

CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN

EXPERT OPINION (AMICUS CURIAE) OF ACCESS NOW ON THE APPEAL OF Y.M. KABYSHEV (RESOLUTION OF JANUARY 12, 2026 NO. 94-KP)

I. Introduction

1. Access Now (www.accessnow.org) is an international civil society organization that defends and extends the digital rights of people and communities at risk.¹ Through policy development and advocacy, grant making, multi-stakeholder convenings like RightsCon,² and direct technical support through a Digital Security Helpline,³ the organization works to monitor, investigate, and prevent violations of digital rights worldwide. Access Now coordinates the international #KeepItOn campaign, which tracks and decries intentional disruptions of internet access through a global coalition of more than 345 civil society organizations from over a 100 countries.⁴
2. The unprecedented power of the internet to enable millions freely to express opinions, and seek, impart, and receive information, is clear. However, the actions of governments around the world in recent years have shown with equal clarity that the internet has given States unprecedented power to stem the flow of opinions and information by technical means, with immediate effect and in a blanket fashion. This submission sets out, **first**, the wider context of States' internet disruption, including "internet shutdowns," and the response of the United Nations (the UN) [and other multilateral organizations] to such activities, **second**, the principles to be applied by this Court when considering the lawfulness of such States actions, and **third**, the principles to be applied to a private company who facilitated such States actions.

II. The United Nations and multilateral bodies condemn internet shutdowns

3. The phrase "internet shutdown" has been defined as an "intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the

¹ Access Now, About Us, <https://www.accessnow.org/about-us/>.

² RightsCon, About, <https://www.accessnow.org/about-us/>.

³ Access Now, Digital Security Helpline, <https://www.accessnow.org/help/>.

⁴ Access Now, #KeepItOn, <https://www.accessnow.org/campaign/keepiton/>.

flow of information.”⁵ Shutdowns range from blocks of service-specific messaging or social platforms, to wider blocks of the mobile internet, the broadband internet, or even the internet as a whole. They are also referred to as “blackouts,” “kill switches,” or “network disruptions.”⁶

4. Access Now and the #KeepItOn coalition track worldwide instances of internet shutdowns. In 2024, the coalition documented 296 shutdowns in 54 countries, surpassing the previous 2023 record of 283 shutdowns in 39 countries.⁷ While States often insist that they shut down the internet for reasons of combating fake news and hate speech; public safety and national security; precautionary measures; and preventing cheating during exams, the reality on the ground shows these shutdowns coincide with elections, protests, and political instability that those governments would like to hide or suppress.⁸
5. In response, the UN and other multilateral organizations have frequently condemned internet shutdowns, highlighting the critical importance of the internet for exercising fundamental human rights.

The United Nations

6. In May 2011, Frank La Rue, the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, provided a framework for the analysis of the human rights implications of States’ disruption of the internet. La Rue lamented “ways in which States are increasingly censoring information online,” including through “arbitrary blocking or filtering of content; criminalization of legitimate expression; [and] disconnecting users from Internet access.”⁹
7. In his report, La Rue characterized the internet as “one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information and for facilitating active citizen participation in building democratic societies,”¹⁰ and therefore “a key means by which individuals can exercise their right to freedom of opinion and expression.”¹¹ Importantly, La Rue stated that the internet is an “enabler” of other rights such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.¹²

⁵ Access Now, #KeepItOn: Frequently Asked Questions, <https://www.accessnow.org/keepiton-faq/>.

⁶ Id.

⁷ Access Now, Lives on hold: internet shutdowns in 2024 (23 February March 2025), <https://www.accessnow.org/internet-shutdowns-2024/>.

⁸ Access Now, Shattered Dreams and Lost Opportunities, A year in the fight to #KeepItOn (March 2021), https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf.

⁹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (16 May 2011), UN Doc. A/HRC/17/27, <https://undocs.org/en/A/HRC/17/27>.

¹⁰ Id. para. 2.

¹¹ Id. para. 20.

¹² Id. para. 22.

