SDG 16.10 and implementation of the right to information in 2021

ဗိုလ်ချုပ်ကိုယ်စားလှယ်များ၏

SECRET STATE OF MYANMAR
Acknowledgements

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About FEM

Free Expression Myanmar (FEM) is a national human rights organisation that is expert in free expression and information, engaging in legal reform, defending victims of violations, and promoting best international standards.

This report forms part of FEM’s objective to promote appropriate and needed reforms. See:

- [www.FreeExpressionMyanmar.org](http://www.FreeExpressionMyanmar.org)
- [www.facebook.com/FreeExpressionMyanmar](http://www.facebook.com/FreeExpressionMyanmar)
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This report was completed just days before the military’s coup d’état on 1 February 2021. The military’s actions have violated human rights, including the right to information. The status of the UN’s Voluntary National Review into Myanmar’s SDG progress, due in July 2021, is unknown.

However, FEM has decided to publish this report as a contextual record, to inspire global peers on testing local implementation of SDG 16.10, and in recognition of the hard work done by all those involved.
Executive summary

“Knowledge is power and it can command obedience”

Imam Ali, AD 900; Francis Bacon, AD 1597

If Myanmar’s democratic transition is to succeed then chronic government secrecy must end. The lingering desire for secrecy and control of information among all parts and levels of government are relics of the previous authoritarian government and have led to widespread corruption and wrongdoing. Such ingrained secrecy will not end on its own or simply through occasional government pronouncements – it requires organised, systematic, and sustained change.

The right to information (“RTI”) is the democratic principle that information held by the government is public property and not government property. RTI is not just a law; it is a fundamental readjustment of power intended to end secrecy, and with it, corruption and wrongdoing. Giving the public control over information is vital to development. For example, if people have access to information about their hospital’s budget, then they can start to hold the hospital accountable. Accountability both improves decision-making and reduces corruption.

In 2015, the world came together and included RTI in the UN Sustainable Development Goals (“SDGs”) alongside other aims such as those for health and education. SDG 16.10 requires all governments to embed RTI into all policies and practices, including via an RTI law. The Myanmar government adopted the SDGs in 2015 and created the Myanmar Sustainable Development Plan (“MSDP”) in 2018 to elaborate on how it would achieve the goals. In 2021, the Myanmar government will conduct a “Voluntary National Review” before the UN to update the international community on its progress to date, including on RTI under SDG 16.10.

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1 See https://www.transparency.org/en/what-is-corruption
In preparation for this process, FEM brought together 20 senior journalists and trained them as “RTI Auditors” to methodologically investigate and test the government’s implementation of SDG 16.10 across Myanmar. Although Myanmar does not yet have a specific RTI law, the SDG and MSDP commitments are broader and require widespread changes in policies and practices, each of which can and should be measured.

The RTI Auditors conducted their investigations engaging with over 50 government institutions at union, regional, and district levels between November 2020 and January 2021. Afterwards, all RTI Auditors came together to jointly assess their experiences, identify commonalities, and conclude the real situation for RTI in Myanmar. This report is that assessment and will be submitted into the UN’s Voluntary National Review process for Myanmar.

The RTI Auditors found that the Myanmar government still does not proactively disclose information. Government officials are often inaccessible and are usually unaware of either RTI or the government’s own MSDP. Some information procedures exist, but officials do not seem to follow them. Officials are suspicious and dismissive of public engagement, demanding reasons for requesting information and showing an ingrained presumption for secrecy. Most officials never disclosed information or offered reasons for not disclosing information. Those officials that did disclose gave too little information too late. Some of the RTI Auditors faced threats as a result of their investigation.

Countering decades of ingrained official secrecy will take time and effort, but the RTI Auditors have found no evidence that this process has even been started yet in Myanmar. The government must urgently reassess and reinvigorate its approach if it is to achieve its international and domestic commitments in the SDGs and MSDP.

