



Briefing Paper: Myanmar's Internet Shutdown in Rakhine and Chin States

2 August 2019

Background

On 20 June 2019, Myanmar's Ministry of Transport and Communications ordered mobile phone operators to 'stop mobile internet traffic' in nine townships in Rakhine State and Chin State due to 'disturbances of peace and use of internet services to coordinate illegal activities'.¹ Government officials from the Ministry of Transport and Communications have declined to publicly comment on the order. The shutdown is now entering its seventh week.

Since the beginning of the shutdown, serious concerns have been raised about the safety of the population in Rakhine State, where the Myanmar military has repeatedly attacked civilians. Military attacks on the Rohingya population prompted the flight of over 700,000 refugees from Rakhine State to Bangladesh in late 2017, leading the Independent International Fact-Finding Mission on Myanmar to call for senior generals to 'be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes'.² The shutdown affects an area where the Myanmar military has recently engaged the Arakan Army, an ethnic armed organisation. Human rights researchers have documented serious human rights abuses against civilians by both parties to the conflict.³ The Special Rapporteur on the situation of human rights in Myanmar expressed grave concern over the Internet shutdown, citing an ongoing military 'clearance operation', that she worried would be used as 'cover for committing gross human rights violations against the civilian population'.⁴

In Myanmar, the Internet is overwhelmingly accessed through mobile phones.⁵ The shutdown therefore has a severe impact on the ability of individuals to communicate with one another and access information. Human rights organisations, telecommunications providers, and chambers of commerce have called attention to the negative impacts of the internet shutdown. These include concern that the shutdown will:

- Inhibit dissemination of key information relating to safety and security;⁶

¹Telenor, 'Network shutdown in Myanmar,' 21 June 2019, <https://www.telenor.com/network-shutdown-in-myanmar-21-june-2019/>.

² Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, 18 September 2018, UN Doc A/HRC/39/CRP.2.

³ Amnesty International, 'Myanmar: "No one can protect us": War crimes and abuses in Myanmar's Rakhine State', 29 May 2019, <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>.

⁴ UN Office of the High Commissioner for Human Rights, 'Myanmar: UN expert 'fears for civilians' after Internet shutdown', 24 June 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx>.

⁵ Freedom House, 'Freedom on the Net 2018: Myanmar,' <https://freedomhouse.org/report/freedom-net/2018/myanmar>.

⁶ Amnesty International, 'Myanmar: End Internet Shutdown in Rakhine, Chin States,' 25 June 2019, <https://www.amnesty.org/download/Documents/ASA1606042019ENGLISH.PDF>.

- Prevent civilians from contacting one another in case of an emergency;⁷
- Impede access to basic rights, including healthcare;⁸
- Negatively impact the economy;⁹
- Impede the operations of organisations working and delivering aid in rural areas, which often rely on messaging services;¹⁰ and
- Frustrate attempts to document ongoing human rights abuses.¹¹

International standards on freedom of expression and Internet shutdowns

The rights to freedom of expression and information are protected by Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and customary international law. Under international law, these rights may be restricted only in specific circumstances, often articulated as a three-part test. Restrictions must:

- **Be prescribed by law:** Restrictions must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Ambiguous, vague or overly broad restrictions on the rights to freedom of expression and information are therefore impermissible.
- **Pursue a legitimate aim:** Legitimate aims are exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR as respect of the rights or reputations of others, protection of national security, public order, public health or morals.
- **Be necessary and proportionate:** Necessity requires that there must be a pressing social need for the restriction. Proportionality requires that a restriction on expression is not overly broad and that it is appropriate to achieve its protective function. It must be shown that the restriction is specific and individual to attaining that protective outcome and is no more intrusive than other instruments capable of achieving the same limited result.¹²

In their 2011 Joint Declaration on Freedom of Expression and the Internet, four special mandates on freedom of expression emphasised that international standards on freedom of expression, including the three-part test, fully apply to Internet access and use.¹³ They added:

⁷ Eleven Myanmar, 'Rakhine Lower House MP to persist in striving for internet ban removal in Rakhine State in Union Parliament,' 12 July, 2019, <https://elevenmyanmar.com/news/rakhine-lower-house-mp-to-persist-in-striving-for-internet-ban-removal-in-rakhine-state-in>.