8. La Rue added that any restriction to the right to freedom of expression, including restrictions on freedom of expression on the internet, must meet the strict criteria under international human rights law: (i) it must be provided by law, which is clear and accessible to everyone (principle of legality); (ii) it must pursue a legitimate aim (principle of legitimacy); and (iii) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality)¹³ (collectively, “the three-part test”). However, according to La Rue, “in many instances, States restrict, control, manipulate and censor content disseminated via the Internet without any legal basis, or on the basis of broad and ambiguous laws, without justifying the purpose of such actions; and/or in a manner that is clearly unnecessary and/or disproportionate to achieving the intended aim,” and consequently, “such actions are clearly incompatible with States’ obligations under international human rights law.”¹⁴
9. This analysis and concern about the States’ disruption of the internet have been increasingly reconfirmed by the UN and other multilateral organizations on many occasions.
10. One month after Frank La Rue’s report was published, the 2011 Joint Declaration on Freedom of Expression and the Internet issued by the UN and regional experts in the field of freedom of expression reconfirmed “[c]utting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds.”¹⁵
11. In the 2015 Joint Declaration, the UN and regional experts in the field of freedom of expression reconfirmed the unlawfulness of the internet shutdowns by saying “[f]iltering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) [...] are measures which can never be justified under human rights law.”¹⁶

¹³ Id. para. 24.

¹⁴ Id. para. 31.

¹⁵ The UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (1 June 2011), <https://www.osce.org/files/f/documents/e/9/78309.pdf>. The 2001 Joint Declaration stated that the right to freedom of expression applies to the internet, just as it does to other communication media. The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (19 November 2001), <https://www.osce.org/files/f/documents/2/0/40053.pdf>.

¹⁶ The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information (4 May 2015), <https://www.osce.org/files/f/documents/a/0/154846.pdf>. The 2011 and 2015 Joint Declarations were reconfirmed in the Joint Declaration in 2016, 2018. Further, the 2019 and 2020 Joint Declaration deplored specifically internet shutdowns and required “[o]ver the coming years, States and other actors should [...] [r]efrain from imposing Internet or telecommunications network disruptions and shutdowns.”

12. In September 2016, the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, reconfirmed that internet shutdowns “are generally disproportionate, as “for even if they are premised on national security or public order, they tend to block the communications of often millions of individuals.”¹⁷
13. In 2018, the UN General Assembly in its resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association called upon “all States to ensure that the same rights that individuals have offline, including the rights to freedom of expression...are also fully protected online, in accordance with human rights law, particularly by refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law”.¹⁸ Accordingly, the UN Secretary General also confirmed in May 2020 that blanket internet shutdowns and generic blocking and filtering of services are considered by the UN human rights mechanisms to be in violation of international human rights law.¹⁹
14. In May 2019, the former UN Special Rapporteur on the Right to Peaceful Assembly and Association, Clément Nyaletsossi Voule, in his annual report to the Human Rights Council, characterized the internet “both as tools through which these rights can be exercised ‘offline’ and as spaces where individuals can actively form online assemblies and associations.”²⁰ Given this importance of the internet, he expressed concern that “[g]overnments are ordering Internet shutdowns more frequently [...] ahead of critical democratic moments such as elections and protests.”²¹ He added that “network shutdowns are in clear violation of international law and cannot be justified in any circumstances,” and called for “repealing and amending any laws and policies that allow network disruptions and shutdowns, and refraining from adopting such laws and policies.”²²
15. Since the COVID-19 pandemic, multiple UN bodies have been even more frequently calling upon refraining from internet shutdowns, since the pandemic made people more dependent on the internet in their daily lives.
16. In April 2020, the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, issued a report, where he

¹⁷ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (6 September 2016), UN Doc. A/71/373, para. 21, <https://undocs.org/en/A/71/373>.

¹⁸ UN General Assembly, Resolution on Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association (8 January 2019), UN Doc. A/RES/73/173, para. 4, <https://undocs.org/en/A/RES/73/173>.

¹⁹ UN General Assembly, Road map for digital cooperation: implementation of the recommendations of the High-level Panel on Digital Cooperation (May 29, 2020), UN Doc. A/74/821, para 44, <https://undocs.org/A/74/821>.

²⁰ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, (17 May 2019), UN Doc. A/HRC/41/41, para. 21, <https://undocs.org/A/HRC/41/41>.

²¹ Id. para 3.

