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FREE လွတ်လပ်သော
EXPRESSION ထုတ်ဖော်ပြောဆိုခြင်း
MYANMAR မြန်မာ

Access Now and Free Expression Myanmar: Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 37th Session Third Cycle for Myanmar

9 July 2020

About Access Now

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, including engagement with stakeholders and policymakers in Asia and Asia-Pacific, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

About Free Expression Myanmar

Free Expression Myanmar (FEM) defends freedom of expression and freedom of information in Myanmar. FEM was created to fill a gap: although Myanmar had elected its first ever civilian government, local civil society lacked technical expertise to drive forward legal reform. It was time for legal reform to be led by local civil society voices and their strategy. FEM aims to increase knowledge among decision-makers by publishing and training on high quality research and policy recommendations based on international standards. FEM aims to shift attitudes among decision-makers by delivering conferences, trainings, workshops, roundtables. FEM aims to encourage progressive behaviour among decision-makers by conducting high-level advocacy with decision-makers, including on individuals' cases.²

Introduction

1. Access Now and Free Expression Myanmar welcome this opportunity to contribute to Myanmar's third UPR review cycle. Myanmar has participated in two UPR review cycles: 27 January 2011 and 6 November 2015 respectively.³

¹ Access Now, [Access Now About Us](#).

² Free Expression Myanmar, [About Us](#).

³ UN Human Rights Council, [Universal Periodic Review - Myanmar](#).

2. This submission addresses the state of digital rights including (1) freedom of expression and access to information and (2) the right to privacy in Myanmar. Specifically, this submission raises concerns regarding internet shutdowns, protection of human rights defenders, activists, journalists, and other at risk actors, data protection, and digital identity programmes in Myanmar. Freedom of expression, access to information and the right to privacy remain priority issues for Myanmar.

Domestic and international human rights obligations

3. Myanmar is a signatory to the Universal Declaration of Human Rights (UDHR). Myanmar has not signed or ratified the International Covenant on Civil and Political Rights (ICCPR). Myanmar has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴
4. Myanmar has signed the ASEAN Human Rights Declaration, which affirms the right to freedom of expression and opinion and the right to privacy.⁵
5. The 2008 Constitution (the Constitution) is Myanmar's third and current Constitution. Articles 354 (liberty of expression and publication) and 365 (freedom of artistic expression), recognize – but do not fully protect – the right to freedom of expression and opinion. Article 354 provides citizens the freedom “to express and publish freely their conventions and opinions” and “to assemble peacefully without arms and holding procession,” but only to the extent that they do not contradict laws for the protection of national security, public order, community peace and tranquillity and public morality.⁶ Article 365 provides for freedom of literary, cultural and artistic expression for every citizen. However, it requires citizens to avoid any “act detrimental to national solidarity” and to coordinate any action likely to adversely affect the interests of a national race with that group.⁷
6. Article 357 of the Constitution recognizes the right to privacy. Article 357 states “the Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.”⁸
7. Myanmar has no laws or regulations protecting personal data.
8. Despite its membership in the United Nations, the government of Myanmar has refused to engage with international delegations, experts, and missions, including the Independent International Fact-Finding Mission for Myanmar,⁹ and the Special

⁴ OHCHR, [Status of Ratification: Interactive Dashboard](#).

⁵ ASEAN, [ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration \(AHRD\)](#), (February 2013).

⁶ Free Expression Myanmar, [Constitution](#).

⁷ *Id.*

⁸ *Id.*; Privacy International, [The Right to Privacy in Myanmar: Universal Periodic Review Stakeholder Report 23rd Session, Myanmar](#), (March 2015).

⁹ See OHCHR, [Special Rapporteur on the situation of human rights in Myanmar Oral update to the Human Rights Council](#) (16 September 2019).

