹⁷⁵ To compound those issues further, there also appears to be a concentrated, biased action to disallow certain kinds of protests.

C. Biased Action to Dissuade Certain Protesters

Consistent throughout the many efforts to curtail protests are several common threads that indicate that we do not, in fact, protect protests evenly and will make it as hard as possible for some to express their rights. Inconsistent application of protest protections reveals implicit bias in the establishment and protection of human rights, even though international law explicitly prohibits this kind of discrimination.¹⁷⁶

For example, noted inconsistencies arise in how police respond to different kinds of protests. Specifically, studies indicate that police will respond differently, and often more violently, if a protest is perceived to be

Discourse.” MERCURY (Nov. 20, 2023), <https://utdmercury.com/student-affairs-removes-spirit-rocks-for-platforming-extended-political-discourse/> [<https://perma.cc/M2QP-2VUM>] (“Spirit Rocks have been part of campus political discourse since their inception.”); Rabea Eghbariah, *The Harvard Law Review Refused to Run this Piece About Genocide in Gaza*, NATION (Nov. 21, 2023), <https://www.thenation.com/article/archive/harvard-law-review-gaza-israel-genocide/tnamp/> [<https://perma.cc/JWQ9-9CCQ>] (beginning the piece with a discussion on how the *Harvard Law Review* decided to kill a publication).

¹⁷² Aaryan Morrison, *On White Supremacy and Zionism: A Reflection on Claudine Gay’s Tenure as President of Harvard University*, MONDOWEISS (Jan. 4, 2024), <https://mondoweiss.net/2024/01/on-white-supremacy-and-zionism-a-reflection-on-claudine-gays-tenure-as-president-of-harvard-university/> [<https://perma.cc/H68U-T4AS>].

¹⁷³ FIRE, *supra* note 170; *see also Iran: Stop Punishing Student Activists*, HUM. RTS. WATCH (Sept. 30, 2003, 8:00 PM), <https://www.hrw.org/news/2003/09/30/iran-stop-punishing-student-activists> [<https://perma.cc/9SEV-GTPY>].

¹⁷⁴ Tobi Omotoso, *1st Amendment Fiasco: Bharmal and Tettey-Tamaklo Were Protecting Students*, HARV. L. REC. (Dec. 20, 2023), <https://hlrecord.org/first-amendment-bharmal-and-tettey-tamaklo-were-safe/> [<https://perma.cc/TR2Y-FLTM>] (“Despite working to actually prevent further violence, misinformation has exposed Tettey-Tamaklo and Bharmal to extreme scrutiny, attacks on their character, and adverse effects to their professional life. The Times of Israel published a statement by 94 alumni of Harvard Law School calling for Bharmal’s expulsion. Harvard has evicted Tettey-Tamaklo from his campus housing and relieved him of his role as an undergraduate proctor for his actions. Both students, and possibly others, are also allegedly facing a pending FBI investigation for their non-violent actions.”).

¹⁷⁵ Indeed, the entire point of protests is to go against the grain and make institutions uncomfortable.

¹⁷⁶ Gen. Comment No. 37, *supra* note 84 at ¶ 25.

“left-wing.”¹⁷⁷ Mass arrests during widespread liberal protests are unfortunately incredibly common,¹⁷⁸ and, as a 2020 study found, left-wing protesters in the United States were arrested as much as ten times as often as right-wing protesters.¹⁷⁹ This means that so-called “left-wing” protesters would also face disproportionate policing in their protests and have to endure the numerous consequences that would inevitably follow their arrest, such as those involved with bail, pre-trial incarceration, conviction rates, and other post-conviction impacts.¹⁸⁰ This disparate treatment has gone on for several decades in the United States, with people of color more likely to face an overly forceful government response even when they are peacefully protesting.¹⁸¹ While it is true that, on occasion, protests can cease to be peaceful and fall outside of the bounds of what is protected by the right to protest,¹⁸² those instances are by far the exception, not the rule.¹⁸³

