



**Submission to the United Nations Human Rights Committee
During its Periodic Review of Kazakhstan (for session)**

May 26, 2025

We, Access Now, the International Justice Clinic at University of California, Irvine School of Law, and MediaNet, jointly submit to the Human Rights Committee this written contribution for adoption of the List of Issues Prior to Reporting (LOIPR) of the third cycle of periodic review on Kazakhstan.

The submission serves as a follow-up to our written contribution for adoption of the List of Issues Prior to Reporting (LOIPR)¹ and aims to inform the committee of issues of non-compliance with the International Covenant on Civil and Political Rights (ICCPR) arising after the adoption of the LOIPR, and address claims made by Kazakhstan government in their state response to the LOIPR.²

Information on submitters

Access Now, a United Nations Economic and Social Council (ECOSOC) accredited organization, routinely engages with the United Nations (UN) in support of our mission to extend and defend the digital rights of users and communities at risk around the world.³ Since its founding in 2009, Access Now has monitored the abuse and misuse of new and emerging technologies in ways that threaten the realization of fundamental human rights, including the freedoms of expression, association, and peaceful assembly, and the rights to privacy and non-discrimination. Access Now closely monitors internet shutdowns and other intentional disruptions to internet access, and coordinates the global #KeepItOn coalition and campaign against internet shutdowns.⁴

¹ LOIPR, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKAZ%2FQPR%2F3&Lang=en, April 5, 2023; our previous submission is accessible here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FICS%2FKAZ%2F51016&Lang=en.

² State Response to LOIPR https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKAZ%2F3&Lang=en, July 17, 2024

³ Access Now, [About Us](#).

⁴ Access Now, [#KeepItOn](#).

The International Justice Clinic at the University of California, Irvine School of Law, produces research and conducts advocacy promoting compliance with international human rights law and, *inter alia*, UN human rights mechanisms.⁵ Since its founding in 2012, under the direction of Professor David Kaye, a former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Clinic has continuously researched and advocated for freedom of expression and privacy. Supported by the Clinic, Prof. Kaye recently testified on the impact of the human rights caused by spyware before the European Parliament's PEGA Committee.⁶

MediaNet International Centre for Journalism is a non-governmental organization founded by Kazakhstani journalists in 2004.⁷ The organization works on developing civil society in Kazakhstan and other Central Asian countries by strengthening the potential and capacities of independent mass media. MediaNet supports public organizations and defends human rights and fundamental freedoms. In the last two years, MediaNet campaigned for freedom of expression on the internet.

Information on Kazakhstan's non-compliance with the Covenant

Oppression of Critical Voices: Internet shutdowns and the criminalization of dissenting speech

Summary

Our previous report addressed Kazakhstan's suppression of internet access through widespread internet shutdowns as well as throttling and blocking websites to disrupt opposition political activities. These issues, as well as issues regarding the criminalization of certain speech, were addressed to Kazakhstan in LOIPR item 23(a).⁸ Rather than committing to rectify these problems, Kazakhstan's response attempts to justify their actions through an overly permissive interpretation of their ICCPR obligations.⁹

Since issuing our letter on January 3, 2023, these issues have continued to persist.¹⁰ Kazakhstan has failed to repeal its law authorizing the government to shut down internet access and has

⁵ The International Justice Clinic, [About the Clinic](#).

⁶ David Kaye, [Testimony to the PEGA Committee of the European Parliament](#), the impact of spyware on fundamental rights, October 27, 2022. You can find out about the Clinic's other work at <https://ijclinic.law.uci.edu/>.

⁷ MediaNet, [About MediaNet](#).

⁸ LOIPR, *supra* note 1, para. 23, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKAZ%2FQPR%2F3&Lang=en, April 5, 2023.

⁹ State Response to LOIPR https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKAZ%2F3&Lang=en, July 17, 2024

¹⁰ Kazakhstan: TLS MITM attacks and blocking of news media, human rights, and circumvention tool sites, <https://ooni.org/post/2024-kazakhstan-report/>,

bolstered its ability to restrict free speech through the adoption of additional media regulations.¹¹ These pieces of legislation use the pretext of establishing greater freedom of speech protections to enhance government control over media in the state.