Rapporteur on the situation of human rights in Myanmar, who was denied entry to the country from Dec. 2017 onwards.¹⁰ Furthermore, the Special Rapporteur expressed concern over possible reprisals against those who supported her country visit in January 2017.¹¹

Developments of digital rights in Myanmar

9. Myanmar has made marginal changes to address existing oppressive legislation regarding the right to privacy and freedom of expression since the last UPR review cycle. In fact, Myanmar continues to use overly broad, vague and abusive laws to directly prosecute those exercising freedom of expression, creating a chilling effect on free speech throughout the country.¹² While Myanmar has taken some important steps to strengthen the right to access information in the country, proposed legislation still falls short of international standards.
10. Laws that criminalise freedom of expression in Myanmar, include, but are not limited to:
 - a. Telecommunications Law (Article 66(d));
 - b. Electronic Transactions Law (Articles 33 and 34(d));
 - c. The Unlawful Associations Act of 1908;
 - d. The Official Secrets Act of 1923;
 - e. The Peaceful Assembly and Peaceful Procession Law;
 - f. Penal Code sections 124(A) (sedition), 295A (insulting religion), 499-500 (defamation) and 505 (incitement);¹³
 - g. Printing and Publications Enterprise Law;
 - h. Law Protecting the Privacy and Security of Citizens.¹⁴
11. In April 2018, a draft amendment to the Peaceful Assembly and Peaceful Procession Law was proposed in Parliament. However, the draft "contains five amendments that would undermine freedom of expression."¹⁵ Some 230 civil society organizations and 25 individuals issued a joint statement opposing the bill to amend the Peaceful Assembly and Procession Law.¹⁶ The current status of this draft amendment in Parliament remains unclear.
12. Legislative provisions do not integrate the right to access information in Myanmar's domestic legal framework – with the exception of some regulations relating to business ownership – and therefore the legislation falls short in meeting international human

¹⁰ See UN Experts, [Myanmar: Departing UN rights expert still hopeful for democratic transition](#) (23 January 2020).

¹¹ OHCHR, [UN human rights expert concerned about reprisals during recent visit to Myanmar](#) (24 January 2017).

¹² Aye Min Thant, [Human Rights Watch says Myanmar government using 'abusive laws' to punish critics](#), Reuters, (31 January 2019).

¹³ Article 19, [Myanmar: Criminalisation of free expression](#), (7 June 2019).

¹⁴ Human Rights Watch, [Burma: Privacy Law Used to Prosecute Critics Amend Provision Violating Free Expression Rights](#), (12 January 2018).

¹⁵ Free Expression Myanmar, [5 violations that need addressing in protest law amendment](#), (26 February 2018).

¹⁶ The Irrawaddy, [Hundreds March Against Proposed Changes to Peaceful Assembly Law](#), (6 March 2018).

rights standards. In 2016, the Right to Information Bill was proposed by the USDP government before the NLD government took power. If enacted, the Bill would create a new culture of openness in the Myanmar government, but also contained several weaknesses as well.¹⁷

13. In February 2020, a senior MP attempted to amend the 2017 privacy law with the Draft Amendment Bill of the Law Protecting the Privacy and Security of Citizens.¹⁸ While it is unclear whether the proposal has government support, it remains in Parliament at time of submission and seems to be proceeding. Specifically, Free Expression Myanmar and Access Now raise concern that the 2017 enactment actually focused on creating a duplicative criminalisation of conduct similar to defamation, rather than giving individuals more clarity on their right to privacy and protection of data in line with international human rights and best practices amongst states on protecting the right to privacy in the digital age. Free Expression Myanmar and Access Now maintain that the privacy law should be amended to promote and protect individuals' rights.
14. In December 2019, the National Records and Archives Law was adopted to replace the undemocratic 1990s law. However, the Law is problematic and undermines the right to information. The Law essentially perpetuates a system where all information is the government's secret property and any public access to that information would be regarded as a security threat. It would create a government controlled supervisory body with extensive and unrestrained powers and create an ominous risk for media and civil society.¹⁹ Free Expression Myanmar and Access Now note two specific problems with this Law:
 - a. First, under this Law, the government would be able to classify any information as "strictly confidential" and hide it away for 30 years or more. No independent body exists to review the government's decisions. Therefore, the government could easily misuse the "strictly confidential" classification to hide information about corruption, wrong-doing or human rights violations.
 - b. Second, any and all requests for access to government-held information would be individually approved in advance by the law's supervisory body. The chairperson of the law's supervisory body is the Union Minister for Planning and Finance. The law does not say on what basis the Minister must make this decision and there is no option to appeal to an independent court or Information Commission. Importantly, accessing information without permission would attract a prison sentence. Therefore, the government would be in control of the decision of who can access information, even information at the lowest level of