“The government needs to pay greater attention to creating a culture of openness by changing its policies and practices, and enacting a right to information law too. We are all suffering right now”

RTI Auditor, Rakhine
ဆယ်စပ်ေပါင်းများစွာ အစိုးရ၏သတင်းလိုက်နှစ်ကိုက်တွယ်ေနသည့် များစွာ ရေးသားအချက်အလက် ပေါ်ထွက်တတ်ကြောင်း RTI အရေးအကျော်သော စိုးရိမ်များကို ဖန်တီးသည်မှာ ပေါ်လာသည်။ RTI အရေးအကျော် မှန်မာစိုးရိမ်များ တွင် စတင်ပြုလုပ်ပေမှာ SDGs နှင့် MSDP တွင် ပါဝင်သည်မှာ ကျင့်သတ်ပေါ်သော အချက်အလက်များအကျဆုံး မျိုးမျိုးစားသဖြင့် အသိပေးမှုနှင့်အတူ များစွာလိုက်နှစ်ကိုက်တွယ်ေနသည် RTI အရေးအကျော်တွင် သိပ်သိမ်းပေးဆောင်ပေးခြင်း

"အာန်လိုနှင့် အားလုံးသင်္ကေတများ အမျိုးအစား ကြည့်ရှုပေးပါ၀င်စေ နေရာသို့ ရေးသားမှုအရေးအကျော် ပေါ်ထွက်သည်မှာ ဆိုင်ရာ အသိပေးမှုနှင့်အတူ များစွာလိုက်နှစ်ကိုက်တွယ်ေနသည် RTI အရေးအကျော်များ

ဥပမာ များစွာ အမျိုးအစား RTI အရေးအကျော်တွင်
Recommendations

- Adopt a Right to Information Law in accordance with international standards. The RTI Law should include:
  - A right to access, without having to show justification or a legal interest
  - A duty for all government institutions to provide access to information
  - Only exemptions that are clear and legitimate in a democracy
  - An independent oversight body with real powers to enforce disclosure and discipline officials
  - Targets for proactive disclosure and awareness-raising
  - Protections for whistleblowers on corruption and wrongdoing
  - An override over all conflicting laws, such as the Official Secrets Act.

- Implement – in parallel and without delay – a specific, measurable, achievable, relevant, and time-bound strategy for reversing official secrecy and adopting open government. The strategy should include targets for all government institutions and officials, which should be made publicly available to ensure accountability.

- Bring into line with international standards all laws that contribute to undermining RTI, including the News Media Law, Broadcasting Law, National Records and Archives Law, Official Secrets Law, Penal Code, and any provisions relating to accessing public officials or accessing public property.
The purpose of this report is to assess Myanmar’s fulfilment of its right to information (“RTI”) commitments since adopting the Sustainable Development Goals (“SDGs”) in 2015. Although Myanmar has not yet adopted a specific RTI law, the SDGs are broader than laws and require changes to policies and practices too.

This report is timely. In 2020, the Myanmar government volunteered to self-assess its own progress in achieving the SDGs and to present its assessment before the UN in 2021. FEM hopes that this report will inform both the Myanmar government and the UN too, enabling a more balanced understanding of the situation, and leading to improved future implementation of the RTI commitments.

The following chapters briefly outline RTI, identify the Myanmar government’s commitments to RTI, and assess the extent to which these commitments have been fulfilled. A detailed explanation of FEM’s assessment methodology can be found below, before the results of the assessment.
The right to information ("RTI") is the principle of giving the public control over government-held information. This means that government-held information is public property, just like public parks, schools, and hospitals.

Under RTI, a government's first role is to manage public access to all government-held information. This includes information on everything from budgets to policies. The vast majority of information held by a government should be open to the public.

A government's second role is to protect government-held information when it is lawful, legitimate, and necessary to do so. The only legitimate reason for protecting information is if its release would directly harm the public. For example, information about an individual's health should be protected. However, it is never legitimate to protect information simply because its release would embarrass the government. For example, information that shows government corruption should never be protected.
Right to information standards

The right to information includes eight standards:

- Presumption of disclosure – government must disclose everything except in very limited exceptions.
- Proactive disclosure – government must actively disclose information regardless of whether they are asked.
- Promote openness – government must change its policies and practices to create a culture of openness and ending government secrecy, this includes access to the meetings of public bodies.
- Limited exceptions – government must define only very limited exceptions to access to information according to the principle of ‘harm’, and there should be a public interest test.
- Fast and fair processes – government should answer any requests for information in a fast and fair way, and there should be a mechanism for appeals.
- Cheap processes – government should ensure that people are not dissuaded from asking for information because of high costs.
- Disclosure takes precedence – government should amend any laws that contradict disclosure, and the courts should interpret the laws with disclosure taking precedence.
- Protect whistleblowers – government should protect whistleblowers who release information about wrongdoing and corruption.
Adopting a right to information law

Most governments have chosen to adopt an RTI law to codify these eight standards and demonstrate their desire to be more open. An RTI law ensures that the public understands their rights and the government understands its duties. An RTI law also includes remedies for when governments fail in their duties. However, international experiences have shown that RTI laws are not sufficient to reverse ingrained secrecy, and must also be accompanied by a comprehensive change in government attitudes and behaviours.2

Governments without an RTI Law should still adopt RTI standards as much as possible. Most democracies implemented many of the RTI standards in their policies and practices before adopting a specific RTI law.