²² Id. para. 51.

emphasized that internet shutdowns interfere with not only the freedom of expressions but other fundamental rights by risking the health and life of everyone who is denied access to the internet, which is “a critical element of health-care policy and practice, public information and even the right to life.”²³

17. In addition, the former Special Rapporteur on the rights to freedoms of peaceful assembly and of association Clément Voule called for, among ten principles for the government under the pandemic, guaranteeing freedom of association and assembly online, and refraining from restrictions such as internet shutdowns or online censorship.²⁴
18. Similarly, the UN High Commissioner for Human Rights Michelle Bachelet called on ending “any blanket Internet and telecommunication shutdowns and denials of service.” during the pandemic.²⁵
19. In July 2021, the UN Human Rights Council, in its resolution on the promotion, protection and enjoyment of human rights on the internet, called on all States to refrain from and cease measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law.²⁶
20. In 2023, the General Assembly adopted a resolution regarding the “promotion and protection of human rights in the context of digital technologies” which calls on States to “refrain from imposing restrictions on the free flow of information and ideas that are inconsistent with relevant obligations under international law,” naming internet shutdowns as a particular example of such discouraged activity.²⁷

²³ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (23 April 2020), UN Doc. A/HRC/44/49, paras. 26-28, <https://undocs.org/A/HRC/44/49>.

²⁴ UN Special Rapporteur on the Right to Peaceful Assembly and Association, States responses to Covid 19 threat should not halt freedoms of assembly and association (14 April 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>.

²⁵ UN High Commissioner for Human Rights, COVID is “a colossal test of leadership” requiring coordinated action, High Commissioner tells Human Rights Council (9 April 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>.

²⁶ UN General Assembly, Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet (13 July 2021), UN Doc. A/HRC/RES/47/16, Preamble, para. 11, <https://docs.un.org/en/a/hrc/res/47/16>. A 2016 resolution on the same subject was recalled by the UN General Assembly, Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet (17 July 2018), A/HRC/RES/38/7, <https://undocs.org/A/HRC/RES/38/7>. Also, another 2018 Human Rights Council resolution “[c]oncerned about the emerging trend of disinformation and of undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies[.]” UN General Assembly, Human Rights Council, The promotion and protection of human rights in the context of peaceful protests (16 July 2018), UN Doc. A/HRC/RES/38/11, <https://undocs.org/A/HRC/RES/38/11>. This resolution was recalled by a 2020 Human Rights Council resolution. UN General Assembly, Human Rights Council, The promotion and protection of human rights in the context of peaceful protests (13 July 2020), UN Doc. A/HRC/44/L.11, <https://undocs.org/en/A/HRC/44/L.11>.

²⁷ UN General Assembly, Promotion and protection of human rights in the context of digital technologies (19 Dec. 2023), UN Doc. A/RES/78/213, para 18, <https://docs.un.org/en/A/RES/78/213>.

21. The 2024 Global Digital Compact, recognizing the internet’s status as a “critical global facility for inclusive and equitable digital transformation,” includes a commitment to “refrain from Internet shutdowns and measures that target Internet access.”²⁸
22. That same year, the UN Human Rights Council adopted a resolution concerning freedom of opinion and expression which expressly proscribed internet shutdowns as a means of “intentionally prevent[ing] or disrupt[ing] access to or the dissemination of information online.”²⁹ An additional Human Rights Council consensus resolution on the promotion and protection of human rights in the context of peaceful protests also stressed that “in times when physical assemblies are restricted, it is all the more necessary that access to and use of the Internet be ensured, by refraining from undue restrictions such as Internet shutdowns and online censorship.”³⁰
23. A 2025 Human Rights Council Resolution concerning human rights defenders and new technologies called upon States to refrain from internet shutdowns and any other methods for blocking or restricting the human rights defenders’ access to information and communication technologies.³¹ This provision specifically lists blocking, filtering, throttling, and encryption and anonymity tools as practices which may violate the stated prohibition.³²
 - a) Regional institutions
24. Regional institutions have also spoken out against internet shutdowns.

Europe

25. As early in May 2003, the Committee of Ministers of the Council of Europe, in its Declaration on freedom of communication on the Internet, called on the Member States not to subject content on the Internet to restrictions which go further than those applied to other means of content delivery, and, “through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers.”³³
26. In April 2016, the Committee of Ministers of the Council of Europe confirmed, in its Recommendation CM/Rec(2016)5 on Internet freedom, that the internet freedom

²⁸ Global Digital Compact (2024), UN Doc. A/79/L.2, para 29(d), <https://docs.un.org/en/a/res/79/1>.

²⁹ UN General Assembly, Human Rights Council, Freedom of opinion and expression (10 July 2024), UN Doc. A/HRC/RES/56/7, para 8(n), <https://docs.un.org/en/A/HRC/RES/56/7>.