These arrests often reflect an effort to criminalize otherwise lawful conduct based on what the protest is about. Recent legislative efforts around the world attempt to dissuade people from protesting because it criminalizes otherwise lawful conduct.¹⁸⁴ In Tennessee, for instance, obstructing a sidewalk or street—with no mention of any exceptions—is punishable by a year in jail.¹⁸⁵ Since protests necessarily include large groups of people marching in either a street or the sidewalk, this would effectively make a traditional protest impossible, without breaking the law and risking arrest. These legislative efforts also include expanding definitions of what is considered an unlawful protest, and therefore unprotected. Particularly, some lawmakers have expanded definitions of a “riot” to include anyone who is “perceived” to “threaten” violence.¹⁸⁶ These new definitions do not require actual property damage or violence; in fact, they are drafted broadly enough to include acts that cause an “annoyance.”¹⁸⁷ Considering that the goal of a

¹⁷⁷ See generally Lesley Wood, *Policing Counter-Protest*, 14 SOCIO. COMPASS 1 (2020).

¹⁷⁸ Kishi & Jones, *supra* note 91.

¹⁷⁹ Pierre Thomas et al., *ABC News Analysis of Police Arrests Nationwide Reveals Stark Racial Disparity*, ABC NEWS (June 11, 2020, 5:04 AM), <https://abcnews.go.com/US/abc-news-analysis-police-arrests-nationwide-reveals-stark/story?id=71188546> [<https://perma.cc/34TD-S496>].

¹⁸⁰ See Melissa Chan, *These Black Lives Matter Protesters Had no Idea How One Arrest Could Alter Their Lives*, TIME (Aug. 19, 2020), <https://time.com/5880229/arrests-black-lives-matter-protests-impact/> [<https://perma.cc/HVM4-X6MV>].

¹⁸¹ See, e.g., Jennifer D. Roberts, *Pandemics and protests: America has experienced racism like this before*, BROOKINGS (June 9, 2021), <https://www.brookings.edu/articles/pandemics-and-protests-america-has-experienced-racism-like-this-before/> [<https://perma.cc/44ZW-V5V7>].

¹⁸² Kishi & Jones, *supra* note 91.

¹⁸³ *Id.*

¹⁸⁴ See *White Hat v. Landry*, No. 6:20-CV-00983, 2023 WL 3854717 (W.D. La. June 5, 2023).

¹⁸⁵ 2018 La. Acts 692.

¹⁸⁶ See, e.g., C.S./H.B. 1, 2021 Leg., Reg. Sess. (Fla. 2021); H.B. 784, 133rd Gen. Assemb., Reg. Sess. (Ohio 2020).

¹⁸⁷ Ohio H.B. 784. In some cases, this would mean displaying certain flags during a protest, which does not advocate for violence or unlawful conduct, validates government action because it is “annoying.”

protest is to disrupt everyday life,¹⁸⁸ all protests are, in a sense, annoying. Even more, because these new legislative efforts are not particularized and require subjective interpretation by police, these new laws are enforced unevenly.¹⁸⁹

A similar story is told with regard to employment. It should come as no surprise that political discrimination exists in the workplace.¹⁹⁰ Given the fact that many jurisdictions lack any sort of legal protection against discrimination based on political affiliations,¹⁹¹ employers are largely able to punish employees for their protected activity without consequence. For instance, a restaurant staff in Canada lost their jobs for cheering on a pro-Palestine protest.¹⁹² Similarly, a journalist was also fired for her social media posts, which called for a “#freepalestine.”¹⁹³ Conversely, there are no reports of any action being taken against employees expressing support for Israel.¹⁹⁴ Furthermore, while some political officials were swiftly removed for expressing a particular stance on Palestine,¹⁹⁵ other government officials who used “hate-laden, Islamophobic language” were only “disciplined” after videos of them doing so spread online.¹⁹⁶

Even if these laws applied equally,¹⁹⁷ protesting unfortunately involves literal costs; costs that many people cannot afford. Scholars note the “civil costs and liabilities that apply to individuals who organize, participate in, and support protest activities.”¹⁹⁸ These costs include the logistics of setting up a protest (i.e., permit fees), policing fees, cleanup costs, and insurance.¹⁹⁹ Thus, for even a modest protest, organizers may have to spend several thousand dollars just to exercise their right to protest.²⁰⁰ Furthermore, these costs do not contemplate the incredible costs associated with getting arrested or being fired from one’s place of employment.²⁰¹ Particularly for

¹⁸⁸ See Amber Baylor, *Unexceptional Protest*, 70 UCLA L. REV. 716, 756–57 (2023).