¹⁷ Free Expression Myanmar, [Right to Information Bill](#), (27 February 2017); PEN Myanmar et al, [Myanmar: Freedom of Expression Scorecard](#), (2 May 2019).

¹⁸ Free Expression Myanmar, [NGOs call on parliament to consult on draft privacy law amendment](#), (6 March 2019).

¹⁹ Free Expression Myanmar, [New Bill a big step backwards for RTI](#), (18 July 2019).

confidentiality classification.²⁰

Freedom of expression and access to information

15. During Myanmar's first review cycle, the country received 20 recommendations regarding freedom of expression, of these only 1 recommendation was supported and 19 recommendations were noted by the government of Myanmar.²¹ During Myanmar's second review cycle, the country received 19 recommendations regarding freedom of expression, 6 of which were supported and 13 of which were noted by the government of Myanmar.²² Freedom of expression remains a priority issue in Myanmar.
16. In March 2016, Myanmar established its first democratically elected government since 1962, which triggered high expectations concerning potential reforms to laws and policies that had been restricting freedom of expression and assembly for years. Yet, the government of Myanmar seems to be taking the opposite direction.²³ Aside from not promoting substantive changes in existing laws, the government has been adopting new legislation and policies that further impairs the exercise of the right to freedom of expression²⁴ and people's access to information.²⁵ The situation is especially alarming with regards to the ongoing armed conflict in Myanmar and the responses to the COVID-19 pandemic in the country.²⁶
17. Recently, for instance, three news outlet editors were charged under the Counter-Terrorism Law for publishing interviews with an Arakan Army spokesperson - after the Arakan Army was declared a terrorist organization by the government. The Special Rapporteur on the situation of human rights in Myanmar expressly condemned the charges, highlighting that the editors' reporting on the armed conflict was of even higher value to the public interest as the government imposed the mobile shutdown in the Rakhine and Chin States.²⁷
18. In addition to journalists, other individuals have been prosecuted by the authorities for criticizing the military, live-streaming a satirical anti-war play, and for social media posts deemed insulting by other private individuals. Lawyers in the country also express their fear of prosecution or other reprisals from the government when speaking up about politically sensitive issues.²⁸ Additionally, individuals are also being prosecuted for organizing or participating in peaceful assemblies.²⁹

²⁰ Free Expression Myanmar, [New Bill a big step backwards for RTI](#), (18 July 2019).

²¹ UPR Info, [Database of Recommendations](#).

²² *Id.*

²³ Human Rights Watch, [Dashed Hopes: The criminalization of Peaceful Expression in Myanmar](#) (31 January 2019).

²⁴ *Id.*

²⁵ OHCHR, [Myanmar must allow free flow of information and aid to protect right to health in COVID-19 crisis – UN Special Rapporteur Yanghee Lee](#), (9 April 2020).

²⁶ *Id.*

²⁷ *Id.*

²⁸ ICJ, [Myanmar: Country profile prepared by the Centre for the Independence of Judges and Lawyers](#), (March 2020), at p. 19.

²⁹ Human Rights Watch, [Dashed Hopes: The criminalization of Peaceful Expression in Myanmar](#) (31 January 2019).

