

NECESSARY AND PROPORTIONATE?
TIKTOK BANS AND AMERICAN OBLIGATIONS UNDER
INTERNATIONAL HUMAN RIGHTS LAW

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INTRODUCTION

American policymakers and legislators have increasingly called for a ban or other serious restrictions on TikTok in response to perceived fears about surveillance, data collection, manipulation and espionage by the Chinese government. A bipartisan group of senators introduced legislation in early March, known as the RESTRICT Act, that would give the Biden administration significant powers to restrict technologies like (but not only) TikTok.¹ The Biden administration itself reportedly has been seeking authority from Congress to take a variety of coercive measures against TikTok.² At the end of January 2023, Republican U.S. Senators introduced the aptly-named *No TikTok on United States Devices Act*, which would prohibit the app from being downloaded on all mobile devices in the United States, including private persons' mobile phones.³

Washington is not alone; the TikTok ban movement has gone viral. Several U.S. states have already restricted the use of TikTok on state-issued devices.⁴ Meanwhile, several public universities have, on asserted cybersecurity and data protection grounds, also prohibited access to TikTok when a person's mobile device is connected to the school's Wi-Fi network.⁵ Outside the United States, Canada banned the app from all government-issued devices.⁶ European Union governing institutions, the European Commission and European Council, recently banned their staff from installing TikTok on any work or personal device that has official EU email and communication apps installed.⁷ This ban comes after TikTok acknowledged that some of its staff in China may have access to the data of European users, although the company rejected any notion that the Chinese government has any access or control over that data.⁸

A nationwide ban or similar substantial restriction would constitute a serious restriction on Americans' freedom of expression, one that resembles acts

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of censorship that the United States condemns in countries around the world. The United States has international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) to promote and protect the freedom of expression, and any restriction on that fundamental freedom must meet the tests of legality, legitimacy, and necessity. Considering the millions of Americans who use TikTok to seek, receive, and impart information and ideas of all kinds, any prohibition on the social media app must meet the high standards of human rights law under the ICCPR. This report seeks to place the calls to ban TikTok in a human rights context.

What is TikTok?

Before addressing the human rights obligations at stake in the debate over TikTok, it may help to review the application itself – what it is, what it allows its users to do, how it collects data. TikTok, as is well known, is a video-sharing app that allows users to create, discover, and share short-form videos on any subject matter.⁹ ByteDance, a Chinese company headquartered in Beijing, owns TikTok, which currently has over one billion active users across 154 countries, placing it in the very highest tier of popular apps worldwide.¹⁰ While its users range in age, the app enjoys extraordinary popularity among those under 30 years old.¹¹ Its influence is palpable, the birthplace of internet dance sensations, viral political memes and conspiracy theories, disinformation and self-harm instruction, fashion trends, and much more. The app may be perceived by some as simply a place for entertainment, but TikTok also functions as a broader tool for civic engagement and public political debate, as well as a major news source for many.¹²

TikTok's vast reach derives in part from its algorithmic method, which curates each user's home feed based on user interaction (such as liking, commenting, or sharing¹³), as well as device and account indicators, and perhaps just as importantly its design.¹⁴ The device and account indicators include the mobile device type and carrier, time zone settings, screen resolution and operating system, battery state, audio settings, language preferences, and keystroke patterns. The social-media app also automatically collects users' approximate location information through SIM cards or IP addresses. In the United States, the user's approximate location is limited to the zip code in which the user is located.¹⁵ According to the app, precise GPS location information is collected only if users affirmatively give permission through the user's mobile device's system settings.¹⁶ Furthermore, only with user permission can the app access a mobile device's photos and videos.¹⁷ If a user chooses to upload a video, then the app can collect various information about the video including identifying objects and scenery that appear, nature of the audio, text of any words spoken in the video, and "existence and location within an image of face and body features and attributes."¹⁸ Metadata is also collected when users choose to upload a video.¹⁹ Users may also choose to provide additional information such as their name, date of birth, photograph, phone contacts, and payment card numbers. TikTok's algorithmic method is clearly

successful, as one study reported that an average user spends around 95 minutes a day on the video-sharing platform, compared to 51 minutes a day on Instagram.²⁰