¹⁸⁹ *Id.* (“Behavior norms are not universal, nor is the regulation of such norms evenly applied. Instead, vague language allows for individual perception of orderly norms to be enforced.”).

¹⁹⁰ See Craig R. Senn, *Ending Political Discrimination in the Workplace*, 87 MO. L. REV. 365, 370–72 (2022).

¹⁹¹ *Id.* at 400–04.

¹⁹² Basu, *supra* note 161.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ See *Spanish Minister Removed After Urging End to Israel’s ‘Genocide’ in Gaza*, PRESS TV, *supra* note 151.

¹⁹⁶ Artemis Moshtaghian, *Former Obama Administration Official Arrested After Video shows Islamophobic Language Spewed at Food Vendor*, CNN (Nov. 23, 2023, 11:55 PM), <https://www.cnn.com/2023/11/22/us/seldowitz-ex-obama-official-islamophobic-comments/index.html> [<https://perma.cc/7ZLN-AYUH>]. The officials were arrested but pled not guilty and released without bail. *Id.*

¹⁹⁷ Studies consistently refute the equal application of laws among various differences in race, gender, and class. See Baylor, *supra* note 188, at 727–28.

¹⁹⁸ Zick, *supra* note 154, at 233.

¹⁹⁹ *Id.* at 241–42.

²⁰⁰ *Id.*

²⁰¹ See Chan, *supra* note 180.

those living paycheck-to-paycheck,²⁰² getting arrested or fired isn't just an inconvenience—it can upend lives.²⁰³ Accordingly, because protesting has become prohibitively expensive, the exercise of this human right can only be enjoyed by those who have the privilege to afford those costs. In other words, given the nature of the prohibitive fees associated with the exercise of these fundamental human rights, protesting is something only rich people—who don't technically have to work—can do.

Finally, biases also appear where the media tries to pressure protesters into not speaking at all. This includes the failure of respected publications to properly review publications that call for the holistic suppression of protests.²⁰⁴ Furthermore, this pressure also includes op-eds which urge people to not share opinions because it isn't the “best” course of action, or because it is more admirable to not share opinions.²⁰⁵ Arguably, these tactics could be another way to police disenfranchised groups on when they can and cannot speak, resulting in more censorship.²⁰⁶ If the stated ideal is to codify, promote, and protect protest rights, we seem to be missing the ball.

III. HOW WE SHOULD TREAT PROTESTS

The need to promote and protect protesting rights has become increasingly urgent and cannot be focused on only legal protections. While it is true that legal protections only attach to governmental actions,²⁰⁷ that does not mean that non-governmental institutions do not have a role to play. Protests will continue to happen, so it is in *everyone's* best interest to uphold these human rights to avoid further unrest.

Constituents take to the streets to express their grievances against their government, and the suppression of their protest rights is leading to

²⁰² According to Forbes, approximately half of the U.S. lives paycheck-to-paycheck. Becky Pokora, *Survey: How Many Americans Are Living Paycheck to Paycheck?*, FORBES (Dec. 1, 2023), <https://www.forbes.com/advisor/credit-cards/survey-living-paycheck-to-paycheck/> [<https://perma.cc/L9KS-4J62>].

²⁰³ Chan, *supra* note 180.

²⁰⁴ See Marc Tracy, et al., *New York Times Says Senator's Op-Ed Did not Meet Standards*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/business/new-york-times-op-ed-cotton.html> [<https://perma.cc/Y6ME-F8F8>] (admitting that the editing process of a piece that called to suppress protesters was “rushed”).

²⁰⁵ See, e.g., Elizabeth Spiers, *I Don't Have to Post About My Outrage. Neither Do You.*, N.Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/opinion/social-media-israel-palestine.html>.

²⁰⁶ Emma Camp, *I Came to College Eager to Debate. I Found Self-Censorship Instead*, N.Y. TIMES (March 7, 2022), <https://www.nytimes.com/2022/03/07/opinion/campus-speech-cancel-culture.html> [<https://perma.cc/6YWK-AUYB>] (discussing how, even in higher education where intellectual curiosity is purportedly valued, a student self-censored their own speech due to encouragement from others to *not* speak and the “cancelling” of other students for their speech).