⁸ Ibid.

⁹ 'Statement from EU Investors in Myanmar on the Internet Shutdown in Northern Rakhine,' 10 July 2019, <https://eurocham-myanmar.org/post/430/Statement-From-EU-investors-in-Myanmar-on-the-internet-shutdown-in-Northern-Rakhine>.

¹⁰ Fortify Rights, 'Myanmar: Lift Internet-Blackout in Rakhine and Chin States,' 22 July 2019, <https://www.fortifyrights.org/publication-20190722.html>.

¹¹ Amnesty International, 'Myanmar: End Internet Shutdown in Rakhine, Chin States,' 25 June 2019, <https://www.amnesty.org/download/Documents/ASA1606042019ENGLISH.PDF>.

¹² Human Rights Committee, General Comment No. 34, UN Doc CCPR/C/GC/34, 12 September 2011.

¹³ Joint Declaration on Freedom of Expression and the Internet, UN Special Rapporteur on Freedom of Opinion and Expression (Special Rapporteur on FOE), the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 1 June 2011, para. 1(a).

Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds.¹⁴

In their 2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations, the same four special mandates stated that:

Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.¹⁵

In June 2016, the UN Human Rights Council, in response to a number of States having recently shut down access to the Internet or digital communication tools, condemned ‘measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law’ and call[ed] on all States to refrain from and cease such measures.¹⁶ The Human Rights Council’s strongly-worded statement reflected the severity of the impact of network shutdowns on the enjoyment of the right to freedom of expression and information.

In addition, the Human Rights Committee has addressed the legality of generic Internet bans, stating, ‘Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3 [of Article 19 of the ICCPR].’¹⁷

Analysis

ARTICLE 19’s finds that Myanmar’s internet shutdown in Rakhine State and Chin State fails to meet the requirements set forth in international human rights law for the following reasons:

- **Overly broad legal basis:** The legal basis for the Internet shutdown is Article 77 of the Telecommunications Act 2013, which provides that the Ministry of Transport and Communications:

[M]ay, 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.

¹⁴ *Ibid.*, para. 6(b).

¹⁵ Joint Declaration on Freedom of Expression and Responses to Conflict Situations, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, <https://www.osce.org/fom/154846>.

¹⁶ Human Rights Council, ‘The promotion, protection and enjoyment of human rights on the Internet’, UN Doc A/HRC/32/L.20, 27 June 2016, paras 10.

¹⁷ Human Rights Committee, General Comment No. 34, UN Doc CCPR/C/GC/34, 12 September 2011, para 43.

This provision is impermissibly broad and fails to satisfy the legality requirement of Article 19(3) of the ICCPR, as pointed out in ARTICLE 19's 2017 analysis of the law.¹⁸ While the current situation in Rakhine and Chin States has been invoked as an 'emergency situation' under article 77 of the Telecommunications Act, the Act fails to define what amounts to an 'emergency situation'. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasised, 'Shutdowns ordered pursuant to vaguely formulated laws and regulations...fail to satisfy the legality requirement.'¹⁹