How international law protects freedom of expression

Much of the debate around TikTok rotates around a set of security concerns which, in the abstract, may be real and legitimate causes for policy response. Yet given the massive free speech implications of a ban or significant restrictions on TikTok, the debate should identify principles according to which such moves would be justified under law. To date, such a framework has been missing from much of the public debate, which is largely framed unhelpfully as a typical security-versus-liberty balancing – a balancing that too often results in excessive deference to the state and creeping interference with individual rights. The human rights framework, by contrast, reframes such debates, demanding that restrictions on expression satisfy the kinds of burdens of proof one should expect from governments that claim to so highly value free speech.

U.S. global obligations rest on a human rights framework that the United States itself helped develop and establish. Most importantly, the United States ratified the ICCPR in 1992, following its transmission to the Senate by President George H.W. Bush.²¹ A multilateral treaty that commits its 173 state parties to respect and ensure the civil and political rights of individuals within their jurisdictions, the ICCPR is one of the central treaties in human rights law. Article 19 of the ICCPR, echoing Article 19 of the Universal Declaration of Human Rights, provides the foundational statement of state obligations to protect the freedom of opinion and expression.²² Article 19(1) recognizes the right to hold opinions without interference.²³ This right is absolute, and no restrictions or limitations may be imposed on it.

Article 19(2) recognizes that everyone enjoys the right to freedom of expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”²⁴ The breadth of protection of freedom of expression under Article 19(2) is robust, multi-directional, protecting not only speakers but also audiences’ rights to seek and receive information.

The Human Rights Committee, the body of independent legal experts that monitors implementation of and compliance with the ICCPR, has referred to the freedom of opinion and expression as “the foundation stone for every free and democratic society.”²⁵ The Committee’s General Comment No. 34, a widely-embraced interpretation of Article 19, emphasizes that “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.”²⁶ While Article 19 is especially

protective of political discourse,²⁷ it is also highly protective of freedom of expression regardless of the subject matter, protecting everything from “discussion of human rights” to “cultural and artistic expression” and “commercial advertising.”²⁸ The principles underlying Article 19 are the same as those found in the First Amendment to the U.S. Constitution, reflecting the fact that its drafters and inspirations included prominent American diplomats, lawyers and even former First Lady Eleanor Roosevelt.

Unlike the right to hold an opinion, the right to freedom of expression may be limited by the state under a narrow set of circumstances. To be lawful, Article 19(3) requires that any speech restriction be (1) provided by law and (2) necessary to protect (3) a legitimate objective. It is the government that bears the burden of showing how its restrictions meet this three-part test. For a restriction on freedom of expression to be “provided by law,” it must be precise, public and transparent, and avoid providing government authorities with unbounded discretion.²⁹ A restriction on freedom of expression is “legitimate” only if it aims to protect those interests identified in Article 19(3): (i) the protection of the rights or reputation of others, or (ii) the protection of national security, public order, or public health or morals. A restriction is necessary only if it is the least intrusive measure to achieve a legitimate state interest, not just “useful,” “reasonable,” or “desirable.” The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued. The restriction must also be directly related to the specific need on which they are predicated.³⁰ Human rights law also imposes duties on States to ensure enabling environments for freedom of expression and to protect its exercise.³¹

What human rights law requires the United States to demonstrate

Outlawing or otherwise severely restricting American users’ access to TikTok would raise serious questions about the United States’ compliance with its obligations under the ICCPR to protect and promote the freedom of expression of all those within its jurisdiction. TikTok is a platform for communication, entertainment, knowledge and more for millions of people in the United States, a tool for transnational communication that Article 19(2) explicitly protects with its language, “regardless of frontiers.” TikTok enables millions of Americans to exercise their protected rights under Article 19(2), both to impart information and ideas and also to seek and receive them, regardless of the country of origin. If the United States seeks to restrict or ban TikTok, it must show that such action satisfies all of the cumulative elements of the three-part test identified above.