³⁰ UN General Assembly, Human Rights Council, The promotion and protection of human rights in the context of peaceful protests (11 July 2024) UN Doc. A/HRC/RES/56/10, paras. 15 and 25, <https://docs.un.org/en/A/HRC/RES/56/10>.

³¹ UN General Assembly, Human Rights Council, Human rights defenders and new and emerging technologies: protecting human rights defenders, including women human rights defenders, in the digital age (4 April 2025), UN Doc. A/HRC/RES/58/23, para 9(j), <https://docs.un.org/en/A/HRC/RES/58/23>.

³² *Id.*

³³ Council of Europe Committee of Ministers, Declaration on freedom of communication on the Internet (28 May 2003), <https://rm.coe.int/16805dfbd5>.

indicators, which are equivalent to the three part test, are applicable to internet shutdowns.³⁴

27. In January 2022, in response to the internet shutdown in Kazakhstan, the EU Parliament “strongly condemn[ed] the use of internet shutdowns to crush dissent and violate freedom of expression and assembly, contrary to international human rights standards and “calls on the Kazakh authorities to restore unrestricted access to the internet, unblock all other forms of communication and stop meting out reprisals against those who share news independently.”³⁵
28. In October 2025, the European Union, in response to the human rights situation in Afghanistan, condemned the 48-hour internet shutdown imposed by the Taliban and urged the government “to cease all acts of [...] censorship and media interference.”³⁶

III. State-ordered internet shutdowns violate international law

29. International Covenant on Civil and Political Rights (ICCPR)³⁷ and the International Covenant on Economic Social and Cultural Rights (ICESCR),³⁸ together with the Universal Declaration of Human Rights, are deemed as “the International Bill of Human Rights,” i.e., the basic set of international human rights. Kazakhstan has ratified ICCPR and ICESCR in 2006, therefore it is bound by these treaties.³⁹

a. Violation of ICCPR

Article 19 of ICCPR (freedom of opinion and expression).

³⁴ Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom (13 April 2016), para 2.4, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415fa.

³⁵ European Parliament, Resolution of 20 January 2022 on the situation in Kazakhstan, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0012_EN.html, para R.13. In Kazakhstan, on January 2 2022, thousands of people started protesting peacefully in the city of Zhanaozen, opposing the government’s decision to lift the price cap on liquefied petroleum gas, and protests rapidly spread to over 60 cities and localities, demanding genuine political change, fair elections and effective measures to tackle widespread corruption. In response, on January 4, 2022, the Kazakh authorities imposed restrictions on mobile internet and social networks, and since 5 January 2022, when President Kassym-Jomart Tokayev declared a nationwide state of emergency that includes a curfew, temporary restrictions on movement and a ban on mass gatherings, a five-day internet blackout has been reported. Access Now, Timeline: Kazakhstan internet shutdowns aim to crush protests, hide state violence (12 January 2022), <https://www.accessnow.org/kazakhstan-internet-shutdowns-protests-almaty-timeline-whats-happening/>.

³⁶ European Union, Delegation of the European Union to the United Nations in New York, EU Statement – UN General Assembly 3rd Committee: Interactive dialogue on human rights in Afghanistan (30 October 2025), https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-%E2%80%93-un-general-assembly-3rd-committee-interactive-dialogue-human-rights-afghanistan-0_en.

³⁷ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³⁸ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (3 January 1976), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

³⁹ United Nations Human Rights Treaty Bodies, UN Treaty Body Database, Ratification Status for Kazakhstan, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=89&Lang=EN.

30. Article 19 of ICCPR guarantees the right to freedom of opinion and expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.” The UN Human Rights Committee’s General Comment No. 34 on Article 19 ICCPR clarifies that Article 19 “protects all forms of expression and the means of their dissemination [...]includ[ing] [...] internet-based modes of expression.”⁴⁰ Once an individual has shown the existence of a restriction on freedom of expression, the burden falls on the State to demonstrate that it passes the three-part test.⁴¹
31. General Comment No. 34 also emphasizes that State authorities wanting to place restrictions on freedom of expression “it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴² The Committee adds that it is inconsistent with Article 19 “to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”⁴³
32. Most importantly, General Comments No. 34 adds that “[restrictions] must be the least intrusive instrument amongst those which might achieve [State interests]” and “Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3 [of Article 19].”⁴⁴
33. These strict standards have been applied by several domestic and regional courts in internet shutdown cases. In 2020, the Indian Supreme Court set out constitutional requirements, i.e., the State must define the legitimate goal, assess the existence of any alternative mechanism in furtherance of the goal, and resort to only the least restrictive measure.⁴⁵ The court outright rejected the State’s excuse that it does not have technical

