



MTN must stand up for its users, meet international obligations

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The human rights impacts of global telecommunications companies have come to the foreground as more activists, journalists, as well as ordinary citizens, access the internet and speak out via mobile devices. Few countries exhibit these complex issues better than Iran, where a connected, tech-savvy population runs up against a government that relies on advanced surveillance and censorship methods to stifle free expression. One foreign telecom operating there, MTN, has faced international criticism and investigations over reports of its role in the harassment of government critics and participation in corrupt business practices. To date, MTN has operated in Iran in a manner that is often publicly at odds with international norms on accountability and transparency and respect for human rights, exposing the company to the imminent threat of international legal repercussions that would likely limit their ability to provide basic connectivity services. At this crossroads, the company must urgently respond to its crisis of legitimacy through presenting a principled and comprehensive set of commitments to rule of law, accountability and transparency, which protect both the rights of users, as well as the critically important progress of providing widely-available access to modern communications services to the Iranian public.

On Thursday, Oct. 22, 2012, the human rights organization United for Iran released its report "Toward a Human Rights and Democracy Agenda for Iran," comprehensive assessment of the international response to the Iranian government's escalating crackdown against civil society and political opposition. The report, noting South Africa's own transformation from authoritarianism to constitutional democracy, calls attention to the failure of its government and domestic companies to consistently support international human rights movements. These comments come at a time when a wide range of civil society organizations have called into question the role that the Johannesburg-based, multinational telecommunications firm MTN Group plays in politically repressive environments such as Iran, Sudan, Syria and Yemen. With the credible legal threat and financial incentive posed by potential criminal investigations in both South Africa and the United States for evading sanctions and facilitating human rights abuses, a multi-billion dollar bribery suit in U.S. federal court, and blocked access to Irancell profits, whose value is declining rapidly, MTN stands to lose two of its largest operations -- Irancell and MTN Syria -- if it mishandles this crisis. The aggressive legal and political repercussions that MTN has invited on itself will further play into the Iranian government's war against the internet. Simply providing connectivity is not an excuse for disregarding



responsibilities to respect human rights; the company's approach must live up to fundamental moral obligations, and take into account the recognizable constraints presented by working in Iran. Without significant and immediate shifts in behavior, regulations such as the GHRAVITY Executive Order and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) place on the table a clearly defined recourse through sanctions. MTN must therefore urgently respond to this crisis by presenting a codified and transparent human rights policy, with principled responses to requests for information, transparency and accountability.

Inherent tensions of telecommunications in Iran

In Iran the very ownership of Irancell has come under scrutiny. MTN is the minority shareholder (49% ownership) within a consortium of companies who have been associated with Iran's Revolutionary Guard, namely the Mostazafan Foundation and Iran Electronics Industries. Statements in filings made in U.S. District Court by the Turkish telecommunications firm Turkcell allege corruption and bribery in MTN's securing permission to operate, and reinforce concerns over the relationship between the company and intelligence organizations.¹ Turkcell asserts, based on the testimony of a former MTN Irancell executive, Chris Kilowan, that the company offered from the outset to "provide access by the Iranian Ministry of Defense to MTN's devices," which would "facilitate installation of eavesdropping technology on MTN devices." Through these proceedings and other reports, the company has been accused of having entered various contracts to purchase and maintain surveillance and filtering equipment.² MTN has stated on a number of occasions³ that it does not engage in tracking of political dissidents nor censor social media services. However, it has failed to answer specific accusations that its data center is effectively run by government organizations that are not bound to legal or administrative processes to access subscriber data and track individuals.⁴ MTN has responded to these claims superficially, calling them "colourful allegations" without directly refuting their validity or elaborating how the company handles government requests.⁵

¹ http://newsandinsight.thomsonreuters.com/uploadedFiles/Reuters_Content/2012/04_-_April/turkcellvtmn.pdf

² <http://www.bloomberg.com/news/2011-10-31/iranian-police-seizing-dissidents-get-aid-of-western-companies.html>; <http://www.timeslive.co.za/local/2012/04/03/human-rights-commission-asked-to-investigate-mtn>; <https://www.accessnow.org/blog/access-confronts-telco-mtn-for-neglecting-human-rights/>

³ February 24 2012 letter to Ambassador Mark Wallace: <http://www.mtn.com/SiteCollectionDocuments/resources/data/Letter%20from%20MTN%20Group%20President%20and%20CEO%20to%20Ambassador%20Wallace.pdf>

⁴ <http://mg.co.za/article/2012-04-05-iran-puts-the-screws-on-mtn>

⁵ <http://www.mtn.com/MTNIran/Pages/MTNIranInfo.aspx?Pid=117>



All telecommunications entities face inherent tensions between the privacy expectation of their customers and the demands of governments that they are legally beholden to. While MTN claims that it does not facilitate the surveillance of political activists, it has not explained how current policies on government requests for information account for Iran's pervasive history of prosecutions based on unfounded charges that do not meet international legal standards for due process. International Campaign for Human Rights in Iran and others have documented the systematic detention of lawyers, journalists and human rights activists, noting these arrests occur often without warrants or on the basis of nonspecific warrants that enable authorities to detain anyone. Rather than overtly prosecuting critics for questioning government policies, these proceedings occur under the aegis of vague accusations of acting against national security, disturbing public order, espionage, insulting authorities, spreading propaganda against the regime, insulting Islam, and maintaining relations with anti-revolutionary groups.⁶ Without codified policies that articulate principled responses to unlawful requests, MTN becomes complicit in the Iranian government's assault on basic freedoms and rule of law.

