

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 MMR 6/2019

13 September 2019

Excellency,

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.

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 Ministry of Transport and Communications issued a directive to all mobile network operators in Myanmar to temporarily suspend mobile internet services in nine townships 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 also clarified that the directive did not specify when the services would be allowed to resume. We note that this is the first time that this provision has been used, and that mobile internet has been shut down.

We also note that 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. 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.

The shutdown and its impact on the flow of information from the areas concerned has occurred in a context of a shrinking space for human rights defenders and journalists and attacks against them, including for their legitimate work of reporting on the conflict in Rakhine State.

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 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 facing conflict in the future. We are very concerned about the provisions in the Telecommunication Law 2013 that allow for such a shutdown to be ordered as they do not appear to comply with the requirements for of necessity and proportionality.

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. Please explain how ordering the shutdown of mobile internet services is consistent with Myanmar's international law obligations.
3. Please provide information about how you are ensuring that the internet shutdown is proportionate to achieving a legitimate objective.
4. Why has the internet not been restored to all townships in Rakhine? When will the internet be restored to the remaining townships in Rakhine?
5. Please provide information on steps that your Excellency's government has taken, or is considering to take, to protect against human rights abuses

by business enterprises, in line with the United Nations Guiding Principles on Business and Human Rights.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, 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, under Article 19 of the Universal Declaration of Human Rights (UDHR). This right is also guaranteed in article 19 of the International Covenant on Civil and Political Rights (ICCPR). We welcome in this regard your Excellency's Government's statement during the second cycle of the UPR, in which it stated that it had "accepted in principle" the ratification of the ICCPR (A/HRC/31/13/Add.1, para 7).

Under article 19 (3) of the ICCPR, limitations on the right to freedom of expression must be determined by law and must conform to the strict tests 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. The complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedom of expression. Shutdowns fail to reach the established test for restrictions to the right to freedom of opinion and expression under article 19(3) of the ICCPR.

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 this regard, 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".

In particular, 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).

Finally, we would like to refer you to the reports of the Special Rapporteur on freedom of opinion and expression, which forcefully concluded that online and offline limitations follow the same criteria as those above.

For instance, 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”.

We would also like to draw attention to the **United Nations Guiding Principles on Business and Human Rights** (A/HRC/17/31). The Guiding Principles clarify that according to international human rights obligations "States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including business" (Guiding Principle 1). This requires States to "clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). "In compliance with their obligation to protect, States must: (b) Ensure that other laws and regulations governing the creation and activities of companies, such as commercial law, do not restrict but rather encourage respect for human rights by companies; (d) Encourage and if necessary require companies to explain how they take into account the impact of their activities on human rights. (Guiding Principle 3). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate channels, that when such abuses occur in their territory and/or jurisdiction, those affected have access to effective redress mechanisms" (Guiding Principle 25). The Guiding Principles also emphasize that "States must ensure [...] that no obstacles are placed in the way of legitimate and peaceful activities of human rights defenders" (commentary on Guiding Principle 26).

Businesses also have a responsibility to respect human rights, which requires them to have appropriate policies and procedures in place; such as a human rights due diligence process to identify, prevent, mitigate, and account for how they address their human rights impact; and processes to redress all negative human rights consequences they have caused or contributed to causing. (Principles 11-24).