²⁰⁷ See Omotoso, *supra* note 174.

more violence.²⁰⁸ Several studies have shown a troubling pattern: people peacefully protest, and the government responds disproportionately and violently. Since governments respond forcefully to a protest because it is purportedly “violent,” this violent governmental response only raises the level of overall violence.²⁰⁹ Examples of this irony can be found broadly, such as in both Guinea and the United States.²¹⁰ This response is what scholars have called “feedback loops, where protesters escalate against police, police escalate even further, and both sides become increasingly angry and afraid.”²¹¹ Quelling protests, therefore, does nothing more than to put a cap on the increasing anger—eventually, this pressure will be too much to contain.

Even more, curtailing these rights in a biased and disparate manner—thereby making it a right only for some—endangers the validity of legal structures and policies that seek to apply equally in society.²¹² The drafting and codification of these ideals into laws and policies implies a consistent, universal treatment that would bear teeth in the event of a violation,²¹³ but if these rights are not protected as they should be, these laws and policies lose their intended meaning. Accordingly, over-policing when and where people can exercise their protest rights, and only addressing protests in a biased manner, threatens the efficacy of those laws and policies.²¹⁴

Avoiding disparate treatment is also good business practice. Disparate treatment can result in lawsuits,²¹⁵ the expense of which can significantly impact a business’ financial health.²¹⁶ Additionally, being

²⁰⁸ See Aglae Eufrazio, *A Human Rights Crisis Under our Roof*, 23 SCHOLAR: ST. MARY’S L. REV. & SOC. JUST. 201, 209 (2021) (“As the government refused to investigate the deaths of protesters and justified violence towards them, the protests grew in intensity.”).

²⁰⁹ Maggie Koerth & Jamiles Lartey, *Why so Many Police are Handling the Protests Wrong*, MARSHALL PROJECT (June 1, 2020, 2:55 PM), <https://www.themarshallproject.org/2020/06/01/why-so-many-police-are-handling-the-protests-wrong> [<https://perma.cc/6HRE-YFGE>].

²¹⁰ Eufrazio, *supra* note 208, at 212–31.

²¹¹ Koerth & Lartey, *supra* note 209.

²¹² See Mark B. Baer, *Unchecked Biases in Family Law are Pervasive and Harmful*, AM. BAR ASS’N (Feb. 2, 2022), https://www.americanbar.org/groups/family_law/publications/family-advocate/2022/winter/unchecked-biases-family-law-are-pervasive-harmful/ (“Policymakers’ biases and those held by their influencers can motivate their policies, and policies can be used to ingrain and worsen existing societal biases or challenge them to effectual cultural change.”).

²¹³ See Noah D. Zatz, *Disparate Impact and the Unity of Equality Law*, 97 B.U. L. REV. 1357, 1422–23 (1999).

²¹⁴ For the past few decades, scholars have noted the eroding nature of international human rights law, particularly in relation to its inconsistent usage. See, e.g., Richard Falk, *Some Thoughts on the Decline of International Law and Future Prospects*, 9 HOFSTRA L. REV. 399, 407–08 (1981); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. OF PEACE RES. 407, 408 (SPECIAL ISSUE ON PROTECTING HUM. RTS.) (2007); Rafael Domingo, *The Crisis of International Law*, 42 VAND. TRANSNAT’L L. 1543, 1555 (2021).

²¹⁵ *Disparate Treatment: What is it and why Does it Matter?*, QUALTRICS, <https://www.qualtrics.com/experience-management/employee/disperate-treatment/> [<https://perma.cc/9R3G-J9WB>] (last visited Apr. 7, 2024).

²¹⁶ *Id.*

involved in those lawsuits can subsequently impact the company's reputation, leading to high attrition rates and poor morale.²¹⁷ This is not to mention the negative impact of alternatives to lawsuits, such as negative treatment through "media, public relations, organizing, or lobbying."²¹⁸ This would be especially true for an employer who has made public statements that they seek to uphold human rights, only to then turn around and fire workers for expressing those rights.²¹⁹ While laws and policies should be enough, a threat of hypocrisy can, and should, strongly motivate non-governmental organizations to comply.