Protecting the availability of communications services in Iran

Against the backdrop of these claims, it is important to underscore the gap in connectivity filled by telecommunications vendors such as MTN Irancell, as well as the opportunities that ongoing operations would provide. At the time that MTN was awarded Iran's second private mobile communication license, cellphone services were outside the reach of much of the public, plagued by waiting lists, high costs, congested networks, poor service quality, and low network coverage. MTN Irancell presented the first serious challenge to the state telecommunications company's effective monopoly, becoming the most popular service within six years (49% market share) and, in doing so, entered into a moral obligation to defend the free flow of information to the Iranian people. The availability of stable, open and inexpensive internet and communications connectivity must be vigilantly protected and encouraged. Toward these ends, Irancell has expanded wireless broadband service in several cities, while most of the country is forced to use dial-up due to archaic laws that restrict ADSL service.⁷

⁶ <http://www.iranhumanrights.org/2011/03/distortion-disinformation-arbitrary-detention;>
http://www.ecoi.net/file_upload/1226_1309944095_report-0611.pdf

⁷ <http://www.guardian.co.uk/technology/2006/oct/18/news.iran>



As the primary technical partner in the Irancell consortium, MTN provides infrastructure expertise and promotes market competition that serves to increase access to mobile data networks, smart phones and advanced communications services. This modernization, which is the foundation of ensuring freedom of expression, access to information, and the promotion of economic development, is certainly noted. Without MTN, however, authorities would not lose the capacity to monitor dissidents, considering the wide field of Iranian, Chinese and Russian vendors that have asserted that human rights are “psychological warfare the Americans use against their opponents.”⁸ The challenge presented to the company is to clarify and fulfill the promise of “strict ethical principles” asserted in the company’s narrow Human Rights policy.⁹

International standards on human rights and telecommunications

MTN has publicly stated that there is a “role for international bodies to draw up suitable codes of engagement with governments” and that it is “keen to draw on the expertise of third parties to think through how these issues are handled.”¹⁰ Despite these statements, the company does not participate in the human rights accountability processes that already exist, nor does it appear to follow the experiences of other companies. MTN refuses to disclose data through the Global Reporting Initiative on breaches of customer privacy, human rights grievances, or human rights reviews.¹¹ Nor does it comply with the UN Guiding Principles on Business and Human Rights, and it has ignored calls to join the Global Network Initiative (GNI). The “Ruggie Framework” describes the corporate responsibility to respect the human rights of users through due diligence, internal policies and the remedy of potential “business-related abuse.”¹² Furthermore, the company appears to ignore the pertinent guidance of the United Nations Global Compact, provided through case studies, such as one criticizing Nokia Siemens Networks for its provision of lawful interception equipment to MTN Irancell itself.¹³

⁸ <http://www.opendemocracy.net/od-russia/andrei-soldatov-irina-borogan/just-business-how-russian-technology-provides-eyes-and-ears->

⁹ http://www.mtn.com/Sustainability/Sustainable_Societies/Pages/FullView_SS_HumanRights.aspx

¹⁰ http://www.mtn.com/Sustainability/Sustainable_Societies/Pages/FullView_SS_HumanRights.aspx

¹¹ http://www.mtn.com/Sustainability/PerformanceHighlight/Pages/FullView_PH_GRI-Table.aspx

¹² <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>

¹³ http://human-rights.unglobalcompact.org/case_studies/product-misuse/product_misuse/addressing_the_misuse_of_telecommunications_technology_in_iran.html

These examples underscore the importance of voluntary compliance, centered around conducting due diligence, with the involvement of senior management, on institutional impact assessments. Accordingly, the United Nations notes that businesses are responsible for ensuring that they are not complicit in human rights abuses, including through silence or inactivity in the face of abuse.¹⁴ If the company is to continue to serve a progressive role in Iran and to mollify those countries threatening legal sanctions, MTN cannot persist in ignoring the advice and processes that already exist, and it cannot evade its responsibilities through opaque promises for addressing these issues through secretive corporate boards and paltry sustainability policies.