19. Restrictions on freedom of expression in Myanmar come along with limitations on access to information. For instance, journalists outline that government officials often refuse to answer questions or dialogue with the media.³⁰ Internet shutdowns have also been deployed by the government as a tool to hinder access to information, which is vital in the context of the COVID-19 pandemic.³¹
20. Similarly, the government has been issuing statements warning that people who disseminate "fake news" would be prosecuted. There is a great risk that the decision on what constitutes "fake news" would lie on the authorities' scrutiny and arbitrary decision. This power can, then, be used as a tool to contain the spread of relevant public health information and information on the government's response to the pandemic. However, as the UN Special Rapporteur on the situation of human rights in Myanmar highlights, "state authorities must not misuse the crisis situation to crack down on human rights defenders, journalists, health workers and others who provide information that is perceived to be critical or is exposing human rights violations, including those that may occur during the COVID-19 emergency response."³²

Internet shutdowns and website blocking

21. The international community has demonstrated a continued opposition to blanket restriction on internet access, such as internet shutdowns, and an ongoing commitment to the open exchange of information via the internet.³³
22. Myanmar imposed the longest internet shutdown of 2019. The government first introduced the shutdown in nine townships in Rakhine and Chin states affecting over a million people.³⁴ After 71 days, the shutdown was lifted in five of the townships, leaving four townships in a blackout. Rakhine state is where at least 500,000 - 600,000 Rohingya Muslims reside, and where the Myanmar military is in active conflict with the Arakanese Army. At the date of this submission Myanmar has once again extended the shutdown to include the original nine townships in Rakhine and Chin states.³⁵
23. On June 21, 2020, amid the COVID-19 pandemic, these states entered their second year of internet shutdown in the region. This shutdown is the third-longest internet shutdown in the world and it currently affects approximately 1.4 million people.³⁶ The internet shutdown was issued under article 77 of the 2013 Telecommunications Law. Article 77 permits the suspension of a telecommunications service, when an emergency situation

³⁰ *Id.*

³¹ OHCHR, [Myanmar must allow free flow of information and aid to protect right to health in COVID-19 crisis – UN Special Rapporteur Yanghee Lee](#), (9 April 2020).

³² *Id.*

³³ See e.g. UN General Assembly, Resolution on the Safety of Journalists and the Issues of Impunity, (19 December 2017), UN Doc. A/RES/72/175; UN General Assembly, Resolution on the Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association, (17 December 2018), UN Doc. A/RES/73/173.

³⁴ Free Expression Myanmar, [21-day countdown to Myanmar Internet Blackout Day 101](#), (9 September 2019).

³⁵ #KeepItOn, Access Now, [Targeted, Cut Off, and Left in the Dark The #KeepItOn report on internet shutdowns in 2019](#), (February 2019).

³⁶ Access Now, [365 days and counting: Myanmar must end the internet blackout in Rakhine and Chin states](#), (22 June 2020)

arises.³⁷ In justifying the original shutdowns, Mr. U Nyo Swe, a chief engineer for Myanmar Posts and Telecommunications insisted that they were for the benefit of the people.³⁸ Internet shutdowns, in Rakhine State or else around the world, do not benefit people; they place them at higher risk.³⁹ Civilians living in these conflict zones are unable to reach their loved ones and unable to access information that could be life saving. Civil society, journalists, and humanitarian organizations cannot use the internet to document or publish information about human rights violations or war crimes, and they struggle to provide humanitarian support that often requires the internet to coordinate efforts.⁴⁰