Relevant Articles of ICCPR

Articles 2(1) and (3), 19(2) and (3), 21

State response to LOIPR and its insufficiency in factual provision and falseness of legal analysis

The Kazakhstan government provided *some* information in response to the LOIPR. However, as we highlight below, their reports fail to include the material information about their restriction on freedom of expression of people in Kazakhstan. They also applied an overly broad interpretation of Article 19(2)(3), drawing a conclusion that contradicts with the Committee's General Comment 34.

Criminal sanctions on speech

The Committee, in its April 5, 2023 LOIPR, addressed Kazakhstan's suppression of free speech in items 23. Here, The Committee reiterated their previous recommendation (para. 50) by asking whether steps had been taken to decriminalize offenses related to free expression, including those that criminalize insulting the president.¹² In response to this, Kazakhstan points to their repeal of Criminal Code 373 and 374 which provided criminal penalties for insulting or "encroaching on the honor" of the President. While this is certainly a step in the right direction, it does little to limit the government's ability to punish free expression, as insulting public officials is still a criminal offense.¹³

Additionally, Kazakhstan touts their reclassification of defamation from a criminal offense, punishable by up to five years in prison, to an administrative one.¹⁴ Under the administrative code, convicted individuals can face fines of up to 750 times the minimum monthly salary in the country and up to 30 days in jail.¹⁵ Although less punitive than under the criminal code, the penalties placed on defamation under the administrative code will continue to chill free expression.

Like other restrictions on expression addressed in their State response, Kazakhstan appears to argue that the enforcement of insult laws against journalists complies with article 19(3) for the sole reason that it is provided for in law. In Para. 390 of the state report, they state that

¹¹ Official Website, President of The Republic of Kazakhstan, <https://akorda.kz/ru/ob-utverzhenii-informacionnoy-doktriny-respubliki-kazahstan-2025248>.

¹² See LOIPR, *supra* note 1, item 23.

¹³ See State Response to LOIPR, *supra* note 2, para. 391 and 412.

¹⁴ Committee to Protect Journalists, [Kazakhstan decriminalizes defamation, but maintains detentions, criminal penalties for speech offenses](#), July 8, 2020.

¹⁵ Article 19; [Kazakhstan: Legal reforms essential to protect expression](#), April 7, 2020.

“[r]estrictive measures are applied strictly within the law, in order to ensure the safety of citizens and respect for public order.”¹⁶ This argument, however, fails to consider whether the restriction is a necessary and proportionate measure for pursuing their stated aim. Under Article 19(3) restrictions on freedom of expression are permitted only in circumstances where the restrictions are (1) provided for by law, (2) pursue a legitimate aim, and (3) are necessary.¹⁷ In order for a restriction to be deemed necessary it must be effective, proportionate, and be the least restrictive means of achieving the stated objective. Here, Kazakhstan fails to demonstrate a direct and immediate connection between the enforcement of insult laws and the protection of public safety and order. In order for the Committee to properly assess the necessity of the restriction, states must clearly and specifically demonstrate the exact nature of the threat to one of the grounds enumerated in paragraph 3 that justifies any restriction on freedom of expression.¹⁸ Furthermore, General Comment 34 states that “The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”¹⁹

Kazakhstan fails to acknowledge General Comment No. 34 in their attempt to defend their prosecution of or imposition of sanctions on journalists and other voices of dissent. In the state response they state that, “Criminal proceedings have been initiated against individual journalists and public figures only in cases in which acts indicative of the commission of criminal offences have been carried out.”²⁰ They further state that criminal offenses include “[i]nciting social and ethnic hatred, insulting officials and promoting separatism or terrorism.” While it could be argued that these “extremism” offenses serve a facially legitimate objective in certain contexts, in practice, they are interpreted broadly to allow the prosecution of people expressing opposition to the government.²¹ Because of the vague definitions of words such as “extremism,” “separatism,” and “promoting,” Kazakhstan’s laws on extremism violate Article 19(3) for their lack of specificity. Under 19(3) laws must be crafted with sufficient precision to allow individuals to regulate their conduct accordingly. The vague definitions in these laws, coupled with the unfettered discretion granted to officials charged with executing them,²² creates considerable uncertainty for individuals attempting to comply.