⁴⁰ UN General Assembly, Human Rights Committee, General Comment No. 34, Article 19, Freedoms of Opinion and Expression (12 September 2011), UN Doc. CCPR/C/GC/34, para. 12, <https://undocs.org/CCPR/C/GC/34>. Treaty bodies, which monitor the implementation of treaties, publish their interpretation of the provisions of their respective human rights treaty in the form of general comments. For ICCPR, the Human Rights Committee is authorized to publish general comments, and for ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) is authorized to publish general comments. See, <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>.

⁴¹ Id. para. 22.

⁴² Id. para. 35.

⁴³ Id. para. 43.

⁴⁴ Id.

⁴⁵ Anuradha Bhasin v. Union of India, Indian Supreme Court, Writ Petition No. 1031 of 2019 (January 10, 2020), para 70, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/02/AB-v.-Union-of-India-Full-Judgment.pdf>. An editor of a newspaper company sued the Indian government, claiming that internet shutdowns which were imposed in the Jammu and Kashmir region in India on August 4, 2019 in the name of protecting public order were unlawful.

means to block access to specific websites and applications as, according to the court, such an excuse serves as a “a free pass to put a complete internet blockage every time.”⁴⁶ The court further reiterated “complete broad suspension of telecom services, [...] a drastic measure, must be considered by the State only if ‘necessary’ and ‘unavoidable.’”⁴⁷

34. In its 2022 decision, ECOWAS made a similar ruling with respect to the blocking of a social media platform Twitter (now X) by the government of Nigeria.⁴⁸ Despite the government claiming that the the platform was used by a separatist leader who engaged in violence, the court ruled that since “social media platforms, like Twitter, Facebook, and Instagram,” among others, enable the exercise of the rights to freedom of speech and access to information under Article 9 of ACHPR and 19 of the ICCPR, and any derogation from these rights requires lawful justification, which the government failed to provide.⁴⁹ Therefore, the court ruled that the government blocking of Twitter was unlawful.⁵⁰
35. A year later, the court similarly applied the three part test and ruled that the internet shutdown and blocking of social media by the government of Guinea during October 2020 protests was unlawful because the government’s actions were unjustified and disproportionate.⁵¹

Article 21 of ICCPR

36. Article 21 of ICCPR states that “[t]he right of peaceful assembly shall be recognized.” The General Comment No. 37 on Article 21 ICCPR clarifies that it protects peaceful assemblies on and offline or combination of them.⁵² It also clarifies that the country’s obligation extends to participants’ or organizers’ associated activities such as “mobilization of resources; planning; dissemination of information about an upcoming event; preparation for and travelling to the event; communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and

⁴⁶ Id. para. 75.

⁴⁷ Id. para. 99. See also *Banashree Gogoi v. Union of India*, Gauhati High Court, 2019 SCC Online Gau 558 (19 December 2019), para. 7, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/01/Assam-Court-Order-.pdf>. The court declared the internet shutdown unlawful due to the lack of necessity by saying “[v]ery importantly, no material is placed by the State to demonstrate and satisfy this Court that there exists, as on date, disruptions on the life of the citizens of the State with incidents of violence or deteriorating law and order situation which would not permit relaxation of mobile internet services,” and ordered restoration of the connectivity. Also, see *Dhirendra Singh Rajpurohit v. State of Rajasthan & ors.*, Rajasthan High Court, D. B. Civil Writ No. 10304/2018 (25 July 2018), https://www.medianama.com/wp-content/uploads/206800103042018_1.pdf. The court declared the internet shutdown to prevent cheating during an examination was unlawful.

⁴⁸ *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) & 3 Ors. v. Federal Republic of Nigeria*, ECOWAS, ECW/CCJ/JUD/40/22 (14 July 2022).

⁴⁹ Id., paras. 67-68, 85.

⁵⁰ Id., para. 89.

⁵¹ *Association des Blogueurs de Guinée (ABLOGUI) & 3 Ors. v. The State of Guinea*, ECOWAS, ECW/CCJ/JUD/38/23/22 (31 October 2023), paras. 58, 65, 68.