24. The national government has repeatedly stated that the shutdown is intended to address conflict in those areas.⁴¹ However, despite more than nine months of shutdown, the conflict remains as ongoing as before the shutdown.
25. In the context of the current global pandemic, internet shutdowns have an even greater impact on people's lives and the enjoyment of human rights. Access to the internet saves lives and gives people a fighting chance, as the internet becomes a fundamental channel to disseminate public health information on COVID-19, such as prevention measures.⁴²
26. The ICESCR, to which Myanmar is a signatory, provides for a right to access to healthcare, which requires, among others, "Information accessibility."⁴³ Beyond the right to access to health-related information, information accessibility also imposes on States the duty to abstain from enforcing discriminatory practices, as well as censoring and withholding health-related information.⁴⁴ As noted by the International Commission of Jurists, since International human rights law still applies in armed conflicts, the existence of any such conflict in Myanmar is no legitimate excuse for the government not to comply with the ICESCR.⁴⁵
27. Despite calls from civil society organisations for the government to lift the internet shutdowns,⁴⁶ authorities not only expanded the network disruptions⁴⁷ but also issued opaque new orders to block websites and thus censor content and information.⁴⁸ Among the blocked websites are those run by pro-Rohingya activists, and ethnic media outlets on which affected communities – many in conflict zones – rely for health information and

³⁷ Human Rights Watch, [Myanmar: Internet Shutdown Risks Lives Immediately End Restriction in Rakhine, Chin States](#), (28 June 2019).

³⁸ Access Now, [As Myanmar marks 101 days of internet shutdowns, the #KeepItOn coalition urges full restoration of internet access](#), (30 September 2019).

³⁹ *Id.*

⁴⁰ Access Now, [Urgent: Shutdowns in Kashmir, Myanmar, and Bangladesh leave oppressed groups disconnected from the world](#), (19 December 2019).

⁴¹ Thu Thu Aung, Sam Aung Moon, [Myanmar reimposes internet shutdown in conflict-torn Rakhine, Chin states: telco operator](#), Reuters, (5 February 2020).

⁴² See Access Now, [Expanding connectivity to fight COVID-19: recommendations for governments and telcos](#), (April 2020), at p. 3.

⁴³ ICJ, [COVID-19 and Human Rights: Upholding the Right to Health in Myanmar's Conflict Areas](#) (April 2020), at p. 4.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Fortify Rights, [Myanmar: Lift Internet Restrictions to Protect Public Health](#), (26 March 2020).

⁴⁷ *Supra* note 37.

⁴⁸ Telenor, [Blocking of 230 Websites in Myanmar Based on Directive from the Authorities](#), (30 March 2020).

others.

28. Furthermore, as a response to the requests to lift the internet shutdowns for the sake of public health, the Minister of Transport and Communications informed that, despite the pandemic, "there was no plan to lift the months-long Internet shutdowns until hate speech, misinformation and the conflict with the Arakan Army were addressed".⁴⁹
29. As of 14 January 2020, the cost of internet shutdown in Rakhine (Myanmar) had cost the government over approximately US\$75.2 million.⁵⁰
30. In February 2020, the police laid charges against nine Myanmar students who organized a protest demanding an end to the internet shutdown. The case has been built on the Peaceful Assembly and Peaceful Procession Law, which prohibits unauthorized assemblies and, if convicted, the students can face a fine and/or up to three months in jail.⁵¹
31. In Myanmar's national Parliament, any debate on the shutdown is effectively banned as previous agenda requests by MPs representing Rakhine constituencies have been refused by the parliamentary authorities. Debates continue in the Rakhine State Parliament but the body holds very little power to address the shutdown or its effects.

Protection and safety of journalists, human rights defenders, civil society organisations

32. According to Athan, a youth-led freedom of expression group based in Myanmar, in 2019 over 250 people were either imprisoned or charged with violating laws that restrict freedom of expression.⁵² For instance, award-winning journalist Swe Win has been fighting a court case for more than 2 years for comments he made online. The Peacock Generation Theatre Group were imprisoned under Penal Code 505(a) for their play critical of the military.⁵³ Moreover, documentary filmmaker Min Htin Ko Ko Gyi was sentenced to 1 year's imprisonment under section 505 (b) of the Penal Code, in relation to comments critical of the military.⁵⁴ He is suffering from a life-threatening illness. Finally, two Reuters journalists, Ko Wa Lone and Ko Kyaw Soe Oo were imprisoned, and then eventually released, for reporting on the Rohingya crisis in Myanmar.⁵⁵
33. NGOs continue to face unwarranted restriction, particularly under the 2014 Association Registration Law. Under this law, authorities have excessive discretion to deny

⁴⁹ ICJ, [COVID-19 and Human Rights: Upholding the Right to Health in Myanmar's Conflict Areas](#), (April 2020), at p. 2.