Fortunately, methods exist to reach the ideal of upholding protest rights. Indeed, scholars have discussed the general principles to follow in protecting these human rights.²²⁰ These principles follow three similar themes: (1) the introduction of preventive measures and intentional institutional design;²²¹ (2) new and improved policing tactics and more regulatory control over the use of force in response to protests;²²² and (3) accountability and oversight.²²³ These suggestions aim "to fill this gap by bridging the divide between principle and practice and provide guidance on how . . . [to] protect and promote protest and public assembly."²²⁴

First, the introduction of preventative measures and institutional design involves recalibrating legislation, leadership, and culture.²²⁵ This includes ensuring non-discrimination and equality, largely through effective training.²²⁶ This training "should prepare [officials] to exercise good judgment and to engage in balanced decision-making aimed at protecting and promoting the rights to protest,"²²⁷ and it also encourages proactive communication with protest organizers.²²⁸ Public authorities should communicate in a timely manner with protesters and supply, free of charge, any information that could affect their rights and freedoms prior to the beginning of any protest.²²⁹

²¹⁷ *Id.*

²¹⁸ Andrew Melzer & Whitney Barth, *Whether Employees can be Fired for Participating in Peaceful Protests*, 2020 U. OF ILL. L. REV. ONLINE 221, 233 (2020).

²¹⁹ *Id.*

²²⁰ See, e.g., Int'l Network of Civil Liberties Orgs. & Univ. of Chi. L. Sch., Int'l Human Rights Clinic, *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest*, INT'L NETWORK CIVIL LIBERTIES ORGS. 6 (2018), <https://inclo.net/wp-content/uploads/2024/02/Defending-Dissent-Report-Complete-WEB-FINAL.pdf> [<https://perma.cc/WC6P-4NAZ>] [hereinafter INCLC & IHRC].

²²¹ *Id.* at 26–57.

²²² *Id.* at 57–93.

²²³ *Id.* at 94–112.

²²⁴ *Id.* at 6.

²²⁵ *Id.* at 27–35.

²²⁶ *Id.* at 36–43.

²²⁷ *Id.* at 8.

²²⁸ *Id.* at 75.

²²⁹ *Principles and Guidelines on Protest and the Right to Information*, OPEN SOCIETY JUST. INITIATIVE (May

Second, the adoption of new ways in which to treat protesters should re-consider the current tactics and amount of force used in policing protests.²³⁰ De-escalation and non-escalation training is an essential means of restricting the amount of force used by police on protesters.²³¹ Additionally, studies have demonstrated that the use of data collection—through means such as recording, retaining, and increasing public availability of information related to decisions or actions made that would be “relevant to human rights compliance”—are all methods that should be adopted.²³² If adopted, these methods would better regulate the ways in which governments police protests, thus improving the ability and likelihood that people are able to exercise protest rights.

Finally, additional accountability and oversight is the last step necessary to adequately protect these rights. This step should include ensuring that states enact laws codifying protections for employees who express their rights, thus preventing non-governmental institutions from taking biased action against an employee for expressing a fundamental human right.²³³ Furthermore, this would also involve actively promoting journalistic activity, such as providing additional protections for journalists who are recording or documenting how police respond to a given protest.²³⁴ In turn, that documentation can then aid in an independent oversight mechanism that “investigate[s] all uses of force during protests and assemblies[,] as well as allegations of police misconduct or criminality.”²³⁵ Finally, any information produced or compiled should be publicly accessible to ensure that the public has the information necessary to safeguard their protest rights.²³⁶

In recalibrating how we treat protesters, it is important to take the temperature on how we currently mistreat them.²³⁷ While there is no one way

2018), <https://www.justiceinitiative.org/uploads/f4b68019-7718-4182-8800-e6c5ce164317/Principles-and-Guidelines-on-Protest-20191210.pdf> [https://perma.cc/8A9Q-HTD8].

²³⁰ See, e.g., Edward R. Maguire, *New Directions in Protest Policing*, 35 ST. LOUIS U. PUB. L. REV. 67, 96–106 (2015).