1. Are TikTok bans and restrictions motivated by a legitimate purpose?

We will take what is typically the third part of the test first, because much of the public discussion around restrictions concerns the basis for any action. It should be needless to say, but it is insufficient to argue that merely because

restrictions have a legitimate purpose, they are lawful. It is only one prong of three. At any rate, the government would have to demonstrate that a ban on TikTok is intended to promote one of the legitimate ends designated by the ICCPR, that is, to protect the rights or reputations of others, national security or public order, or public health or morals. The arguments for restrictions typically rest on national security concerns, though some also make general arguments about user privacy in the United States. Both are enumerated legitimate goals of a speech restriction (i.e., rights of others and national security), and thus could serve to satisfy the legitimacy requirement. National security claims should be subjected to particular scrutiny because states often invoke it as an overly broad pretext for adopting restrictive measures.³²

Calls for a TikTok ban often begin with a basic claim of interference with American privacy rights (in human rights terms, those rights guaranteed by Article 17 of the ICCPR, which prohibits “arbitrary or unlawful” interference with one’s privacy, family, home, or correspondence). The app, it is argued, vacuums up enormous amounts of data. This is undeniably true. However, it is not clear that TikTok’s practice is materially different from other popular social media apps. YouTube, Meta (Facebook and Instagram), Twitter, and Snapchat, for instance, also collect various types of device indicators and track user’s approximate location through SIM cards or IP addresses.³³ In addition, all of these social media platforms allow users to grant permission for the app to track their exact location via GPS, as well as gain access to their mobile device’s camera roll.³⁴ User interactions and search histories are collected across the board as well. Just like TikTok, when a user uploads a video, YouTube and Meta collect various information including identifying objects and scenery,³⁵ nature of the audio,³⁶ and the text of any words spoken in the video.³⁷ The types and amount of data collected by these social media platforms may at times differ slightly, but when taking a close look at each platform’s privacy policy, it appears that these apps generally acquire similar amounts and types of data.³⁸ For example, some have raised concerns over TikTok’s data collection of users’ keystroke patterns.³⁹ While Meta may not collect keystroke patterns like TikTok does, Meta’s privacy policy states that it automatically tracks “what you’re doing on your device, like whether our app is in the foreground or if your mouse is moving.”⁴⁰ Furthermore, Snapchat may not track keystroke patterns, but it does automatically track information from device sensors (such as accelerometers, gyroscopes, and compasses) to decipher exactly how a user is holding its mobile device,⁴¹ information that TikTok evidently does not collect.

If privacy *qua* privacy is not the specific TikTok concern but is rather a legitimate industry-wide problem, the more likely ground specifically to address TikTok appears to be a set of national security claims. According to some cybersecurity and information experts, what makes TikTok different from other popular social media platforms is not its data-collection *per se* but concern that its parent company, ByteDance, is Chinese, and its government may thus demand and

acquire access to American user data.⁴² In turn, it is feared that information could be used against Americans, whether through information operations, manipulation, surveillance, or other nefarious behavior. To be more specific, some express the concern that China can or will acquire U.S. user data and then weaponize it to surveil and influence individuals in the United States.⁴³

The fear is not new. In 2020, former President Trump issued two Executive Orders which attempted to ban TikTok and another Chinese-owned social media app, WeChat, in the United States for national security reasons. The Executive Orders declared that “the spread in the United States of mobile applications developed and owned by companies in the People’s Republic of China (China) continues to threaten the national security, foreign policy, and economy of the United States” because the social media apps’ “data collection threatens to allow the Chinese Communist Party access to Americans’ personal and proprietary information — potentially allowing China to track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage.”⁴⁴ A federal court blocked the Trump administration’s attempt at a complete TikTok ban on the grounds that it did not have the authority to do so.⁴⁵ Yet the U.S. government’s scrutiny over the app’s surveillance concerns has continued. President Biden withdrew Trump’s Executive Order, but he recently prohibited the use of TikTok on federal government devices.⁴⁶