⁵⁰ The ASEAN Post, [Internet shutdowns could cost ASEAN dearly](#), (14 December 2020).

⁵¹ Reuters, [Myanmar students face charges over internet shutdown protest: student union](#), (24 February 2020).

⁵² Sit Htet Aung, [Freedom of speech remains elusive under NLD regime](#), Myanmar Times, (1 January 2020); *See also* Athan, [2019 FOE Report](#), (2019).

⁵³ BBC, [Peacock Generation: Satirical poets jailed in Myanmar](#), (30 October 2019).

⁵⁴ Article 19, [Interactive Dialogue with the Special Rapporteur on Cultural Rights](#), (4 March 2020).

⁵⁵ AFP, [Freedom of expression in Myanmar still 'dire': UN](#), Frontier Myanmar, (7 May 2019).

registration to an NGO on vague and unspecified grounds.⁵⁶

The right to privacy and data protection

34. During both the first and second review cycles, Myanmar received no recommendations regarding the right to privacy or data protection.⁵⁷ During the second UPR review, neither the National Report submitted by Myanmar nor the report of the Working Group mention the right to privacy and data protection. Nonetheless, violations of the right to privacy have and continue to occur in Myanmar.

Surveillance

35. Myanmar has also enforced mandatory registration of SIM cards. Earlier this year, the Posts and Telecommunications Department required mobile phone users to re-register their SIM cards with their IDs. Telcos have stated that the Department did not withdraw or postpone the order and that all unregistered SIMs are now in the process of deactivation.⁵⁸ Over 6 million have reportedly been deactivated so far.⁵⁹

36. Mandatory SIM card registration requires people to provide personal information – such as digital identification and even biometrics – as a condition to operate a SIM card. Such requirements enable the state to identify the owners of SIM cards. Communications can therefore be attributed to specific persons.⁶⁰ Mandatory SIM card registration therefore undermines people’s right to privacy, freedom of expression by undermining people’s ability to communicate freely and anonymously, often leading to self-censorship.

37. Moreover, many users of unregistered SIMs and “counterfeit” devices are members of at-risk communities, including impoverished groups and those without easy access to legal identity documents, such as immigrants, displaced persons, and refugees. Deactivating their devices or accounts directly interferes with their fundamental rights to expression and access to information, as well as economic, social, and cultural freedoms.

38. In 2019, the Ministry of Transport and Communications issued a tender for a national database of biometric information for SIM card subscribers.⁶¹ No further information has been provided relating to the protection of that database.

39. As noted in the OHCHR’s summary of Myanmar’s last UPR review, Privacy International indicated that Myanmar had yet to draft laws that governed the interception of

⁵⁶UN Human Rights Council, [Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Myanmar](#), A/HRC/WG.6/23/MMR/3, (28 August 2015); Charlene Chin, [Myanmar launches digital identities for citizens](#), Gov Insider Asia, (11 January 2017).

⁵⁷UPR Info, [Database of Recommendations](#).

⁵⁸Aung Thiha, [Myanmar Mobile Users Told to Re-Register SIM Cards by June 30](#), The Irrawaddy, (28 February 2020); Saw Yi Nandar, [Government to block SIM cards not used within six months](#), Myanmar Times, (14 January 2020).

⁵⁹Freedom House, <https://freedomhouse.org/country/myanmar/freedom-net/2019>, (November 2019). The government has implemented two rounds of deactivations, and this number is likely now to be over 12 million (see as yet unpublished Freedom of the Net Report, Freedom House, November 2020).