- **Lack of credible and legitimate justification for the Internet shutdown:** While 'disturbances of peace and use of internet services to coordinate illegal activities' could conceivably be viewed as justification for exceptional measures necessary to protect public order or national security, the government of Myanmar has failed to provide a meaningful public explanation of these 'disturbances' and 'illegal activities' to support the validity of its conclusion. However, even if the government of Myanmar provided such an explanation, the present ban would still fail to meet parts one and three of the test under Article 19 of the ICCPR.
- **Internet shutdowns are inherently disproportionate:** As described above, under international standards, cutting off Internet access, or even access to parts of the Internet, for either the whole population or part of the population is a disproportionate interference with the rights to freedom of expression and information. In this instance, the government of Myanmar has failed to show that limiting access to the Internet in entire townships is necessary for the purposes of 'preventing the coordination of illegal activities' or calming 'disturbances of the peace'. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted, '[n]ecessity requires a showing that shutdowns would achieve their stated purpose, which in fact they often jeopardize'.²⁰ Further, measures must make use of the least restrictive means to achieve that legitimate aim. The Myanmar government has failed to provide a convincing justification that its objectives could not be achieved through measures with a lesser impact on the rights to freedom of expression and information than the wholesale blocking of Internet access in the nine affected townships.

ARTICLE 19 notes that authorities may adopt exceptional measures, such as requiring broadcasters to carry emergency announcements, in limited circumstances. However, these measures must comply with Article 19(3) of the ICCPR. Crucially, these measures must make use of the least restrictive means to achieve that legitimate objective. Blanket denial of access to the Internet for entire townships in Myanmar for seven weeks is in clear violation of international human rights standards. Such a measure is particularly egregious and dangerous given the ongoing grave human rights violations being committed in Rakhine State, and should be reversed immediately.

Recommendations

To the government of Myanmar:

- Immediately lift the shutdown on mobile Internet in Rakhine and Chin States.

¹⁸ ARTICLE 19, 'Myanmar: Telecommunications Law, 2013, March 2017, p 16,

<https://www.article19.org/data/files/medialibrary/38665/Myanmar-analysis--8-March-2017.pdf>.

¹⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 30 March 2017, A/HRC/35/22, para 10.

²⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 30 March 2017, A/HRC/35/22, para 14.

- Repeal Article 77 of the Telecommunications Law. Cutting off Internet access should no longer be an option available to authorities under the law. Any restrictions on service in times of emergency should be narrowly defined, subject to prior judicial approval, and reserved for exceptional circumstances.

To telecommunications companies:

In its 2017 report, 'Getting Connected,'²¹ ARTICLE 19 proposed several recommendations for telecommunications companies and Internet service providers when responding to government orders that fail to comply with international human rights law. In the face of requests or demands to facilitate measures which clearly violate human rights standards, providers have a responsibility to respect international human rights principles to the greatest extent possible. This implies a responsibility to take the following steps with regards to network shutdowns:

Preparation and forecasting

- Identify domestic laws that could be used to order network shutdowns.
- Consult local civil society actors, peer companies and other sources of information to identify situations in which the State is likely to order a network shutdown.
- Educate staff about the possibility of a network shutdown and devise a decision-making strategy, including a public communications strategy, to be used in the event of a shutdown.

Resistance strategies

- Seek clarification from the government as to the intention, duration and scope of the shutdown.
- Exhaust domestic remedies to challenge the relevant order, including by employing legal challenges before judicial authorities.
- Coordinate responses with peers in order to increase leverage.

Mitigation and communication

- Identify potentially affected individuals and communicate to them the fact of the shutdown and its projected duration and scope, and provide them avenues for obtaining further information.
- Maintain control of the provider's infrastructure throughout the shutdown.
- Stage and limit the shutdown (geographically and temporally) to the greatest extent possible.
- Restore access as soon as possible.

Terms of service

- Terms of services should clearly state the conditions under which individuals' access to the Internet will be withdrawn as a result of a State-imposed network shutdown.
- In their terms of service, providers should commit to:
 - Not giving effect to network shutdowns unless all domestic avenues for challenging the shutdown have been exhausted;
 - Notifying individuals immediately of a forthcoming shutdown and regularly providing them with up-to-date information about the shutdown; and
 - Providing individuals grievance and remediation mechanisms to remedy any negative impacts of the shutdown that the company is in a position to address.

²¹ ARTICLE 19, 'Getting Connected,' <https://www.article19.org/wp-content/uploads/2017/06/Final-Getting-Connected-2.pdf>.