⁵² UN General Assembly, Human Rights Committee, General Comment No. 37, Article 21, Freedoms of Opinion and Expression (17 September 2020), UN Doc. CCPR/C/GC/37, para. 6, <https://undocs.org/CCPR/C/GC/37>.

leaving the assembly afterwards.”⁵³ Internet shutdowns hinder online protests and all the associated activities conducted online in a blanket manner, which are prohibited under Article 21.

37. Article 21 is also interpreted as requiring the three-part test to justify a restriction. General Comments No. 37 sets a strict standard that is equivalent to Article 19 by requiring that “[r]estrictions must be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient. [...] They must also be the least intrusive among the measures that might serve the relevant protective function.”⁵⁴

b. Violation of ICESCR.

38. The internet is becoming increasingly essential to fundamental societal systems, including business, banking, health, education, public administration, and social and cultural life. Thus, internet shutdowns affect not only political and civil rights, such as the rights to free expression, access to information, and peaceful assembly, but also economic and cultural rights.
39. Unlike ICCPR, which imposes immediate obligation on States, Article 2(1) of ICESCR requires States to “undertakes to take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights,” because, according to General Comment No. 3, “full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.”⁵⁵ However, the General Comments set out that any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified⁵⁶ by, according to General Comment no. 25, “strictly examining the necessity and proportionality of such measures, including whether alternatives were comprehensively examined and whether the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected.”⁵⁷ There is a strong presumption of impermissibility of any retrogressive measures taken in relation to rights outlined in ICESCR.⁵⁸
40. Unlike an omission of or delay in internet infrastructure investment, for example, internet shutdowns are a deprivation of internet connectivity which already functioned and served as a basis for lives of the affected people. This is a deliberately retrogressive measure, which triggers the strong assumption of impermissibility. Further, the Court should consider individuals’ higher dependency on the internet since the pandemic,

⁵³ Id. para. 33.

⁵⁴ Id. para. 40.

⁵⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, Article 2, para.1, The nature of States parties’ obligations (14 December 1990), UN Doc. E/1991/23, para. 9, <https://www.refworld.org/pdfid/4538838e10.pdf>.

⁵⁶ Id.

⁵⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 25, Article 15 (1) (b), (2), (3) and (4) (30 April 2020), UN Doc. E/C.12/GC/25, para 24, <https://undocs.org/en/E/C.12/GC/25>.

⁵⁸ Id. para. 24.

which deepened and widened the negative impact on social and economic rights caused by internet shutdowns.

Article 6 (right to work)

41. Article 6 of ICESCR protects the right to work, including the right to the opportunity to gain living by work which an individual freely chooses, and requires States to take appropriate steps to safeguard this right.
42. The internet has long been an important infrastructure to secure employment, and with the restriction on travel and in-person communication seen under the COVID-19 pandemic, it became even more evident that the internet is an indispensable condition to guarantee the right to work. Remote communication systems became a lifeline for every aspect of the operation (e.g., sales, orders, and communication with partners) in every business sector, e.g., internal communication, receiving orders, purchasing.⁵⁹ Internet shutdowns infringe on the right to work by depriving affected people of opportunities to work.⁶⁰

Article 12 (right to health)

43. Article 12 protects the right to the enjoyment of the highest attainable standard of physical and mental health. States are obliged to, among others, the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.
44. Like the right to work, the internet has already become an important infrastructure to better enjoy physical and mental health.⁶¹ During pandemics, internet shutdowns leave doctors and health workers unable to access research and communicate in real time with each other or their patients.⁶² As medical capacity is getting strained, more people are relying on telemedicine.⁶³ People are also more reliant on online communication

⁵⁹ See United Nations Conference on Trade and Development, COVID-19 has changed online shopping forever, survey shows, UNCTAD/PRESS/PR/2020/029,

<https://unctad.org/press-material/covid-19-has-changed-online-shopping-forever-survey-shows>.

⁶⁰ See Reuter, FEATURE-No web, no jobs: Kashmiris board the 'Internet Express' (12 January 2020),

<https://www.reuters.com/article/india-kashmir-internet-idUSL8N2971OF>.

⁶¹ See World Health Organization, Telehealth

Analysis of third global survey on eHealth based on the reported data by countries, 2016,

<https://www.who.int/gho/goe/telehealth/en/>.