Right to information and the media

The media, and broader civil society, rely on RTI. Disclosure of government-held information via press conferences, websites, or on paper, enables media to understand what is happening in Myanmar and why. With understanding, media can share information, raise awareness, enable better decision-making, and hold the government to account.

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1 See for example the right to information law in Thailand, which has not resulted in a significant improvement in openness.
Denying RTI not only encourages corruption and wrongdoing but also enables manipulation of the public and violations of media freedom. Governments that block access to information often spread propaganda and attack the media with accusations of “bias”, “anti-government”, and “fake news”. By blocking access to information, governments are themselves responsible for any incorrect reporting.

“Many government officials think that RTI is a tool for journalists to sell news stories. However, they do not realise that by rejecting our requests, they themselves are encouraging misinformation.”

RTI Auditor, Kachin
Myanmar’s right to information commitments

We seek a free flow of information ... we are not afraid to entrust the people with unpleasant facts, foreign ideas, alien philosophies, and competitive values.

President John F. Kennedy, USA (1962)

In 2015, the UN adopted a shared vision called the 2030 Sustainable Development Goals ("SDGs"). The SDGs are the UN’s strategic plan for improving global development.

All governments, including Myanmar, were involved in developing the SDGs, and all governments formally adopted the SDGs on 27 September 2015. The Myanmar government created the Myanmar Sustainable Development Plan ("MSDP") in 2018 to explain how it intends to implement the SDGs by the deadline of 2030.

Both the SDGs and Myanmar's own MSDP include clear, specific, and measurable commitments to fulfilling RTI.
UN Sustainable Development Goal 16.10

There are 17 inter-connected SDGs on topics such as hunger, health, and education. SDG number 16 covers peace, justice, and government accountability, and is the goal that includes a requirement for RTI.

Each SDG includes specific targets for countries to reach. SDG 16 includes 12 such targets. SDG 16 Target 10 is to “ensure public access to information”. It is commonly known as “SDG 16.10”.

The UN also created indicators of success to measure whether countries meet the targets. SDG 16.10 includes two indicators. The second indicator is whether or not countries “adopt and implement guarantees for public access to information”. It is commonly known as “SDG Indicator 16.10.2”.

The UN has stated that SDG Indicator 16.10.2 measures whether the government has legal guarantees for public access to information following international standards, and whether the government is implementing the guarantees. The UN defines implementation as government efforts to publicly promote RTI; public awareness of RTI; and the government’s capacity to provide information upon request by the public.

The following table includes the UN’s full details on SDG 16.10.
<table>
<thead>
<tr>
<th>Sustainable Development Goals (2015-2030)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SDG 16:</strong> Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.</td>
</tr>
<tr>
<td><strong>SDG Target 16.10:</strong> Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.</td>
</tr>
<tr>
<td><strong>SDG Indicator 16.10.2:</strong> Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.</td>
</tr>
<tr>
<td><strong>SDG Indicator 16.10.2 computational method:</strong></td>
</tr>
<tr>
<td>1. Does Myanmar have constitutional, statutory and/or policy guarantees for public access to information?</td>
</tr>
<tr>
<td>2. Do those constitutional, statutory and/or policy guarantees reflect known international agreements (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc.)?</td>
</tr>
<tr>
<td>3. What implementation mechanisms are in place to ensure that such guarantees work optimally?</td>
</tr>
<tr>
<td><strong>SDG Indicator 16.10.2 sub-indicators:</strong></td>
</tr>
<tr>
<td>• National law or constitutional guarantee on the right to information</td>
</tr>
<tr>
<td>• Myanmar has signed and ratified relevant treaty obligations, with no significant exemptions, and these are reflected, to the extent possible, in domestic FOI legislation</td>
</tr>
<tr>
<td>• The public is aware of and exercises the right to access official information</td>
</tr>
<tr>
<td>• Public bodies release information both pro-actively and on-demand</td>
</tr>
<tr>
<td>• Effective and efficient appeals mechanism via independent administrative body e.g. information commissioner or ombudsman</td>
</tr>
</tbody>
</table>
- Any restriction on grounds of protection of personal privacy is narrowly defined so as to exclude information in which there is no justifiable public interest.