²³¹ See INCLO & IHRC, *supra* note 220, at 9.

²³² See *id.* at 81–85; OPEN SOC’Y JUST. INITIATIVE, *supra* note 229, at 9; Maguire, *supra* note 230, at 98–100.

²³³ Many have noted this gap in protections and the importance to codify specific legal rights. See, e.g., Senn, *supra* note 206, at 368–72; Melzer & Barth, *supra* note 235, at 224; *Your Right to Protest*, CIVICUS, <https://prt.civicus.org/your-right-to-protest/> [https://perma.cc/FR62-H52G] (last visited Mar. 30 2024); Erica Sweeney, *What Your Rights are at Work When it Comes to Getting Involved in Social or Political Activism*, BUS. INSIDER (June 23, 2020), <https://www.businessinsider.com/what-rights-are-work-social-political-activism-fired>; *Your Workplace Rights as a Political Protester*, LEGAL AID AT WORK, <https://legalaidatwork.org/factsheet/your-rights-as-protester-political-protests-by-employees/> [https://perma.cc/U3SJ-U9JX].

²³⁴ See INCLO & IHRC, *supra* note 220, at 66–72; See OPEN SOC’Y JUST. INITIATIVE, *supra* note 229, at 11.

²³⁵ See INCLO & IHRC, *supra* note 220, at 12; OPEN SOC’Y JUST. INITIATIVE, *supra* note 229, at 4–5, 7.

²³⁶ See INCLO & IHRC, *supra* note 220, at 12–13; OPEN SOC’Y JUST. INITIATIVE, *supra* note 229, at 4–6.

²³⁷ *Defending Dissent and the Rule of Law*, N.Y.U. SCH. L., <https://www.law.nyu.edu/centers/bernstein-institute/dissent> (last visited Apr. 7, 2024).

to do this, any given approach should include a range of education, research, and advocacy initiatives. When change does start, it is especially important to protect those doing this important work.²³⁸

Avenues do exist to avoid further infringement on rights and the subsequent violence for doing so, but those changes need to begin today.

CONCLUSION

Toomaj Salehi should not be in prison for expressing his fundamental human right to protest. However, neither should communities lose internet access, employees be fired, nor student groups disbanded for lawfully expressing these same human rights.²³⁹ Curiously, there is little ambiguity about the right to protest,²⁴⁰ as the international community has broadly codified these rights and purport to value its expression.²⁴¹ Non-governmental institutions have also followed suit, similarly claiming that they value its expression and are in the business of “protest protection.”²⁴²

Unfortunately, governments and non-governmental institutions continually fail to uphold the rights they claim to protect.²⁴³ Even though the overwhelming majority of protests are peaceful, the lawful expression of dissenting views does not often protect people from being fired from work, having their organizations disbanded by community leadership, or getting arrested or killed.²⁴⁴ Regrettably, research indicates that this treatment is also not uniform, with particular groups getting a larger share of this mistreatment.²⁴⁵

This universal effort to curtail protests must change. If this mistreatment continues, the laws and policies which seek to protect protests would, at worst, appear unenforceable and invalid and, at best, hypocritical and inconsistent. Fortunately, scholars have offered practical approaches to revise how we treat protesters before, during, and after protests.²⁴⁶ With proper training and appropriate balancing of all interests involved, the world can finally live up to its promise to protect and promote protest rights.

²³⁸ Amnesty International is one example. See AMNESTY INT’L, *supra* note 34.

²³⁹ See Dages, *supra* note 9; see Strzyżyńska *supra* note 19; see e.g., Basu, *supra* note 161; Averion et al., *supra* note 171.

²⁴⁰ See, e.g., AMNESTY INT’L, *supra* note 34.

²⁴¹ See discussion *supra* Part I.

²⁴² See Fletcher, et al., *supra* note 72.

²⁴³ See discussion *supra* Part II.

²⁴⁴ See discussion *supra* Part II.

²⁴⁵ See discussion *supra* Part II.

²⁴⁶ See generally, e.g., INCLO & IHRC, *supra* note 220; OPEN SOC’Y JUST. INITIATIVE, *supra* note 229; see also discussion *supra* Part III.