This was addressed in LOIPR item 9 where the Committee requested information as to whether “legislative provisions have been revised to eliminate the broad formulation of the concepts of “extremism”, “inciting social or class hatred” and “religious hatred or enmity.””²³ In response to this, the Kazakhstan government reports that “article 174 of the Criminal Code, concerning

¹⁶ See State Response to LOIPR, *supra* note 2, para. 390

¹⁷ UNESCO, [The Legitimate Limits to Freedom of Expression](#), September 17, 2021.

¹⁸ General Comment 34, para 36, [CCPR/C/GC/34](#), September 4, 2011.

¹⁹ *Id.* at para. 42.

²⁰ See State Response to LOIPR, *supra* note 2, para. 390-391.

²¹ Clooney Foundation for Justice, [Journalist Convicted Under Unfair Anti-Extremism Law](#), April 27, 2022.

²² *Id.*

²³ See LOIPR, *supra* note 1, para 9.

incitement to social, ethnic, clan, racial, class or religious discord, was rendered more humane.”²⁴ No steps were taken to reformulate the laws to comply with The Committee’s specificity requirement. Furthermore, no information is provided to back up the claim that enforcement of the laws was rendered more humane. This claim is also contradicted by the fact that the law continues to be used to prosecute and imprison journalists.²⁵

New legislation on speech restrictions

Since the submission of our previous report on January 3, 2023, Kazakhstan’s government has drafted new legislation that, while ostensibly increasing freedom of expression, tightens the government’s grip on the flow of information.

On March 20, 2023, President Kassym-Jomart Tokayev issued the decree "On approval of the Information Doctrine of the Republic of Kazakhstan" (the Doctrine). Although the Doctrine purports to emphasize the value of a diverse media landscape and media literacy among its population, its focus centers on the importance of preventing the spread of misinformation to maintain “information sovereignty” and “the main ideological vector.” Because no definition is provided for either phrase, it likely fails the necessity and proportionality test under Article 19(3) of ICCPR due to the lack of specificity as speech regulation. Although the Doctrine does not carry direct legislative effect, it demonstrates the government's attitude towards protection of freedom of expression and indicates a potential direction for future legislation that may use this broad language to justify further suppression of information and new ways to prosecute journalists critical of the government.²⁶

In September 2023, the government enacted the Law on Online Platforms and Advertising. This law requires social media platforms with over 100,000 daily users to appoint a representative based in Kazakhstan who will be charged with removing content that the government deems to be false.²⁷ According to the Kazakhstan government, the new law is aimed at combating “internet fraud, cyberbullying and uncontrolled illegal advertising.”²⁸ In addition to requiring online bloggers and influencers to register with the Government, the law introduces a ban on posting and disseminating false information on online platforms such as Telegram, Facebook, Instagram, and YouTube.²⁹ In addition to creating a new framework for the government to censor social media users and bloggers, the law also allows for civilians, who have “been subjected to the dissemination of false information” to file removal requests to platforms and sue in cases when they fail to comply.³⁰ This law ultimately tightens Kazakhstan’s control over online information and runs counter to The Committee’s 2011 Concluding observations which

²⁴ See State Response to LOIPR, *supra* note 2, para. 126.

²⁵ Human Rights Watch, [2023 Country Report](#), March 8, 2023.

²⁶ Roman Reimer, [Digital Rights and Freedom Landscape](#), June 2, 2023.

²⁷ Freedom House, [Country Report, 2024](#); 2024

²⁸ Library of Congress, [Kazakhstan: New Legal Framework for Online Platforms](#), September 9, 2023.

