

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
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Dear Eric Yuan and Lynn Haaland,

RE: Zoom's suspension of Chinese activists' accounts violates International Human Rights

We write on behalf of Lawyers' Rights Watch Canada (LRWC), a Canada-based committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems, and the rule of law through advocacy, education, and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).

LRWC is concerned about recent events in which your company, Zoom Video Communications, Inc. (Zoom), suspended the accounts of human rights activists in the US and Hong Kong SAR who were using your platform, effectively censoring their ability to participate freely in discussion about human rights and political issues. We note that these three accounts were subsequently reinstated, and that Zoom has indicated it will not in future suspend the participation of persons outside mainland China. However, we are troubled by Zoom's stated intention to develop the means to disrupt calls involving people in mainland China should authorities in China so request.

We remind you of your corporation's obligations under international law binding in the United States (US) to respect the rights to privacy, freedoms of expression, access to information, association, and assembly pursuant to the *International Covenant on Civil and Political Rights*

(ICCPR).¹ These rights are also guaranteed by the *Universal Declaration of Human Rights* (UDHR)² which all UN member States, including China, are expected to recognize and observe. Though the UDHR is not a formally-binding treaty, parts of it, including the right to freedom of expression, are widely considered to be part of the body of customary international law that is binding on all States.³ Corporations such as Zoom have the responsibility to respect international human rights law. This responsibility exists over and above compliance with national laws and regulations. LRWC is particularly concerned that Zoom’s actions have been detrimental to human rights defenders, who are afforded special recognition in the UN Declaration on Human Rights Defenders⁴ and other human rights instruments.

We call upon Zoom to remedy these rights violations and ensure that further violations do not occur. The corporate responsibility to respect international law requires a forward-looking plan to ensure rights compliance in future situations.

Zoom states that it will, in future, “not allow requests from the Chinese government to impact anyone outside of mainland China.”⁵ However, LRWC is deeply concerned that Zoom intends to develop technology to remove or block participants based on geography so as to enable Zoom to comply with requests from local authorities when those authorities deem an activity on Zoom’s platform to be illegal within their country. This statement indicates that Zoom intends to continue a policy that has the effect of curtailing the rights to privacy and freedoms of expression, association, and assembly guaranteed by the international human rights law. We request that Zoom ensure that it will not in future block participation of persons based on their location, including of all persons in China. We urge Zoom to enact a company policy clarifying how Zoom will ensure respect worldwide for the rights guaranteed by international law.

Background

On 11 June 2020, Zoom had suspended the accounts of US- and Hong Kong-based human rights activists who were using Zoom as a platform to communicate in a meeting between people in the US and Hong Kong.⁶ Zoom admitted that it had suspended these accounts in order to “comply

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [ICCPR].

² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [UDHR].

³ See, e.g. *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit), para, 882, cited in ARTICLE 19, Memorandum on The Law of the Press of Afghanistan, London, ARTICLE 19, 2002, available at: <https://www.refworld.org/pdfid/475e4e1e0.pdf>.

⁴ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN General Assembly, resolution, 8 March 1999, A/RES/53/144, available online at: <http://www.refworld.org/docid/3b00f54c14.html> [UN Declaration on Human Rights Defenders].

⁵ Zoom Blog, “Improving Our Policies as We Continue to Enable Global Collaboration,” June 11, 2020, available online: <https://blog.zoom.us/wordpress/2020/06/11/improving-our-policies-as-we-continue-to-enable-global-collaboration/>, [Zoom Blog]

⁶ The Guardian, “Zoom admits cutting off activists’ accounts in obedience to China,” 12 June 2020, available online: <https://www.theguardian.com/world/2020/jun/12/zoom-admits-cutting-off-activists-accounts-in-obedience-to-china>;

with local law,” following a request from the government of China to do so. The activists were attempting to host Zoom meetings to commemorate the Tiananmen Square massacre.

