

Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL OTH 48/2019

13 September 2019

Dear Mr. Khine Maung Soe,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 40/29 and 34/18.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the **shutdown of mobile internet services in northern Rakhine State and southern Chin State in Myanmar**.

According to the information received:

On 20 June 2019, the Myanmar Ministry of Transport and Communications (Ministry) issued a directive to all mobile network operators in Myanmar, including MyTel, to temporarily suspend mobile internet services in Ponnagyun, Rathedaung, Mrauk-U, Kyauktaw, Minbya, Myebon, Maungdaw, and Buthidaung Townships in Rakhine State and Paletwa Township in Chin State.

The Permanent Secretary of the Ministry informed the media that the directive was issued under section 77 of the 2013 Telecommunications Law and it was intended “to maintain the stability and law and order in these areas”. The Permanent Secretary noted that the directive did not specify when the services

Mr. Khine Maung Soe
MyTel
Telecom International Myanmar Co. Ltd

would be allowed to resume. We note that this is the first time that this provision has been used, and that this is the first time that mobile internet has been shut down.

Section 77 states:

The Ministry may, when an emergency situation arises to operate for public interest, direct the licensee to suspend a Telecommunications Service, to intercept, not to operate any specific form of communication, to obtain necessary information and communications, and to temporarily control the Telecommunications Service and Telecommunications Equipments.

The shutdown was in place in all nine townships until 2 September when it was lifted in five of them. It remains in place in Kyauktaw, Minbya, Ponnagyun and Mrauk-U.

Those townships the subject of the directive are located in areas where an armed conflict between the Myanmar military and an insurgent group, the Arakan Army, is ongoing. There are credible serious allegations of violations and abuses of human rights and international humanitarian law having occurred as a result of the conflict. Up to 65,000 people have been displaced by the conflict and many more are in need of humanitarian assistance. The townships of Maungdaw, Buthidaung and Rathedaung are the locations of alleged international crimes perpetrated against the Rohingya, and those who remain continue to be subject to persecution and violence. It is of significant concern that a consequence of the shutdown may be the perpetration of violations and abuses of human rights and international humanitarian law and international criminal law. Additionally, it may negatively impact the provision of life-saving services for those affected by natural disasters in the monsoon season. The shutdown has made it more difficult for people to communicate with each other and seek help, for humanitarian agencies to provide assistance to people in need and for information to get to media, human rights monitors and others.

We express our serious concern over the internet shutdown and its effect on human rights in northern Rakhine and southern Chin. It is our firm belief that it severely impairs the realisation of the rights to rights to safety and security, health, education, food, shelter and livelihood, and the rights to freedom of expression, information, participation, association and peaceful assembly. We are alarmed at the ongoing and blanket nature of the shutdown and the precedent it sets, as it could be imposed in other parts of Myanmar in the future. The shutdown has occurred in a context where there was already a broad shrinking of space for human rights defenders and journalists and we note that several journalists have been arrested for their reporting on the conflict in Rakhine State in recent months. This has had a serious impact on the flow of information from the area, which has been markedly exacerbated by the internet shutdown.

We would like to recall that your company has a responsibility to respect human rights, as affirmed by the UN Guiding Principles on Business and Human Rights. This

responsibility requires that MyTel undertakes due diligence, avoids causing or contributing to adverse human rights impacts through their own activities, and addresses such impacts when they occur. MyTel should seek to prevent or mitigate adverse human rights impacts that are directly linked to its operations, products or services by its business relationships, even if it has not contributed to those impacts.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations regarding the internet shutdown in northern Rakhine State and southern Chin State.
2. Has the Government of Myanmar responded to requests for clarification or your arguments regarding proportionality and limitations to the scope and time of the shutdown? If so, what was their response?
3. Please provide information as to what human rights due diligence steps, including with respect to transparency and effective remedies, as set out in the United Nations Guiding Principles on Business and Human Rights, have been undertaken by your company to identify, prevent, mitigate, and remedy the impact that shutting down mobile internet services could have caused on human rights in northern Rakhine and southern Chin in Myanmar.
4. Please advise how MyTel aims to provide for or cooperate in remediation of adverse impacts to human rights caused, or contributed to, by shutting down mobile internet services in northern Rakhine and southern Chin in Myanmar.
5. Please provide information as to how MyTel is acting in accordance with Principle 23 of the UN Guiding Principles, that is, it seeks to honour the principles of internationally recognized human rights when operating in a country which might curtail human rights, as well as violence and armed conflict in Rakhine and other parts of the country.
6. Please provide information as to what human rights due diligence steps were undertaken by your company prior to launching operations in Myanmar, considering the existence of section 77 of the Telecommunications Law and other problematic laws relevant to the provision of information and communications technology services.

7. In light of the Government's demands that Mytel interrupt mobile service in parts of Myanmar under section 77 of the Telecommunications Law, how is your company planning to mitigate and remedy future requests in the country?

We would appreciate receiving a response within 60 days. Following that 60-day period, this communication and any response received from your company will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a copy of this letter has been sent to the Government of Myanmar. We also advise you that we are sending similar communications to the other telecommunications providers with operations in Myanmar

Please accept, Mr. Khine Maung Soe, the assurances of our highest consideration.

Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to underline that international human rights law protects the right to freedom of opinion and expression, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Under article 19 (3) of the ICCPR, limitations must be determined by law and must conform to the strict test of necessity and proportionality. Limitations must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In this regard, the Human Rights Committee also clarified that “Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3” (General Comment No. 34 para. 43).

In this connection, we would also like to highlight the principle enunciated by Human Rights Council Resolution 12/16, which called on States to refrain from imposing restrictions which are not consistent with article 19(3), including on access to or use of information and communication technologies, including radio, television and the Internet; discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; and engaging in election campaigns.

In particular, we would like to draw your attention to Human Rights Council Resolution 32/13, which “condemn[ed] unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures”.

Furthermore, in his report on the role of digital access providers (A/HRC/35/22), the Special Rapporteur on the rights to freedom of opinion and expression clearly stated that: “Network shutdowns invariably fail to meet the standard of necessity. Necessity requires a showing that shutdowns would achieve their stated purpose, which in fact they often jeopardize [...] Given the number of essential activities and services they affect, shutdowns restrict expression and interfere with other fundamental rights”.