²⁹ *Id.*

³⁰ *Id.*

direct the Kazakhstan government to repeal or otherwise revise legal provisions limiting freedom of expression (para. 50(b)).³¹

On June 19, 2024, Kassym-Jomart Tokaev signed into effect a new Law on Mass Media which empowers government agencies to conduct “mass media Monitoring to ensure that all media outlets comply with national legislation and do not violate “national, cultural, and family values.” Under this law, as well as previous versions issued in 1999 and 2014, all internet content including social media accounts are considered media outlets. By treating all internet resources as media outlets, the Mass Media Law holds web publishers accountable for their own content.³² As terms such as “national, cultural, and family values are not defined in the law, officials will have overly broad discretion to block access to certain information.³³

Furthermore, the law requires foreign journalists to register with the government and have a physical presence in the country. This gives the government expansive power to interfere with the work of journalists by denying foreign media registration to outlets whose material is deemed to contain “propaganda of extremism.”³⁴ As noted earlier, Kazakhstan’s vague and overbroad definition of “extremism” is often used abusively to punish legitimate, protected speech.³⁵ Because the law forbids foreign journalists from working in the country without appropriate accreditation, the denial, withdrawal, or suspension of such accreditation can be used to suppress voices critical of authorities.³⁶

Internet Shutdowns

In response to our report, the Committee also asked Kazakhstan to respond to reports of systematic restrictions on online expression through the use of internet shutdowns (para. 23). In the state response, Kazakhstan attempts to justify their actions as an exercise of domestic law that complies with Article 19(3). They state that domestic law provides the possibility of suspending communications, including the internet, in exceptional circumstances, or in the event of widespread “human-caused or social emergencies.”³⁷ This justification runs contrary to The Committee's General Comment No. 34 which states: Article 19(2) protects “internet-based modes of expression;”³⁸ any restrictions on the operation of websites, blogs or social media websites must meet a stringent standard under Article 19(3);³⁹ and internet shutdowns and website throttling or blockings are per-se disproportionate (“permissible restrictions generally

³¹ Human Rights Committee, Concluding Observations on Kazakhstan, CCPR/C/KAZ/CO/1, 19 August 2011.

³² Human Rights Watch, [New Mass Media Law Threatens Freedom of Speech, Information in Kazakhstan](#), June 22, 2024; Human Rights Watch, 2023 Country Report, supra note 25.

³³ Id.

³⁴ Id.

³⁵ Human Rights Watch, [Baseless ‘Extremism’ Case Heads to Court](#), February 8, 2024.

³⁶ Human Rights Watch, supra note 32.

³⁷ See State Response to LOIPR, supra note 2, para. 394.

³⁸ General Comment No. 34, supra note 18, para. 12.

³⁹ Id. at para. 43.

should be content-specific and generic bans on the operation of certain sites and systems are not compatible with paragraph 3”).⁴⁰

Although stating that the “adoption of such measures” in early 2022 was “exceptional” and “related to the state of emergency declared in various regions,”⁴¹ they go on to deny reports of a “blanket internet shutdown” occurring.⁴² This assertion is contrary to on-the-ground reporting and aggregate data regarding internet traffic to and from Kazakhstan during the period in question.⁴³ Even if the internet shutdowns were not “blanket shutdowns,” as Kazakhstan asserts, they would still constitute a per se violation of Article 19.⁴⁴

In their state report, Kazakhstan also denies that any measures were taken to disconnect the internet during the presidential elections held in November of 2022.⁴⁵ Contrary to the State’s claim that no internet shutdowns occurred during, before, or after the presidential election, there was a documented internet shutdown in Astana on the evening of November 26, coinciding with President Tokayev’s inauguration.⁴⁶ While the State Technical Service attributed the disruption to “equipment failure,” independent media sources and observers noted that the disconnection occurred at the same time as protests and the arrests of participants in businessman Marat Abiyev’s project.⁴⁷

Throttling and Blocking of Websites

Regarding the Committee’s request to respond to the censorship of certain online materials Kazakhstan states that “In Kazakhstan, access to online resources is restricted exclusively in the case of websites found to contain materials considered illegal under both national legislation and international instruments[.]” they go on to state that this includes materials that “promote terrorism, extremism or suicide; relate to the distribution of pornography or the sale of narcotic drugs or weapons; constitute propaganda for separatism or terrorism; or incite inter-ethnic discord.”⁴⁸ Here, as with laws criminalizing “extremism,” the broad or undefined categories of impermissible speech violate Article 19 by giving authorities unfettered discretion to censor

⁴⁰ Id. See also Report of the Special Rapporteur on peaceful assembly and of association, A/HRC/47/24/Add.2, June 15, 2021, para. 44 (attempts to tackle problems such as disinformation and hate speech cannot justify “internet shutdowns, which are disproportionate by default, and should strictly adhere to international human rights principles and standards, including those concerning the right to freedom of expression”).