<table>
<thead>
<tr>
<th>SDG Indicator 16.10.2 means of verification:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Any law or policy on right to information that accords with international standards</td>
</tr>
<tr>
<td>• Reports from credible agencies/experts about the right to information guarantees and the extent to which they reflect international standards/agreements</td>
</tr>
<tr>
<td>• Policies of public bodies concerning the release of information (which ensure readily, freely available public access to information, including online)</td>
</tr>
<tr>
<td>• Evidence of Myanmar’s commitment to open government e.g. publication and dissemination of laws, court decisions, parliamentary proceedings, spending programmes (vis-à-vis SDG undertakings)</td>
</tr>
<tr>
<td>• Statistical information about public requests for official information and their fulfilment or rejection</td>
</tr>
<tr>
<td>• Statistical information about appeals or complaints about information requests that have been refused</td>
</tr>
</tbody>
</table>
Myanmar Sustainable Development Plan

After adopting the SDGs on 27 September 2015, the Myanmar government developed its Myanmar Sustainable Development Plan ("MSDP") in 2018. State Counsellor, Aung San Suu Kyi, stated in her opening of the MSDP that it was intended to "forge a common path towards the emergence of a prosperous, peaceful, and democratic Myanmar".

The MSDP includes goals, strategies, and action plans to be achieved by 2030. Each of the MSDP’s action plans refers to the relevant SDG that it is intended to fulfil. Two MSDP action plans refer to SDG 16.10. The first, Action Plan 1.5.2, commits to improving general information flows. The second, Action Plan 1.5.3, restates a commitment to improving general information flows as well as adopting an RTI law.

The following table includes the relevant details from the MSDP.
<table>
<thead>
<tr>
<th>Pillar 1: Peace and stability</th>
<th>Myanmar Sustainable Development Plan (2018-2030)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 1: Peace, National Reconciliation, Security &amp; Good Governance</td>
<td>Strategy 15: Increase the ability of all people to engage with government</td>
</tr>
</tbody>
</table>

**Pillar 1: Peace and stability**

### Goal 1: Peace, National Reconciliation, Security & Good Governance

#### Strategy 15: Increase the ability of all people to engage with government

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5.2</td>
<td>Plan: Strengthen public sector communications capacities, allowing for more effective policy dialogue and feedback mechanisms to emerge</td>
</tr>
<tr>
<td>1.5.3</td>
<td>Plan: Improve and legalize citizens’ access to information and broaden the accessibility of information on budgets, legislation, strategies plans, policies, statistics and other key information held by public authorities</td>
</tr>
</tbody>
</table>

**Outcome:**
- Increased transparency, predictability and accountability of government processes
Assessing Myanmar’s fulfilment of its RTI commitments

Myanmar has not yet fulfilled its SDG and MSDP commitments to adopting an RTI law. The Ministry of Information circulated various drafts of a proposed RTI law between 2016 to 2017, but the RTI law has disappeared since. In a further setback, the governing National League for Democracy removed all commitments to openness and transparency from its 2020 general election manifesto.3

Nevertheless, the absence of an RTI law does not absolve the government of its RTI commitments. Both SDG 16.10 and MSDP Action Plan 1.5.3 are far broader than a law alone. They both involve a commitment to improve and implement RTI in government policies and practices too. RTI standards could be implemented into policies and practices prior to adopting an RTI law.

Assessing the extent to which RTI has been embedded into government policies and practices is difficult. The nature of government secrecy is that it impedes assessments by concealing policies and information. Furthermore, when information is released, it is often unverifiable and therefore potentially untrustworthy. International assessments circumvent these obstacles by setting aside the government’s own claims and instead assess the perceptions of those persons most likely to observe the policy or practice.4

Press releases tell us when the government does something right, but RTI lets us know when they do not.

Patrick Leahy, USA Senator (1996)

1 For further information, see www.freedexpressionmyanmar.org/manifesto
2 See for example, Transparency International: https://www.transparency.org/en/cpi

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Journalists try to access government-held information all the time. In doing so, they act as regular and consistent observers of the government’s policies and practices. Their collective perceptions are excellent indicators of the extent to which Myanmar is delivering on its SDG and MSDP commitments to RTI.