From the start of the public debate over TikTok’s surveillance and privacy risks, the company has rejected accusations that the Chinese government has or might gain access to any data TikTok collects. In a September 2022 Senate hearing, its chief operating officer testified that “under no circumstances would we give that data to China.”⁴⁷ In another Senate hearing the previous year, a TikTok executive’s sworn testimony stated that a US-based security team decides who gets access to user data.⁴⁸ Furthermore, TikTok has pushed back against the security concerns, noting “we know we’re among the most scrutinized platforms from a security standpoint, and we aim to remove any doubt about the security of US user data. That’s why we hire experts in their fields, continually work to validate our security standards, and bring in reputable, independent third parties to test our defenses.”⁴⁹

Advocates of a TikTok ban respond to TikTok’s assurances by pointing to an internal investigation conducted by ByteDance, which discovered that four employees inappropriately obtained the data of U.S. based TikTok users.⁵⁰ The TikTok employees were immediately fired for violating company policy, and there has been no clear evidence presented as to whether any data was given to or accessed by the Chinese government.⁵¹ Following the Chinese spy balloon incident in February 2023, Democratic and Republican politicians argued that TikTok acts as a kind of spy balloon in the phones of U.S. citizens.⁵²

FBI Director Chris Wray has gone beyond the fear of Chinese data collection and use to argue that TikTok’s unique algorithm is in effect a tool used by the Chinese government to influence its users.⁵³ At the end of 2022, Wray publicly expressed concerns about China’s ability to control TikTok’s algorithm and in turn manipulate its content to use it for “influence operations.”⁵⁴ He further warned that the control of TikTok could be in the hands of a Chinese government that “doesn’t share our values.”⁵⁵ Wray’s statements have been used by lawmakers within Congress as support for a nationwide ban on TikTok.⁵⁶ Other critics share the fear that China is or would be pushing content that is sympathetic to the Chinese Communist Party in order to shift public opinion in the United States.⁵⁷

Despite the bipartisan assertion that TikTok is a national security risk, some American cybersecurity experts have come to TikTok’s defense. In response to an open letter written by Republican state legislators to Wisconsin’s Governor, requesting a TikTok prohibition on state devices, one researcher stated that “[surveillance] is the fear. But I think that’s the fear for any social media app that you put on your device.”⁵⁸ Another cybersecurity expert pointed out that many different social media platforms are already cloning TikTok, “to be clear, every app out there is trying to mimic TikTok right now. Even if we banned TikTok, we would still be left with these manipulative and addictive practices that other apps would take advantage of.”⁵⁹ Another cybersecurity expert emphasized that a nationwide ban on TikTok would be a “mistake” and that “instead of a [TikTok] ban, the U.S. government should strengthen privacy protections and bolster transparency requirements for all social media platforms.”⁶⁰

Government fears about the Chinese government accessing Americans’ user data reflect concerns about both national security and privacy. The 2020 Executive Order distilled the main recurring concerns that continue to animate political claims about TikTok: location-tracking of federal employees, information collection for blackmail, and “corporate espionage.”⁶¹ Other political figures have similarly referred to TikTok as an “espionage tool.”⁶² Considering that Chinese-based employees accessed user data in the past, the government may be able to suggest that dangers to Americans’ right to privacy remain a serious issue.⁶³

Despite the debate and the notoriety of the issue, *publicly available evidence of Chinese government access to TikTok data, to its manipulation of information amplified on the platform, and to espionage remains limited today.* The public is generally left with conjecture rather than clear evidence of abusive practices. In the absence of such evidence, it becomes plausible to have concerns that the animating reasons behind the calls for action against TikTok are because of its Chinese ownership, a factor that could arguably be rooted in discrimination – prohibited under the ICCPR and across human rights law – rather than evidence-based national security concerns. That ownership in and of itself does not figure among the grounds for a restriction on freedom of expression under Article 19(3) of the ICCPR. Indeed, Article 19(2)’s guarantee of freedom of

expression is “regardless of frontiers,” a phrase that indicates the need to be particularly mindful of restrictions that would have transnational impact. This is particularly true since TikTok creators in the United States also have a right to share their content beyond our borders. It may very well be possible to connect the various concerns of data collection and use to concrete evidence of China’s exploitation or even potential exploitation of it; that is to say, the claims may ultimately be borne out. But that empirical case – not the raw assertion of it – remains to be made. And as a reminder, it must be made by the government imposing the restriction.