⁶² See Lucy Purdon, Arsalan Ashraf, Ben Wagner, Security v Access: The Impact of Mobile Network Shutdowns, Case Study: Telenor Pakistan (September 2015), page14,

https://repository.upenn.edu/cgi/viewcontent.cgi?article=1008&context=internet_policy_observatory. See also

MediaNama, Kashmir's Doctors, Patients Struggle As Critical Medical Services Are Crippled By Year-Long Internet Shutdown In Region (10 August 2020),

<https://www.medianama.com/2020/08/223-kashmir-internet-shutdown-medicine/>.

⁶³ See U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, Trends in Use of Telehealth Among Health Centers During the COVID-19 Pandemic — United States, June 26–November 6, 2020 (February 19, 2021),

https://www.cdc.gov/mmwr/volumes/70/wr/mm7007a3.htm?s_cid=mm7007a3_w.

with their loved ones and therapists to maintain their mental health.⁶⁴ Internet shutdowns infringe on the right to health by cutting off their lifeline to getting help and support that they need to stay healthy.

45. Access Now is deeply concerned by the emerging precedents in Eastern Europe and Central Asia demonstrating that internet shutdowns pose direct and foreseeable risks to human life and health. In Russia, repeated mobile internet shutdowns have prevented parents of children with Type 1 diabetes from remotely monitoring their children's blood glucose levels through connected medical devices.⁶⁵ Continuous glucose monitoring systems rely on stable mobile data connections to transmit real-time readings and alerts; without such connectivity, caregivers are deprived of critical warnings necessary to prevent hypoglycemia—a sudden and potentially fatal drop in blood glucose that can result in seizures, coma, or death.

Article 13 (right to education)

46. Article 13 protects the right to education. General Comments No. 13 clarifies that States are obliged to implement educational institutions and programs accessible to everyone.⁶⁶
47. Accessibility of education, as defined by CESCR, should encompass the interrelated dimensions of (a) non-discrimination and (b) physical accessibility,⁶⁷ meaning that education must be accessible to all, especially the most vulnerable groups, in law and fact, and has to be within safe physical reach, either by attendance at some reasonably convenient geographic location <...> or **via modern technology** <...>.⁶⁸
48. Government-imposed internet shutdowns directly contravene these principles. In Khorog and the Gorno-Badakhshan Autonomous Region of Tajikistan, authorities' disruption of internet services has effectively denied students meaningful access to higher education processes. As a result of the shutdown, university applicants were compelled to travel approximately 600 kilometers to Dushanbe merely to submit

⁶⁴ See American Medical Association., The Coronavirus Disease 2019 (COVID-19) Outbreak and Mental Health Current Risks and Recommended Actions (June 24, 2020), <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2767724>.

⁶⁵ The Insider, Thousands of children with diabetes lose parental glucose monitoring due to internet shutdowns in Russia (15 November 2025), <https://theins.ru/en/news/286836>.

⁶⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13, Article 13, The Right to Education (8 December 1999), UN Doc. E/C.12/1999/10, para. 6(b), <https://undocs.org/E/C.12/1999/10>.

⁶⁷ See CESCR, General comment N 13, E/C.12/1999/10 [1999], available at: <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW%2BKyH%2BnXprasyMzd2e8mx4cYID1VMUKXaG3Jw9bomilLKS84HB8c9nIHQ9mUemvt0Fbz%2F0SS7kENyDv5%2FbYPWaxMw47K5jTga59puHtt3NZr>>, para. 6 (b)

⁶⁸ Ibid.

required documents online.⁶⁹ This imposed significant financial and temporal burdens, disproportionately affecting those with limited resources.

Article 15 (right to science and culture)

49. Article 15 protects the right to take part in cultural life and the right to enjoy the benefits of scientific progress.
50. In the modern era, the most convenient and economical mechanism for access to cultural products (literature, news content, popular entertainment, etc.) and scientific progress and its applications (scientific literature, computer coding, and web development resources and repositories, open source data for experimentation purposes) is provided by the internet.⁷⁰ Internet shutdowns infringe on the right to science and culture by depriving people affected of opportunities to access to cultural products and scientific progress and its applications.
51. Further, General Comments No. 25 clarifies that Article 15 imposes an immediate obligation on States to respect the right to science, including to refrain from interfering directly or indirectly in the enjoyment of this right. This obligation includes, among others, “eliminating censorship or arbitrary limitations on access to the Internet, which undermines access to and dissemination of scientific knowledge.”⁷¹ Such conduct can be justified only in accordance with the three-part test⁷² as the then UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, also reiterated in his 2020 report, that the right to freedom of expression supports this freedom aspect of the right to science.⁷³