⁶⁰PEN Myanmar et al, [Myanmar: Freedom of Expression Scorecard](#), (2 May 2019).

⁶¹Myanmar Times, [Myanmar wants mobile user biometrics](#), (5 December 2019).

communications by law enforcement. Privacy International also noted lack of transparency of agencies conducting surveillance. These included the Office of Chief of Military Intelligence and the police force.⁶²

40. In 2018, the government formed and implemented the Social Media Monitoring Team (SMMT). According to U Ye Naing Moe, director of the National Cyber Security Centre, the SMMT was formed as a preemptive measure to prevent “foreign sources who interfere and incite unrest in Myanmar.”⁶³ According to PEN Myanmar et al., there are concerns that “the SMMT is carrying out mass surveillance without any form of safeguards to protect the right to freedom of expression and privacy.”⁶⁴ Although parliament has allocated the SMMT with a budget, there remains no available information as to the SMMT’s mandate or work carried out to date.
41. Moreover, Myanmar has in place strict obligations on telecom companies regarding data. Specifically, “telecom companies are obliged to provide data about their users without any proper safeguards to ensure that data requests are lawful. User’s rights are not protected by judicial oversight of data requests.”⁶⁵

Digital Identity Programmes

42. It is imperative that digital identity systems, particularly those backed by the state’s resources and legal powers, are designed around sound principles of governance, data protection, privacy and security. Establishing digital identity programmes is often set within the context of making the delivery of services, including welfare benefits more efficient and accurate, and reducing corruption by using technology to assist in clear identification and secure authentication. However, these programmes can themselves become impediments to governance and harm the provision of welfare services and the wider inclusion of citizens.
43. In 2017, the Ministry of Labour, Immigration and Population established a Digital Government programme to replace paper-based national registration cards with digital IDs. Biometric data, such as people’s fingerprints and eye scans were collected for the digital IDs.⁶⁶ Within two years, the government collected biographic and biometric data of 1.3 million people.⁶⁷
44. National digital ID programmes are also data heavy, both during enrollment and when transactions are regularly authenticated. This raises significant concerns for privacy and data protection. Given that this programme is handled by the government, there is an

⁶² UN Human Rights Council, [Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Myanmar](#), A/HRC/WG.6/23/MMR/3, (28 August 2015).

⁶³ Nyein Zaw Lin, [Social media team will not spy on netizens, official says](#), Myanmar Times, (23 May 2018).

⁶⁴ *Supra* note 56.

⁶⁵ *Id.*

⁶⁶ Charlene Chin, [Myanmar launches digital identities for citizens](#), Gov Insider Asia, (11 January 2017).

⁶⁷ HtooThant, [Govt begins digitising personal information for ID cards](#), (9 May 2019).

inherent public trust in, and authority associated with the collection of this data. This can lead to the pervasive use of Digital IDs and put at risk the information that individuals provide under such programmes. Further, the sheer scale of these programmes requires well designed safeguards. Furthermore, Myanmar does not have a law regulating the protection of personal data.⁶⁸ Without these proper legal frameworks in place, citizens' data – including highly sensitive biometric data – is at risk for misuse.

45. An effective policy framework for a digital ID programme must be supported by an equally strong technology and cybersecurity framework. The collection of large amounts of personal information pertaining to identities – including biometrics – often form tempting targets for criminals and other actors for malicious hacking and cyber intrusion. Additional challenges related to the secure communication of data during authentication must be met through proper encryption.
46. Access Now and Free Expression Myanmar posit grave concern over the use and collection of biometric data in the new digital ID cards in Myanmar. The collection and use of biometric data poses significant risks for individuals. Given the potential for exploitation of these data, we discourage the use of biometrics in digital ID programmes. In its policy handbook for 2017, the Cato Institute echoed similar concerns advocating against the use of biometric identification in national digital ID systems.⁶⁹ The aggregation and use of biometric data should be sharply limited, even if such aggregation and use is aimed at increasing convenience or justified as a way to enhance security.

