

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL MMR 6/2020

30 April 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Working Group on the issue of human rights and transnational corporations and other business enterprises 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, 35/7 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **directive to all internet service providers in Myanmar to block access to 207 specified websites**.

According to information received:

In March 2020 the Ministry of Transport and Communications of the Union Government of Myanmar sent a directive to all internet service providers in Myanmar to block access to 207 specified websites. On 23 March, an additional directive was sent to all internet service providers in Myanmar to block another 14 specified websites.

According to the directives, the sites contain adult/explicit content, child sexual abuse, and contribute to misinformation.

The order was made under Section 77 of the Telecommunications Law. Section 77 provides that:

“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.”

All internet service providers have complied with the directive and blocked access to the 221 specified websites. Under section 15 of the Law, they are required to abide by directives issued under the Law, and under section 57 their licenses may be suspended or terminated for failing to comply.

Local media has reported that the Director General of the Directorate of Communications, U Myo Swe has stated that the directive was partially related to ‘fake news’ about COVID-19.

Access to the websites of several media outlets that report on armed conflict in Myanmar, human rights and the conduct of the Myanmar military and security forces has been blocked under the directive. These include media outlets that are based in a State home to ethnic minority populations and to whom they report news in ethnic minority languages.

The directive was made alongside the existing order for a total suspension of mobile internet services in nine townships in the states of Rakhine and Chin also under Section 77 of the Telecommunications Law.

We are concerned that the orders issued under section 77 of the Telecommunications Law to block access to certain websites were in contravention of the rights to freedom of expression and access to information. We express concern about the lack of any legitimate public justification for the blocking of the websites, and recall that the State has the burden of proof for any restrictions to human rights. The same applies when the restrictions that are based on domestic authorities’ emergency powers. Moreover the prevention of “fake news” does not in and of itself constitute an adequate justification for the blocking of news websites.

We are particularly concerned about ethnic news outlet websites that were blocked, as those sites reported on issues of critical public interest value. That value is heightened in the context of both the ongoing armed conflicts in Myanmar and the Covid-19 pandemic in Myanmar, and as a result we are worried about ethnic minority populations’ ability to access information in their own languages. We are further concerned that these orders come in advance of the elections currently scheduled for later this year.

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 you have on the above allegations.
2. Please explain how the order to block access to specified websites on the basis of ‘contributing to misinformation’ is consistent with Myanmar’s international human rights law obligations, in particular Article 19 of the Universal Declaration of Human Rights, protecting the right to freedom of

opinion and expression. Please provide information on how provisions in the order are necessary and proportionate to achieving a legitimate objective.

3. Please provide information about how you are ensuring that all the population of Myanmar is able to access information regarding ongoing armed conflict and the Covid-19 pandemic.
4. Please provide information on steps taken, or being taken, to protect against human rights abuses by internet service providers, in line with the United Nations Guiding Principles on Business and Human Rights. Specifically, what steps are being taken to ensure that laws and policies governing the operation of business enterprises in the ICTs sector, such as the Telecommunications Law, do not constrain but promote business respect for human rights.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government 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, 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.

Please accept, Excellency, the assurances of our highest consideration.

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

Githu Muigai
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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

Many of the provisions in the Universal Declaration of Human Rights are reflective of customary international law, binding on Myanmar. The right to freedom of opinion and expression, enshrined in Article 19 UDHR, is one such provision, (A/HRC/24/23, para. 11). As highlighted by the United Nations General Assembly and the United Nations Human Rights Council, human rights apply equally online and offline (UNGA Resolution 68/167 (18 December 2013), HRC Resolution 26/13, A/HRC/RES/26/13 (June 26, 2014)). As such, any restriction on the exercise of freedom of expression online has to meet three requirements in order to be justified. First, it must pursue a legitimate aim. Second, it must be in accordance with the law. That is, the law, to comply with the requirement, must be sufficiently precise so as to enable an individual to regulate his or her conduct accordingly, and it must be made accessible to the public. Lastly, the measure must be necessary and proportionate. The necessity requirement means that the State must demonstrate the precise nature of the threat justifying the restriction. The requirement of proportionality entails that the restriction is the least restrictive means among the alternatives, and that the restriction is proportionate to its protective function and the legitimate aim pursued. Even if a restriction complies with these requirements, it can nonetheless be unlawful if it is discriminatory, see e.g. UDHR Article 1 on the principle of equality. The State cannot, for example, implement restrictive measures that are discriminatory against ethnic minorities.

The UN Special Rapporteur on the right to freedom of opinion and expression, has long highlighted importance of the protection of so called online journalists, professional and otherwise, who document and disseminate news (A/HRC/20/17 (2012) para 61). The Special Rapporteur has further highlighted the seriousness of any measure restricting the public's access to websites. Of particular relevance, the Special Rapporteur, in his joint declaration on freedom of expression and "fake news", disinformation and propaganda (2017) affirmed that "General prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information", are incompatible with international standards for restrictions on freedom of expression (...) and should be abolished."

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.