⁴¹ See State Response to LOIPR, supra note 2, para. 395

⁴² Id., at para. 397

⁴³ Kentik, [Internet Blackout in Kazakhstan](#), January 5, 2022.

⁴⁴ See Report of the Special Rapporteur on peaceful assembly and of association, supra note 40, at para. 44

⁴⁵ See State Response to LOIPR, supra note 2, para. 398.

⁴⁶ Inform Buro, [Outage or rally: is the official reason for the internet shutdown in Astana on November 26 confirmed?](#), December 6, 2022.

⁴⁷ Radio Free Europe, [Internet outage in Astana on presidential inauguration day explained by “equipment failure,”](#) November 27, 2022.

⁴⁸ Id., at para. 399.

content.⁴⁹ This violation is bolstered by the fact that the ministries overseeing the regulation of online speech are neither transparent nor subject to independent oversight.⁵⁰

The implementation of website blocking is becoming more frequent. In 2023 alone, 15,835 web pages were blocked at the request of regulators.⁵¹ Among these blocked sites were World Health Organization publications and sites providing health information for LGBTQ+ teens.⁵² The primary reason for blocking these sites, according to an official response by the Ministry of Information and Social Development, included the dissemination of false information, terrorist and extremist propaganda, and copyright violations, as well as hosting content related to pornography, suicide, narcotics, and online gambling.⁵³

For users who wish to access these pages, as well as the tens of thousands that remain blocked from earlier orders, their only option is to use a VPN. However, most VPNs are blocked in the country and authorities have previously confirmed that they can throttle VPNs using a court order.⁵⁴

Prosecution of Activists and Journalists

Since authoring our previous report in January 2023, Kazakhstan authorities have continued to suppress political opposition through criminal prosecution.

In April of 2023, Zhanbolat Mamay, head of the democratic party of Kazakhstan was convicted on charges of organizing mass riots, insulting law enforcement officers, and disseminating knowingly false information in connection with the 2022 January protests.⁵⁵ The conviction prohibited him from any “social or political” activism, including publishing on social media, for 6 years. A violation of the court ordered prohibition will result in imprisonment.⁵⁶

In February 2023, Makhambet Abzhan, a government critic and blogger, was sentenced to nine years in jail for allegedly blackmailing a businessman with the publication of defamatory materials. Abzhan had previously been imprisoned for two months in 2022 on the same charges. Other journalists have condemned this as a “political hunt.”⁵⁷

In July 2023, Aigerim Tileuzhan, an civil rights activist and journalist was sentenced to four years in prison for allegedly “organizing mass unrest” at the Almaty airport during the January

⁴⁹ General Comment No. 34, *supra* note 18, para. 25.

⁵⁰ Freedom House, [Freedom on the Net](#), 2024.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Human Rights Watch, 2023 Country Report, *supra* note 25.

⁵⁶ Human Rights Watch, [Opposition Figure Convicted in Kazakhstan](#), April 12, 2023.

⁵⁷ Cheryl Reed, [Kazakhstan: Citizen journalist’s arrest decried by media rights advocates](#), July 5, 2022

2022 events.⁵⁸ Tileuhzhan’s conviction, as well as the conviction of four others who were tried on related charges have been widely criticized as politically motivated.⁵⁹

In May, police arrested Marat Zhylanbaev, leader of the unregistered “Alga, Kazakhstan” party, for alleged extremist activity. This came shortly after he completed a 20-day sentence for an unsanctioned protest.⁶⁰

On October 18, 2024, Kazakhstani journalist Daniyar Adilbekov was sentenced to 4.5 years in prison on charges of making and disseminating false information. The allegation stems from a Telegram post that accused an energy official of corruption⁶¹

On August 2, 2024, Duman Mulkhammedkarim was convicted of “financing extremist activities” and “participating in the activities of a banned extremist organization” for posting a video interview of a prominent opposition figure to his YouTube channel.⁶² After a closed trial, during which he was detained, Mulkhammedkarim was sentenced to 7-years in prison. Mulkhammedkarim had previously reported on anti-government protests in January 2022, and the violent response by authorities.⁶³