IV. Private companies which facilitate internet shutdowns violate the UN Guiding Principles on Business and Human Rights

52. The UN Guiding Principles on Business and Human Rights (the UNGPs) represent a global standard for preventing and addressing the risk of adverse human rights impacts

⁶⁹ AsiaPlus, Проехать 600 км в поисках интернета. Почему не дают связь в ГБАО и как из-за этого страдают люди? (7 December 2021), <https://www.asiaplustj.info/ru/news/tajikistan/security/20211207/proehat-600-km-v-poiskah-interneta-pochemu-ne-dayut-svyaz-v-gbao-i-kak-iz-za-etogo-stradayut-lyudi>.

⁷⁰ UN General Assembly, Human Rights Council, Report of the Special Rapporteur in the field of cultural rights, “The right to enjoy the benefits of scientific progress and its applications” (14 May 2012), UN Doc. A/HRC/20/26, para. 36, <https://undocs.org/en/A/HRC/20/26>.

⁷¹ UN General Assembly, Human Rights Council, Committee on Economic, Social and Cultural Rights, General Comment No. 25, Article 15 (1) (b), (2), (3) and (4) (30 April 2020), UN Doc. E/C.12/GC/25, para 42, <https://undocs.org/en/E/C.12/GC/25>.

⁷² Id. para. 21.

⁷³ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (23 April 2020), UN Doc. A/HRC/44/49, paras 12-13, <https://undocs.org/A/HRC/44/49>.

linked to business activity.⁷⁴ The U.N. Human Rights Council unanimously endorsed these standards in 2011. The UNGPs are widely supported by States, regional institutions and multilateral organizations.⁷⁵

53. Under the UNGPs, States are obliged to *protect* human rights and corporations are obliged to *respect* human rights throughout their operations.⁷⁶ Importantly, the corporations' obligation exists independently of States' abilities or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists *over and above* compliance with national laws and regulations protecting human rights.⁷⁷
54. UNGP requires private companies to ensure they respect human rights by, for example, avoiding, causing or contributing to adverse impacts on human rights (Principle 12), and addressing such impacts when they occur (Principle 11, 13(a)). As the internet is operated by multilayers of private sectors, States cannot implement internet shutdowns without cooperation by them. Private sector companies that systematically continue to comply with internet shutdown requests which are overbroad, disproportionate and in conflict with international human rights standards and norms violate Principle 11 and 13(a).
55. Further, to secure compliance with these substantive principles, UNGPs also requires creating programs to preventing, detecting and mitigating human rights violation, e.g., policy commitment (Principle 16), human rights due diligence (Principle 17, 18, 19 and 20) and external reporting (Principle 21). Companies who do not have these programs also violate these principles, and therefore, violate the UNGPs.

VI. Conclusion

56. For the reasons set out above, Access Now strongly believes that paragraphs 1-2 of Article 41-1 of the Law of the Republic of Kazakhstan dated July 5, 2004, No. 567 "On Communications," which legitimize the usage of internet shutdowns in Kazakhstan, including the ones imposed on January 5-10, 2022,⁷⁸ violates international law standards. We call on the Court to recognize paragraphs 1-2 of Article 41-1 of the Law of the Republic of Kazakhstan "On Communications" unconstitutional.

⁷⁴ UN General Assembly, Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Un Doc. A/HRC/17/31, (21 March 2011), <https://undocs.org/en/A/HRC/17/31>.

⁷⁵ In 2011, OECD updated its Guidelines for multinational enterprises to incorporate the UNGP. Some States such as France took legislative actions to enforce the UNGP at national level. Other multilateral organizations such as the EU, the Association of Southeast Asian Nations (ASEAN) and the African Union are working on incorporating UNGP in treaties or other regional frameworks.

⁷⁶ UNGP Principle 1 and 11.

⁷⁷ See Id.

⁷⁸ See Access Now, Timeline: Kazakhstan internet shutdowns aim to crush protests, hide state violence (12 January 2022), <https://www.accessnow.org/kazakhstan-internet-shutdowns-protests-almaty-timeline-whats-happening/>

We are open to consultation and questions. Please feel free to contact Natalia Krapiva, Senior Tech Legal Counsel at natalia@accessnow.org or Anastasiya Zhyrmon, Policy Manager (Eastern Europe&Central Asia) at anastasiya@accessnow.org for any required clarification.