Recommendations

47. We therefore urge that freedom of expression, access to information and the right to privacy are prominent issues in the upcoming UPR review cycle. We recommend that the government of Myanmar:
48. Sign and ratify the International Covenant on Civil and Political Rights, and its Optional Protocols.
49. Repeal or amend the following laws in order to bring Myanmar's legal framework in line with international human rights law obligations:
 - a. Telecommunications Law (Articles 66(d), 68(a), 77 and 78);
 - b. Electronic Transactions Law (Articles 33 and 34(d));
 - c. The Unlawful Associations Act of 1908;
 - d. The Official Secrets Act of 1923;
 - e. The Peaceful Assembly and Peaceful Procession Law of 2016;

⁶⁸ UN Human Rights Council, [Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Myanmar](#), A/HRC/WG.6/23/MMR/3, (28 August 2015); Charlene Chin, [Myanmar launches digital identities for citizens](#), Gov Insider Asia, (11 January 2017).

⁶⁹ Jim Harper for Cato Institute, [Cato Handbook for Policymakers](#), 8th Edition, (2017).

- f. Penal Code sections 124(A) (sedition), 295A (insulting religion), 499-500 (defamation) and 505 (incitement);
 - g. Printing and Publications Enterprise Law;
 - h. Law Protecting the Privacy and Security of Citizens.
- 50. Immediately lift all restrictions on internet access and restore telecommunication unconditionally to full capacity. Blocking entire websites, applications, networks, and services disproportionately interferes with fundamental rights.
 - a. Any interference with access to information online must be lawful, necessary and proportionate, pursuant to a legitimate aim, and approved via warrant or court order issued by independent judicial authorities.
- 51. Ensure universal access to a free, secure, and open internet, extending digital economic, educational, health, social, and cultural resources to all, and particularly to those in vulnerable communities and people in at-risk groups.
- 52. Refrain from blocking lawful websites and applications, as well as manipulating network traffic to silence or favor particular voices or content, in addition to prohibiting any such practices by third parties.
- 53. Make a state pledge to refrain from restricting internet access in the future, including in other conflict areas and during periods of elections.
- 54. Review national legislation to fully guarantee the safety of journalists, human rights defenders, and activists, and facilitate the functioning of NGOs so that these important actors can pursue their activities freely without undue interference, attacks or intimidation.
- 55. Enact a comprehensive data protection law to protect the right to privacy, and adequately fund and support its implementation.
- 56. Ensure that mandatory SIM card registration is not deployed as a mechanism to exclude individuals or target communities.
- 57. Ensure that the enrollment or participation in the digital identity programme is not a prerequisite to receive essential goods and services.
- 58. Minimise the amount of and type of data the government and associated service providers collect through the digital identification system. Further, restrict lawful interception and monitoring of digital identity use and implement measures for accountability.
- 59. Ensure that all surveillance of digital communications is consistent with international human rights obligations and is conducted on the basis of a legal framework which is publicly accessible, clear, precise, comprehensive and non-discriminatory.
- 60. Refrain from using criminal law to punish speech acts, and implementing any highly restrictive legal measures to combat misinformation surrounding the COVID-19 pandemic. Criminal law may only be used in the gravest situations, such as incitement to

violence and hatred, and in accordance with international human rights law standards.

61. Ensure that all responses to the COVID-19 pandemic are transparent, time-limited, necessary and proportionate as to be beneficial to solving the crisis while respectful and protective of individual privacy, particularly when handling health data from any citizens.
62. Commit to allow visits by and engage with international organizations and experts, including the UN Special Rapporteur on the situation of human rights in Myanmar, and ensure their delegations and those supporting their work may safely exercise their rights, free from reprisal.

Conclusion

63. The UPR is an important UN process aimed at addressing human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. Access Now and Free Expression Myanmar are grateful to make this submission.

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