In February of this year, Temirlan Ensebek was charged with “inciting interethnic discord” under Article 174 of Kazakhstan’s Criminal Code for a satirical post on his instagram story. He now faces up to seven years in prison.⁶⁴

Recommended questions

- How, specifically, has Article 174 of the Criminal Code been rendered “more humane,” or altered to meet obligations of the covenant?
- How will Kazakhstan prevent internet shutdowns, and blocking and throttling of websites, which are incompatible with the Covenant?
- How and when will Kazakhstan investigate the 2022 internet shutdowns as well as those in 2018, 2019, and 2021, hold those responsible accountable, provide meaningful remedies to the people affected, and ensure non-repetition?

Suggested recommendations to be included in the Concluding Observations

- Review and revise the Law on Mass Media (June 19, 2024) so that it complies with Articles 19(2) and (3) and 21;
- Revise the definition of “extremism” in all national legislation to comply with Article 19(2) and (3).

⁵⁸ Radio Free Europe, [Kazakh Supreme Court Denies Retiral of Activists](#), July 16, 2024.

⁵⁹ EurasiaNet, [Kazakhstan: Stiff sentence for purported airport plotter sparks anger](#), July 11, 2023.

⁶⁰ Human Rights Watch, 2023 Country Report, *supra* note 38.

⁶¹ Radio Free Europe, [Kazakh Journalist Jailed For 4 Years Amid Press Crackdown](#), October 18, 2024.

⁶² Human Rights Watch, Baseless Extremism Case Heads to Court, *supra* note 35.

⁶³ Clooney Foundation for Justice, [Kazakhstan v.Duman Mukhammedkarim](#), January 2025.

⁶⁴ Reza Hossaini, [Kazakhstan criminal charge for satirical post infringes on free expression](#), February 13, 2025.

- Revise administrative penalties for defamation to comply with Article 19(2) and (3).
- Hold the responsible individuals accountable for imposing internet shutdowns in 2022, 2018, 2019, and 2021, among others, and provide remedies to the people affected so that it complies with Article 2(3); and
- Take all effective steps necessary to end shutdowns, throttling, or blocking of the internet or websites, especially during elections, protests, and other important events for individuals to exercise their fundamental human rights so that it complies with Articles 2(1), 19(2) and (3), and 21, including by working with the internet service providers.

Use of spyware against journalists, human rights defenders, and government critics

Summary

The Kazakhstan government has used spyware to surveil journalists, activists, and political opponents, raising serious concerns about privacy and human rights. Investigations have revealed that authorities deployed sophisticated surveillance tools, such as Pegasus spyware, to monitor communications and gather information on critics of the regime. This covert use of technology to track and intimidate dissenters is part of a broader pattern of repression, aimed at stifling opposition and maintaining control over public discourse in Kazakhstan.

Relevant Articles of ICCPR

Articles 2(1) and (3), 17(1), 19, 21, 22

Insufficient response to LOIPR

In LOIPR paragraph 23, The Committee requested that Kazakhstan respond to reports that spyware has been used to systematically restrict online expression in the country. In the same paragraph, The Committee further requests that Kazakhstan provide statistical data “on the complaints of harassment of and threats and violence against human rights defenders and journalists, including those related to the alleged use of spyware against them, and on the outcomes of those complaints.”⁶⁵

In their state response to the LOIPR, Kazakhstan wholly fails to address, or even mention, any issues related to their use of spyware.⁶⁶ The Kazakhstan government’s lack of response is alarming given the gravity and credibility of the allegations raised against them. It is especially concerning in light of the severe chilling effect that the global proliferation of spyware has had on the exercise of fundamental human rights.⁶⁷

⁶⁵ See LOIPR, *supra* note 1, para 23.

⁶⁶ See State Response to LOIPR, *supra* note 2.

⁶⁷ See our [previous report](#).

In addition to the use of spyware, the Committee asked the Kazakhstan government to provide information on the government's "national security certificates" on digital devices, in direct response to our previous report.⁶⁸ However, the Kazakhstan government failed to provide any answers. The lack of even a mere acknowledgment of the issue raises serious questions about the government's understanding of the norms of Article 17 of the ICCPR and the underlying values of the right to privacy.