While Access's Telco Action Plan¹⁵ strongly recommends that companies avoid pursuing business in environments where rights to access, expression, or privacy are subject to egregious restrictions, these entities retain moral and social responsibilities should they make the decision to enter markets. An established set of principles must be the basis of continual evaluations on whether a vendor remains in a country or voluntarily departs due to new political developments. As Irancell's technical implementation partner, MTN maintains an opportunity to facilitate expanded access to communications platforms in Iran, alongside the obligation to ensure these activities maintain a respect for rule of law and human rights that would be expected elsewhere. MTN's responses to allegations thus far have been inappropriate and counterproductive, further encouraging aggressive actions from civil society and investigators. Even when attempting to consult independent experts, the company has fumbled -- recently, MTN sent a public relations firm to survey Access and other civil society groups on their perceptions of the company. Such a one-way, arms-length process is not the method of beginning a meaningful and transparent multi-stakeholder dialogue.¹⁶

Against the threat of further damage to the company's reputation, and the substantial risk of legal repercussions, MTN must sincerely commit to a human rights and rule of law framework, predicated on a set of basic principles set out in various forms by organizations such as Access (in its Telco Action Plan), the Electronic Frontier Foundation, and the UN Human Rights Council, including:

¹⁴ <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle2.html>

¹⁵ https://www.accessnow.org/page/-/docs/Telco_Action_Plan.pdf

¹⁶ <https://www.accessnow.org/blog/access-confronts-telco-mtn-for-neglecting-human-rights/>

Disclosure, within a transparency report and other accountability data, of the conditions under which it complies with government requests for network disruption or customer data, the processes it takes to ensure the legality of these orders, and aggregate records on its compliance activities to date, specific to each country it works in.

Restriction, of the hardware and support for disruptive and human rights-threatening technologies provided to external actors, including governments and telecommunications partners. It must take all possible steps to prevent the abuse of users' access, freedom of expression, or privacy.

Participation, in multi-stakeholder accountability processes, such as the Global Network Initiative, to conduct independent assessments of corporate policies and compliance on human rights obligations.

Documentation, of internal policies and procedures to ensure that compliance with requests for information are within international human rights standards and the rule of law, and are necessary and proportionate to a clearly defined, legitimate public purpose.

Consultation, with independent human rights experts and legal counsel on a continual basis to ensure a due diligence understanding of the potential risks of operating in environments where privacy and rule of law are not secure.

Transparency, regarding the surveillance and filtering equipment that the company has provided to government and telecommunications partners, including clarifying the entities that have direct access to these devices and data, in addition to those within MTN and its partners' facilities.

Conclusion: Time to act

South Africa's political history, international economic ties and position in the United Nations impart an obligation to ensure that its domestic companies are not complicit in the human rights abuses of other governments. MTN's actions have forced a crisis of the company's reputation and potentially exposed it to substantial criminal liabilities, culminating in calls for the company to voluntarily depart¹⁷ from countries in which it is unwilling to hold its operations accountable to tangible human rights policies. However, the decisions of civil society, regulators and MTN itself must account for the differences in the opportunities and risks that exist between different markets. In Syria, Access and others¹⁸ have outlined a history of active

¹⁷ <https://www.accessnow.org/page/s/respect-rights-or-get-out>

¹⁸ <http://en.rsf.org/united-states-us-sanctions-on-iran-syria-for-26-04-2012,42380.html>



complicity in human rights abuses, which raises serious questions as to whether MTN should continue operations there.

Access's recommendations are key to recognizing the differences in environments and an outline for the company to begin to restore the public legitimacy of the company in Iran, through creating structures that guarantee its international activities heed widely-held standards on transparency and respect for human rights. It is clear under these norms, as well as through both Iran's and South Africa's commitments to the International Covenant on Civil and Political Rights (ICCPR) to protect the free flow of information, that MTN has unsettled obligations to the Iranian public.

A policy of full market exit, whether voluntary or forced by external actors, would at this time endanger the progress that has been made in developing ubiquitous and modern access to the internet and telephone communications in Iran. Rather than continuing inaction and negligence by asserting vague promises on human rights, in unspecified policies and ethics committees, the path forward for MTN is clear. It is incumbent at this critical juncture for the company to prove that its presence in Iran is a force for progress that would not be guaranteed by alternative vendors. As policy-makers contemplate additional external actions, this moment demands a greater response than simply new statements and policies. Rather, the company must urgently implement steps towards compliance with widely-accepted human rights standards, transparently audited by an independent third party. This should include new commitments to the rule of law, conducting accountability processes, resisting unlawful government requests, continuing deployment of telecommunications infrastructure and taking further steps to ensure protections of human rights. Whether MTN makes immediate and verifiable advances complying with the established set of moral and legal obligations set out within this paper should be the metric by which civil society and regulators monitor and respond to the continued presence of the company in markets where issues of privacy and accountability are a matter of life and death.

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Access (accessnow.org) is an organization that defends and extends the digital rights of users at risk around the world. For more information, contact:

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