Zoom deferred to the government of China’s interpretation of its domestic laws in attempting to justify the suspension of the activists’ accounts, stating that “[t]he Chinese government informed us that this activity is illegal in China and demanded that Zoom terminate the meetings and host accounts.”⁷ Zoom claims that it “strive[s] to limit actions taken to only those necessary to comply with local laws.”⁸ In the present case, compliance with local laws, according to Zoom, requires it to suspend accounts that the government of China identified as being used to engage in illegal activity.

Zoom has since un-suspended the accounts of US- and Hong-Kong based users, recognizing that China’s laws should not apply to users who are not using the service from mainland China. Despite Zoom’s insistence on the illegality of the suspended users’ actions within China, it did not indicate which law was said to be violated. China’s Constitution itself, in Article 35, protects freedom of speech, assembly, and association. Article 41 of China’s Constitution protects the right of China’s citizens “to criticize and make suggestions to any state organ or functionary” and “to make complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary.” It also prohibits anyone from suppressing such complaints or retaliating against the citizens making them.

LRWC is highly concerned by the ease with which Zoom agreed to the demands of the government of China to curtail its users’ ability to freely associate, assemble and express themselves, and to engage in dissent.

International Legal Obligations

Zoom’s assertion that it must adhere to the government of China’s interpretation of local laws eschews Zoom’s obligations to respect international law. Given that China’s own Constitution appears to protect the rights to freedom of expression, assembly, and association, Zoom’s violation of those rights is not defensible. Zoom’s failure to respect the internationally protected rights of its users is itself a violation of law.

The UN *Guiding Principles on Business and Human Rights* (Guiding Principles) establish that respect for internationally-recognized human rights is a foundational principle to which all corporations should adhere.⁹ Corporate respect for human rights is an imperative in a global

NPR, “Zoom Acknowledges It Suspended Activists’ Accounts At China’s Request,” 12 June 2020, available online: <https://www.npr.org/2020/06/12/876351501/zoom-acknowledges-it-suspended-activists-accounts-at-china-s-request>.

⁷ Zoom Blog, *supra* note 5.

⁸ *Ibid.* See also, *Zoom Terms of Service*, available at: <https://zoom.us/terms>. Zoom’s Terms of Service (TOS) requires Zoom users to “abide by, and ensure compliance with, all Laws in connection with your [. . .] use of the Services” (s2). It does not provide a definition of “Laws,” however, and specifically states the TOS “shall be governed by and construed under the laws of the State of California” (s20.1).

⁹ United Nations, *Guiding principles on business and human rights: implementing the United Nations “Protect, Respect and Remedy” framework*, 2011, available online: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. [Guiding Principles] Section 11.

social and economic system where the actions of businesses have impact on a wide range of rights for the entire population worldwide.

International human rights law has delineated the rights to freedoms of expression, association, assembly, and privacy across a wide range of treaties and instruments. The UDHR, at Article 19, states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁰ Article 20 of the UDHR protects the rights to freedom of peaceful assembly and association. Article 12 guarantees the right to freedom from arbitrary interference with privacy.

The ICCPR¹¹ states in Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹²

ICCPR Article 21 and 22 protect the rights to freedom of assembly and association respectively. The UN General Assembly in 2019 confirmed that the right to freedoms of expression, peaceful assembly, and association, are to be “fully protected online.”¹³

The UN General Assembly recognizes the right of protection for human rights defenders, such as the activists who were attempting to call attention to current and past rights violations in China. The UN Declaration on Human Rights Defenders, Articles 1 and 6, recognizes that all human rights defenders have both the right and the responsibility to promote the protection and realization of human rights and fundamental freedoms at the national and international levels.¹⁴

¹⁰ UDHR, *supra* note 2, Article 19

¹¹ ICCPR, *supra* note 1.

¹² *Ibid*, Article 19.

¹³ UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/41/41, 17 May 2019, available at: <https://undocs.org/A/HRC/41/41>, quoting the General Assembly, Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association, Resolution 73/173, available at: <https://undocs.org/en/A/RES/73/173>.