Spyware is a form of malicious software covertly installed on devices to enable secret monitoring, extraction, or analysis of user data. Advanced variants—such as Pegasus, developed by the Israeli firm NSO Group,⁶⁹ and Hermit,⁷⁰ created by the Italian company RCS Lab—can be deployed remotely without any action from the target. Once installed, these tools grant attackers full access to the victim's device.

Our previous letter addressed numerous allegations that, since 2016, the government of Kazakhstan had been deploying spyware as a means of harassing journalists, human rights defenders, and government critics.⁷¹ These allegations have been corroborated by multiple different sources using various means of forensic investigation to detect the use of malicious surveillance software.⁷²

Kazakhstan's use of spyware violates the covenant

As we stated in our previous letter, the use of spyware against journalists, activists, and government critics violates ICCPR Articles 19 and 17. In General Comment 34,⁷³ The Human Rights Committee affirms that Article 19(1) protects the right to hold opinions without interference, a right that admits no exceptions or limitations. The use of spyware against individuals who hold critical views of the government infringes upon this right by discouraging individuals from freely conducting research or engaging in communication via mobile or computer devices—tools that are essential for forming and holding opinions.

The use or threat of spyware undermines rights to privacy, expression, assembly, and association. The Human Rights Committee has clarified—in General Comments 16,⁷⁴ 34, and 37, and in cases such as *Toonen v. Australia*,⁷⁵ *Romanovsky v. Belarus*,⁷⁶ and *Madhewoo v.*

⁶⁸ Id., at page 10.

⁶⁹ Amnesty International, What is spyware and what can you do to stay protected?, December 14, 2023.

⁷⁰ Lookout, Lookout Uncovers Hermit Spyware Deployed in Kazakhstan, <https://www.lookout.com/threat-intelligence/article/hermit-spyware-discovery>, June 16, 2022.

⁷¹ Id.

⁷² Amnesty International, [Kazakhstan: Four activists' mobile devices infected with Pegasus Spyware](#), December 9, 2021; and Lookout, [Lookout Uncovers Hermit Spyware Deployed in Kazakhstan](#), June 16, 2022.

⁷³ General Comment No. 34, *supra* note 18, para. 9.

⁷⁴ Human Rights Committee General Comment No. 16 (1988): Article 17 (Right to Privacy), CCPR/C/GC/16, April 8, 1988, paras. 3 and 7.

⁷⁵ Human Rights Committee, *Toonen v. Australia*, CCPR/C/50/D/488/1992, March 31, 1994, para. 8.3.

⁷⁶ Human Rights Committee, *Vladimir Romanovsky v. Belarus*, CCPR/C/115/D/2011/201, December 7, 2015, para. 7.2.

*Mauritius*⁷⁷—that interference with these rights is permissible only in exceptional cases where it meets strict requirements of legality, legitimacy, necessity, and proportionality, and where safeguards exist to prevent arbitrary interference.

A strong case can be made that any use of spyware, especially spyware with similar characteristics to Pegasus will fail the requirements of Articles 17, 19(2)(3), 21, and 22. First, they fail the proportionality principle as it enables broad and near-total access to a target’s data and recording functions. Additionally, it is unclear whether safeguards meeting the requirements of Article 17(1) can be effectively designed and implemented.⁷⁸

The General Assembly and the Human Rights Council have repeatedly stressed that states must refrain from unlawful or arbitrary surveillance and establish independent oversight mechanisms to reign in the use of spyware.⁷⁹ Additionally, Multiple UN experts called for a global moratorium on the sale and transfer of spyware.⁸⁰

Furthermore, The Human Rights Committee stated in General Comment 31 that states are obliged to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies,” and if the violations are revealed, to provide “accessible and effective remedies” to victims, “take measures to prevent a recurrence of a violation,” and “ensure that those responsible are brought to justice.” The Committee further stated that failure of these obligations constitutes a separate violation of the Covenant.⁸¹

Kazakhstan has not fulfilled its obligations regarding the alleged use of spyware against individuals within its jurisdiction. Their response to LOIPR also makes no indication that any measures have been taken to meet these responsibilities.