2. Would restrictions or a ban meet the “provided by law” test?

Any restriction on TikTok must be “provided by law.” Also known as the “legality” requirement, common in all human rights systems, it requires more than just that there must be a statute or some other legal basis for the government to take action. Rather, the basis in law must be accessible and understandable to the public, so that individuals may take steps to comply with it.⁶⁴ The rejection of Trump’s attempt to outlaw TikTok through an Executive Order is instructive. He relied on the International Emergency Economic Powers Act (IEEPA), which gives the president authority to designate prohibited transactions based on national security threats. Yet a federal court enjoined the implementation of the order because IEEPA does not give the president the authority to prohibit “personal communication[s]” or “information or informational materials.”⁶⁵ More particularly consistent with the legality rule, the federal district court also relied on the Administrative Procedure Act (APA), which directs courts to set aside agency actions that are “arbitrary, capricious, ... or otherwise not in accordance with law.”⁶⁶ The Court reasoned that the ban on TikTok was arbitrary and capricious because the government failed to consider reasonable alternatives (which also sounds similar to the necessity requirement, discussed below).⁶⁷ While the Court was examining U.S. federal law, rather than international law under the ICCPR, many of the considerations in these rulings apply to the requirements of Article 19. The requirement of legality denies the state “unfettered discretion” in restricting freedom of expression,⁶⁸ a requirement fully consistent with the APA’s limits on “arbitrary” and “capricious” rulemaking.

Regardless, the Biden administration rescinded the Executive Order,⁶⁹ and action against TikTok is now being formulated as grounded in an act of Congress, rather than a U.S. president acting on independent or previously-granted statutory powers.⁷⁰ The Republican proposal entails a similar policy mechanism, however, with the executive acting as directed by Congress pursuant to IEEPA’s mandate to regulate international commerce.⁷¹ The just-released draft legislation known as the RESTRICT Act deserves further analysis, but it clearly provides extraordinary powers for the administration to take actions against platforms that pose an “undue or unacceptable risk of ... coercive or criminal activities by a foreign adversary that are designed to undermine democratic processes and institutions or steer policy

and regulatory decisions in favor of the strategic objectives of a foreign adversary...” or otherwise pose “an undue or unacceptable risk to the national security of the United States or the safety of United States persons.”⁷² The language of the RESTRICT Act, which appears to treat critical infrastructure and communications platforms (such as social media) similarly, evidently provides no exception for communications platforms that enable users to exercise their rights to freedom of expression. While a full analysis may be required, it is written with such broad terms that it raises serious questions as to whether it could satisfy the legality standard of Article 19(3). So-called “unacceptable risk[s]” to national security, or risks of criminal activities “designed to undermine democratic processes and institutions”, may be hinting at a legitimate objective, but whether the legislation’s broadly worded scope would appropriately constrain policymakers deserves significant scrutiny.

3. Would a restriction or ban meet the test of necessity?

The Human Rights Committee has stressed that “generic bans on the operation of certain sites and systems” are incompatible with the freedom of expression.⁷³ For the United States to meet its obligations under Article 19, it must meet what are understood to be the “strict tests” of the necessity requirement: proportionality, least intrusive means, and direct relation to the need.⁷⁴ With over one hundred million active TikTok users in the United States, the government has a heavy burden to demonstrate that a prohibition of the app, a restriction that would eliminate vast amounts of protected speech, would be a necessary and proportionate response to the alleged harms it causes. The United States would have to do more than show that banning TikTok would merely be ‘useful’ or ‘desirable.’ If there are other viable policy alternatives that could address the asserted legitimate objectives, then a blanket prohibition on the social media app would be neither necessary nor proportionate.