¹⁴ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN General Assembly, resolution, 8 March 1999, A/RES/53/144, available online at: <http://www.refworld.org/docid/3b00f54c14.html>:

Article 1 Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 6 Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

The work of a human rights defender includes the right and responsibility to draw public attention to situations, as occurred in this case, in which governments are or appear to be failing or refusing to adhere to international human rights law and standards. The UN Declaration on Human Rights Defenders further guarantees the protection of human rights defenders against any “retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action” as a consequence of their legitimate exercise of their internationally-protected rights.¹⁵

The activities in which the suspended users were engaged on Zoom fall under the protection of international human rights law. The users were engaged in a process of facilitating peaceful access to information and expression of opinion – specifically, the commemoration of the government of China’s brutal repression of political expression and assembly in the Tiananmen Square Massacre in 1989. Zoom’s failure to allow its platform to be used for free association, assembly, and expression, is a breach of international law.

The Guiding Principles “apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure,” and require that businesses respect human rights and avoid causing or contributing to adverse human rights impacts.¹⁶ That is, the Guiding Principles counsel against the exact behaviour in which Zoom has engaged by censoring the ability of activists in China to assemble online to express themselves and engage in discussion about international human rights and political dissent.

According to the Guiding Principles, the corporate responsibility to respect human rights,

is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.¹⁷

In the past week, the UN Human Rights Council adopted by consensus two resolutions relevant to Zoom’s obligations under international law, one on Business and Human Rights¹⁸ and another on Freedom of Opinion and Expression.¹⁹

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

¹⁵ *Ibid*, Article 12.

¹⁶ Guiding Principles, *supra*, note 9, Guiding Principle 13.

¹⁷ *Ibid*, Guiding Principle 11 Commentary.

¹⁸ UN Human Rights Council, *Resolution on Business and human rights: Working Group on the issue of human rights and transnational corporations and other business enterprises and improving accountability and access to remedy*, A/HRC/44/L.14, 10 July 2020, adopted without a vote on 17 July 2020, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/44/L.14.

¹⁹ UN Human Rights Council, *Resolution on Freedom of opinion and expression*, A/HRC/44/L.18/Rev.1, 14 July 2020, adopted without a vote on 16 July 2020, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/44/L.18/Rev.1.

The resolution on freedom of opinion and expression reaffirms the protection that international law affords to that right, and emphasizes that international businesses have a similar responsibility to respect the right to freedom of expression “by ensuring the greatest possible transparency in their policies, standards and actions that have an impact on the freedom of opinion and expression.”²⁰ Similarly, the resolution on business and human rights underlines the significant and increasing importance that business enterprises have in ensuring that all people are able to enjoy the rights and freedoms to which they are entitled. The resolution specifically references the UN Declaration on Human Rights Defenders including its call for “a safe and enabling environment for human rights defenders...”²¹

If Zoom is truly interested in promoting “the rights of . . . citizens and all humanity” and “promot[ing] the open exchange of ideas,” Zoom must ensure that its policies and practices are in line with established international human rights law and standards.²² Continuing to censor users undermines Zoom’s commitment to the global rule of law and undermines the ability of activists around the globe to engage in peaceful criticism of repressive state governments.

Recommendations

LRWC respectfully requests that Zoom:

1. Ensure that online communications of Zoom users are never in future suspended or disrupted in violation of international human rights law;
2. Develop and publish clear policy for how Zoom will fulfil its responsibility to respect human rights, in accordance with the *UN Guiding Principles on Business and Human Rights*.

We would appreciate your reply to this letter. Please also keep us informed of Zoom’s plans to implement the Guiding Principles.

Sincerely,
[signed]

Joey Doyle
Director, Lawyers’ Rights Watch Canada

[signed]

Joshua Lam
Director, Lawyers’ Rights Watch Canada

[signed]

Catherine Morris
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²⁰ *Ibid*, para 9.

²¹ *Supra* note 18, Preamble.

²² Zoom Blog, *supra* note 4.

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