Suggested questions

- Has the government of Kazakhstan ended the use of spyware, especially against journalists, human rights defenders, and government critics, which is incompatible with the Covenant?
- How and when will the government of Kazakhstan investigate the use of spyware, hold the responsible accountable, provide meaningful remedies to people affected, and ensure non-repetition?

Suggested recommendations to be included in the Concluding Observations

⁷⁷ Human Rights Committee, *Madhewoo v Mauritius*, CCPR/C/131/D/3163/2018, July 21, 2021, paras. 7.4 and 7.6.

⁷⁸ David Kaye, Testimony to the PEGA Committee of the European Parliament, *supra* note 6, para. 15.

⁷⁹ See *id.*

⁸⁰ The Office of the High Commissioner for Human Rights, [Spyware scandal: UN experts call for moratorium on sale of ‘life threatening’ surveillance tech](#), August 12, 2021.

⁸¹ *Id.*

- Implement a moratorium on the use of spyware until Kazakhstan designs and implements safeguards that can effectively prevent any abuse of spyware to meet the requirement of Article 17(1).⁸² Such safeguards include:
 - judicial pre-approval;⁸³
 - effective and independent oversight which;
 - monitors every process of each spyware use, including judicial pre-authorization, actual spyware use, and termination of the use;
 - investigates alleged use of spyware, which violates Article 17, 19, 21, and 22;
 - publicly discloses the result of such oversight for public scrutiny;
 - prohibition of data sharing and data repurposing;⁸⁵ and
 - prohibition of use of evidence which is directly or indirectly obtained through the misuse of spyware.⁸⁶
- Stop using spyware and other forms of invasive surveillance against journalists, activists, human rights defenders, and government critics, to comply with Articles 17, 19, 21, and 22.
- Investigate such uses of spyware and hold responsible individuals accountable, and provide access to effective remedies to people affected, including providing ex-post notification to all individuals against whom spyware is used so that they can exercise the right to remedy, to comply with Article 2(3).⁸⁷

⁸² See European Parliament Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware, Draft Report, November 8, 2022, para. 586. See also, David Kaye, [Here's what world leaders must do about spyware](#), Committee to Protect Journalists, October 13, 2022; and Access Now, [The Geneva Declaration on Targeted Surveillance and Human Rights](#), September 29, 2022.

⁸³ See Human Rights Committee, Concluding Observations on Italy (May 1, 2017), CCPR/C/ITA/CO/6, para. 37. See also, The Office of the High Commissioner for Human Rights, The right to privacy in the digital age (2018), A/HRC/39/293, August 2018, para. 39 (“[the judicial branch] needs to make sure that there is clear evidence of a sufficient threat and that the surveillance proposed is targeted, strictly necessary, and proportionate and authorize (or reject) ex ante the surveillance measures”); and The right to privacy in the digital age (2014), A/HRC/27/37, June 30, 2014, para. 30.

⁸⁴ See Human Rights Committee, Concluding Observations on Macao, China, CCPR/C/CHN-MAC/CO/2, 27 July 2022, para. 33; Human Rights Committee, Concluding Observations on Georgia, CCPR/C/GEO/CO/5, September 13, 2022, para. 40. See also, The Office of the High Commissioner for Human Rights, The right to privacy in the digital age (2018), supra note 83, paras. 39 and 40; The right to privacy in the digital age (2014), supra note 83, paras. 37 and 38.

⁸⁵ See *Madhewoo v Mauritius*, supra note 77, paras. 7.4 and 7.6; Human Rights Committee, Concluding Observations on Canada, CCPR/C/CAN/CO/6, August 13, 2015, “c. Counter-terrorism.”

⁸⁶ See Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhumane or degrading treatment or punishment), March, 10, 1992, para. 12.

⁸⁷ See Concluding Observations on Italy, supra note 83, para 37; Human Rights Committee, Concluding Observations on Poland, CCPR/C/POL/CO/7, November 23, 2016, paras. 39 and 40; and Concluding Observations on Ukraine, CCPR/C/UKR/CO/8, 9 February 2022, para.42.

Thank you very much for your consideration. If you have any questions on this submission, please contact Hinako Sugiyama (hsugiyama@law.uci.edu) at the International Justice Clinic, the University of California, Irvine School of Law.