

Mandate of the Special Rapporteur on the situation of human rights in Myanmar

REFERENCE:
AL OTH 54/2019

11 December 2019

Dear Mr Zuckerberg,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolution 40/29.

As an independent human rights expert appointed and mandated by the United Nations Human Rights Council to report and advise on the human rights in Myanmar, I am sending to you this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received.¹ 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 concerns, the applicable international human rights norms and standards, 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, I would like to bring to your attention information I have received concerning the **alleged abuse of the right to freedom of expression and information by Facebook in relation to its operations in Myanmar.**

According to information received:

On 28 August 2018, Facebook announced that it had removed 18 Facebook accounts, one Instagram account, 52 Facebook pages. It said that it had banned 20 individuals and organisations from Facebook in Myanmar – including Senior General Min Aung Hlaing, commander-in-chief of the armed forces, and the military's Myawady television network. In light of the findings of the Independent International Fact Finding Mission on Myanmar, Facebook said that it wants to prevent them from using the platform to further inflame ethnic and religious tensions. A further 6 pages and 6 accounts were removed from Facebook, with one account from Instagram, connected to said individuals and organisations. 46 pages and 12 accounts were also removed for engaging in coordinated inauthentic

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

behaviour on Facebook, as Facebook said they were covertly pushing the messages of the Myanmar military, a behaviour that violates the misrepresentation policy.

On 15 October 2018, Facebook announced that 13 pages and 10 accounts had been removed for engaging in coordinated inauthentic behaviour on Facebook in Myanmar. Facebook said they were linked to the Myanmar military, violating Facebook's misrepresentation policy.

On 18 December 2018, Facebook announced that 424 Facebook pages, 17 Facebook groups, 135 Facebook accounts and 15 Instagram accounts in Myanmar were removed for engaging in coordinated inauthentic behaviour.

On 5 February 2019, Facebook announced that four ethnic armed organisations in Myanmar, the Arakan Army, the Myanmar National Democratic Alliance Army, the Kachin Independence Army and the Ta'ang National Liberation Army, would be designated "dangerous organisations" and banned from the platform. Additionally, related praise, support and representation of the four organisations was banned. Facebook stated that the purpose of the ban was to prevent and disrupt offline harm, as Facebook does not allow "organisations or individuals that proclaim a violent mission or engage in violence to have a presence on Facebook". Another aim was to prevent the organisations from using its platform to further inflame tensions on the ground and to "limit incitement and hate that furthers an already deadly conflict". Following this, the page of the Federal Political Negotiation Consultative Committee, a political negotiation body comprised of the four banned groups and others, and Laiza TV, a Kachin media organisation, were taken down in February.

On 21 August 2019, Facebook announced that it had removed 89 Facebook accounts, 107 Facebook pages, 15 Facebook groups, and 5 Instagram accounts for engaging in coordinated inauthentic behaviour that originated in Myanmar. Facebook said that individuals behind these activities used fake accounts to promote content and engagement, repurposing legitimate content about national and local topics (crime, ethnic relations, military) and found that some of this activity was linked to people associated with the Myanmar military.

Facebook also regularly takes down content in the course of moderating compliance with its Community Standards. This is done both via artificial intelligence technology as well as human moderators. Content that is taken down after moderation includes hate speech and misinformation. While we appreciate that Facebook is attempting to take action in relation to the widespread use of hate speech and misinformation on its platform, we are concerned that Facebook's removal of accounts and pages may contravene individuals' freedom of expression.

I am concerned about the way in which Facebook is applying its Community Standards in Myanmar, whether this is being done in a consistent and transparent manner, and in a way that will meet the stated objectives of Facebook. This is particularly so with

regard to the case of the designation of the four ethnic armed organisations as “dangerous organisations” to prevent tensions being further inflamed. The groups concerned provide information to the public that has public interest value, including for civilian safety during armed conflict. The groups use Facebook as a means to communicate with civil society, the government and international actors involved in the peace process and the provision of humanitarian assistance. As all related praise, support and representation of the four organisations has been banned from Facebook, we are concerned that this may have a significant impact on the ability of individual members of ethnic minority communities to communicate and exercise their right to freedom of expression and opinion.

I am further concerned about the storage of data associated with the pages and accounts that Facebook removes, whether it is being preserved as possible evidence of crimes, and whether individuals whose pages are removed are able to obtain the associated data from Facebook. I am concerned that if content is deleted, valuable evidence of the most serious crimes under international law (as alleged by the Special Rapporteur and the Independent International Fact-Finding Mission in their reports of 2018 and 2019) may be lost. Furthermore, I am concerned about individual Facebook users’ rights to review or appeal of decisions made about their accounts that directly impact on their right to freedom of expression.