If the principal argument focuses on TikTok’s collection of American user-data, and thus rests on the legitimate objective of protecting user privacy, the government would need to answer why addressing user privacy *only in the context of TikTok* meets the necessity and proportionality standard, given that user privacy is a problem across social media. If the argument, as seemingly developed in the RESTRICT Act, is that the problem is Chinese government access to user-data, it would need to address why measures less intrusive than an outright ban, or other serious restrictions on freedom of expression, are unable to address the asserted threat. For example, if management control of the app’s algorithms were insulated from the influence of the Chinese government, that could plausibly serve the same purpose without the same burden on speech.

Proposals for protecting Americans’ user data suggest outlawing TikTok is not the “least intrusive means” of achieving a legitimate aim. One such proposal is Project Texas, TikTok’s plan to ensure that U.S. user data is not accessed from

China.⁷⁵ In July 2022, TikTok established U.S. Data Security Inc. (USDS) as part of the Project Texas initiative.⁷⁶ USDS oversees components of the company that have access to U.S. citizen data and reports to a US government committee.⁷⁷ Furthermore, TikTok has partnered with the technology company, Oracle, which monitors the transfer and storage of all American TikTok user data within the U.S.⁷⁸ However, these measures in themselves may not be sufficient to protect user data privacy because effective management control of TikTok still, it is argued, resides in China with ByteDance.⁷⁹ In the absence of a general data privacy law in the United States, it appears unclear whether U.S. storage of data could meaningfully inhibit attempts by the Chinese government to access that information. Regardless, these interim measures have not satisfied U.S. politicians and the clamor for more restrictive measures continues.

Addressing foreign (i.e. Chinese government) manipulation as a matter of privacy and national security may also be amenable to non-ban, non-restriction approaches, even starting with reporting obligations by TikTok (and perhaps other companies) to demonstrate how they build their algorithmic systems and who has access to them. This is particularly important given that the vast majority of content on TikTok appears entirely unrelated to Chinese state-media controlled narratives.⁸⁰ It should also be emphasized that a ban on TikTok would entail not only removal of allegedly “harmful” national security content. It could also involve the removal of particularly viral content related to political protest and human rights abuses in China itself. In the past, there have been allegations – and even admissions by the company – that TikTok censored evidence of massive human rights abuses against the Uyghur population in the Xinjiang region of China.⁸¹ Indeed, there is undoubtedly severe censorship of political and human rights content on the Chinese version of the TikTok app, Douyin.⁸² It is unclear that such censorship presently extends to TikTok outside of China, while activists and media organizations use the app to share a wide range of political content, seemingly without restriction. A ban would likely interfere with such protected content in the United States.

In addition to Project Texas, some have called for TikTok to be sold to a U.S. company, thus cutting off its relationship to the Chinese government through ByteDance’s ownership.⁸³ For example, Congressman Ro Khanna does not support a TikTok ban, but would support forcing the sale of TikTok to a U.S. company.⁸⁴ This measure, it is argued, could prevent the Chinese government from accessing U.S. user data because ByteDance would no longer have control of the company and there would presumably also no longer be a threat of Chinese-state propaganda. However, forcible divestment might have other significant, far-reaching political and legal implications. The Chinese government has tools such as export controls that it could use to effectively obstruct a potential sale.⁸⁵ More importantly, it is doubtful whether this measure would meaningfully protect the privacy of U.S. users. TikTok – like all of its peer companies – would still engage in the mass collection of sensitive user data, which could be vulnerable to

penetration by malicious parties such as hackers.⁸⁶ That data could also be sold by data brokers, conceivably even to the Chinese government.⁸⁷

Ultimately, domestic data privacy laws for all social media platforms would likely better serve the asserted interests in the TikTok debate over the kinds of restrictions proposed by Congress. A more radical approach to privacy regulation may be necessary: policies could regulate how the technology works to prevent data collection from happening in the first place. The U.S. could even ban the mass harvesting of data conducted by social media companies like TikTok. These policies might be needed to protect Americans' sensitive information from any government, not only China.