Furthermore, given the scale, severity and complexity of hate speech and spread of misinformation on Facebook in Myanmar, and in relation to the possible commission of international crimes, we are concerned as to whether Facebook is allocating sufficient human and financial resources to content moderation in order to address the issues in a timely and appropriate manner that respects human rights.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide information about what bodies of law are used to designate groups as “dangerous” and what Facebook’s factual and legal evaluation process is for both state and non-state actors.
2. Please provide information about the procedure followed by which organisations are designated as “dangerous”, including the process for informing organisations or individuals of the designation, whether reasons are given, and any review or appeal process available to designated organisations. Was a human rights impact assessment of any designation or page removal made?

3. Please describe the factual basis and the process that was followed to designate the four organisations as “dangerous” in February 2019. Was information provided to them about the process and their designation and any possibility of review or appeal? Please also provide information about any warnings or restrictions considered and applied to the four organisations.
4. Please describe the procedure to review and remove content and posts for inauthentic behaviour, and explain if it is different to the removal of content deemed to be “dangerous”, including the process for informing organisations or individuals, whether reasons are given, and any review or appeal process made available.
5. Please provide information about any other pages, including those of “related praise, support and representation” of the four organisations designated “dangerous”, that were removed.
6. Has Facebook banned any accounts or removed any pages or profiles from Myanmar other than those that were included in the announcements in 2018 and 2019? If yes, what were the reasons for their banning and removal? Why were they not made public?
7. Please outline Facebook’s data preservation policy for content that is removed as a result of moderation and a ban, including whether content is being preserved by Facebook and under what conditions. Does Facebook delete any data that it removes?
8. Please provide information about Facebook’s plans to align its Community Standards and methods of assessing content with international human rights standards, including the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
9. Please provide information about how Facebook manages content moderation in Myanmar and the human resources dedicated to it.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received 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.

While awaiting a reply, I 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.

Please accept, Mr Zuckerberg, the assurances of my highest consideration.

Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

Annex

Reference to international human rights law

The right to freedom of expression and opinion is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). It forms part of customary international law binding on all States. Article 20 of the ICCPR places a duty on States to prohibit certain forms of speech, including advocacy of hatred that constitutes incitement to discrimination, violence and hostility. This obligation overlaps with the duty under Article 4 of the Convention on the Elimination of All forms of Racial Discrimination. The duty to prevent certain forms of speech also follow from other international treaties, including the Genocide Convention Article III (c) concerning public incitement to genocide; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child. In all circumstances, any limitation of speech must comply with the following three requirements: It must pursue a legitimate aim, it must be made in accordance with the law, and it must be necessary and proportionate (see Article 19 (3)).

These obligations pertain to States. However, as highlighted by the UN Guiding Principles on Business and Human Rights, private companies have a vital role to play in ensuring the effective protection of the basic human rights of individuals. However, “companies have for too long avoided human rights law as a guide to their rules and rule-making, notwithstanding the extensive impacts they have on the human rights of their users and the public” (2019 report to the United Nations General Assembly, UN docs. A/74/486 para 58). In order to comply with the scope and limitations of the right to freedom of expression, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has developed recommendations to private companies in their moderation of content:

- (a) Evaluate how their products and services affect the human rights of their users and the public, through periodic and publicly available human rights impact assessments;
- (b) Adopt content policies that tie their hate speech rules directly to international human rights law, indicating that the rules will be enforced according to the standards of international human rights law, including the relevant United Nations treaties and interpretations of the treaty bodies and special procedure mandate holders and other experts, including the Rabat Plan of Action;
- (c) Define the category of content that they consider to be hate speech with reasoned explanations for users and the public and approaches that are consistent across jurisdictions;
- (d) Ensure that any enforcement of hate speech rules involves an evaluation of context and the harm that the content imposes on users and the public, including by ensuring that any use of automation or artificial intelligence tools involve human-in-the-loop;

- (e) Ensure that contextual analysis involves communities most affected by content identified as hate speech and that communities are involved in identifying the most effective tools to address harms caused on the platforms;
- (f) As part of an overall effort to address hate speech, develop tools that promote individual autonomy, security and free expression, and involve de-amplification, de-monetization, education, counter-speech, reporting and training as alternatives, when appropriate, to the banning of accounts and the removal of content. (A/74/486 para 58)

Furthermore, I refer to my recent report (A/HRC/74/342):

21. The established principles of international human rights law must be adopted by Internet companies with operations in Myanmar as the basis of policies and processes for content regulation. It is imperative that companies develop and carry out these processes consistently and transparently. While automated processes will play a role in content regulation, the diversity and complexities of language, translation, culture and context in Myanmar dictate that human moderators remain essential, and it is critical that companies allocate sufficient resources to this.

In this regard, I refer to business's responsibility under the UN Guiding Principles on Business and Human Rights:

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the

remediation of any adverse human rights impacts they cause or to which they contribute.

In particular regarding transparency, under the Guiding Principles,

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.