Conclusion: Human rights and evidence should guide the TikTok debate

Generally speaking, the existence of a range of other policies and potential legal avenues to address privacy and national security concerns casts serious doubt on the necessity and proportionality of severe restrictions or bans on TikTok. It may very well be that social media platforms like TikTok, YouTube, Facebook and Instagram pose serious risks to privacy, democratic institutions, and human well-being (particularly of teenagers), but these are industry problems not specific to TikTok. The failure of advocates of bans to introduce more than conjecture, to talk of risks rather than evidence, also speaks to the uncertain ground on which any severe restrictions on TikTok stand.

There is also the fact that any ban or restriction on TikTok – in effect, a ban on American individuals' use of the platform to exercise expressive rights – runs counter to longtime U.S. policy and advocacy. Indeed, one wrinkle in the U.S., Canadian and European push to ban or severely restrict TikTok is that they all have condemned restrictions on access to major platforms, mostly American-owned, around the world. The United States has repeatedly emphasized freedom of expression and access to information when criticizing country bans on platforms, even when those countries themselves emphasize their own national security. In the 2021 State Department Country Report on Human Rights in Pakistan, the U.S. government condemned Pakistan's continued control of "social media and video-streaming services such as YouTube, Twitter, and TikTok."⁸⁸ In 2019, the U.S. Department of State released an official statement condemning China for stifling freedom of expression and included the government's blocking of social media hubs such as Google, YouTube, Twitter, and Facebook in its reasoning.⁸⁹ When the Nigerian government banned Twitter in 2021, the United States stated, "Banning social media and curbing every citizen's ability to seek, receive, and impart information undermines fundamental freedoms."⁹⁰ The U.S. Embassy in Lagos emphasized that "the need for individual expression, open public conversation, and accountability has never been greater."⁹¹ Moreover, in the past the United States has widely condemned any government censorship of social

networking websites, specifically criticizing China, Vietnam, Egypt, Tunisia, and Uzbekistan.⁹²

Likewise, the United Nations has a history of monitoring internet platform and site bans from states that have imposed restrictions in violation of their human rights commitments. When Turkey implemented the aforementioned ban on Twitter, several UN Special Rapporteurs sounded the alarm about the threat to the freedoms of opinion and expression.⁹³ The Special Rapporteur on the right to freedom of opinion and expression specifically emphasized Turkey's commitments under the ICCPR and further noted that “[c]oncerns about national security can be legitimate, but limitations to the freedom to seek, receive and impart information must conform to the strict test of necessity and proportionality to the aim pursued.”⁹⁴ UN Special Rapporteurs have continued to raise similar concerns in response to a variety of online restrictions. These range in their nature, from a Lebanese ministry's order to block public networks from accessing the dating app Grindr,⁹⁵ to a directive from the Myanmar government to block access to over 200 websites,⁹⁶ to a decision by Russia's federal media regulator to block the messaging app Telegram.⁹⁷ The communications reports of the Special Rapporteurs make frequent reference to a variety of human rights instruments, but often return to the obligations under Article 19 of the ICCPR to protect and ensure the right to freedom of expression “which includes the right to seek, receive and impart information of all kinds and through any form of media.”⁹⁸

As a party to the ICCPR, the United States should be grappling with those same rules it has promoted in the past and UN human rights mechanisms have advanced. Adherence to those standards does not mean that the United States – or any government – is barred from protecting its legitimate interests, whether the privacy rights of its nationals or its national security. It does, however, require governments to meet the tests of legality, necessity and legitimacy and to demonstrate that with evidence and transparency. In the absence of such demonstrations, it may very well be difficult to distinguish a U.S. ban of a popular social media app from other nations' bans of similar social media apps or other blanket restrictions on online content.⁹⁹

ENDNOTES

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