For this report, 20 senior, experienced journalists were selected from different backgrounds and from across Myanmar to act as “RTI Auditors”. The RTI Auditors received expert training on the government’s commitments to RTI, and on using investigative journalism as a tool to observe the government’s RTI policies and practices.

### Audit (verb): Conduct a systematic review.

### RTI Auditor (noun): A person who audits and writes a report on the government’s implementation of its RTI commitments.

Following the training, each RTI Auditor designed a local-level investigation to assess Myanmar’s fulfilment of its RTI commitments. Each investigation involved identifying “Target Information”, such as a policy or budget, which was known to be held by an “RTI Duty Bearer”, a government body that bears information in the public interest and therefore has a duty to provide it to the public. Each piece of Target Information was chosen due to its significant local importance and its relevance to local development. The RTI Auditors then approached the RTI Duty Bearers to test their knowledge, attitude, and behaviour when the Target Information was requested.

### Duty (noun): A responsibility or legal obligation.

### RTI Duty Bearer (noun): An individual with a Duty to fulfill RTI. (The Duty originates from the MSDP.)

The 20 RTI Auditors engaged with over 50 RTI Duty Bearers across 12 of Myanmar’s States and Regions between November 2020 and January 2021. Each RTI Auditor engaged with an average of four RTI Duty Bearers in their investigations.
The RTI Duty Bearers were from the following government institutions:

- Union President's Office
- Union MPs
- Regional Chief Ministers and their Regional Administrations
- Regional Parliaments and MPs
- Ministry of Agriculture, Livestock and Irrigation
- Ministry of Health and Sports
- Ministry of Information
- Ministry of Planning and Finance
- Ministry of Social Welfare
- Ministry of Transport and Communications
- District Administrations
- Municipal Administrations
- Township Administrations
- Police
- Electricity Supply Corporation
- Military True News Team
- National League for Democracy

Following their investigations, the RTI Auditors came together in a series of roundtables to conduct qualitative analyses of their experiences. The RTI Auditors assessed the extent of the government's fulfilment of its RTI commitments in the SDGs and MSDP. Their collective, expert, qualitative assessment forms the basis for the next chapter of this report.

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5 The RTI Auditors’ Assessment Framework is available in the Annexe.
Assessment results

Government does not proactively disclose information

International standards on RTI: Governments have a responsibility to proactively disclose information of public interest, regardless of whether they are asked or not.1 Proactive disclosure should include, for example, disclosing budgets and policies. Disclosure should be on government websites and at government offices.

Each RTI Auditor identified Target Information, such as a government policy or budget, which was known to be held by an RTI Duty Bearer. The RTI Auditors investigated whether the Target Information was proactively available and accessible. For example, whether it was published on a government website or a government noticeboard.

The RTI Auditors were unable to find any of the Target Information on government websites or government noticeboards. They were also unable to find the Target Information on government Facebook Pages, which have been used in the past to communicate information to the public. 0% of the Target Information was proactively available and accessible.

The RTI Auditors concluded that the government does not proactively disclose information.

“I searched for information through the websites of multiple ministries, but the government does not publish facts and figures on any of their projects.”

RTI Auditor, Kachin

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Officials are often inaccessible

**International standards on RTI:** Governments have a responsibility to ensure easy, prompt, and practical access to information. Easy access requires that RTI Duty Bearers are accessible and available to deliver their duties.

Each RTI Auditor made multiple attempts to reach each RTI Duty Bearer to request the Target Information. RTI Auditors used a variety of methods, including email, phone calls, hand-written letters, and face-to-face meetings.

In 50% of cases, the RTI Duty Bearer was completely inaccessible to the RTI Auditor. In each case, the RTI Auditor made a variety of attempts to make contact but was unsuccessful. In a further 30% of cases, the RTI Duty Bearer was accessible but largely unavailable. In each case, the RTI Auditor requested the Target Information, or an opportunity to discuss the Target Information, and was either rejected or given only limited time. The RTI Duty Bearer was both accessible and available to the RTI Auditor for the final 20% of cases.

The RTI Auditors concluded that RTI Duty Bearers are often inaccessible and usually unavailable.

**Accessible** (adjective): Able to be reached.

**Available** (adjective): Free to answer a question.

“I sent a formal request in the post to the District Administrator. I then followed up by phoning him every day for five days. When that failed, I then spent three days sitting outside his office. Eventually, he spoke to me for five minutes but he never disclosed the information that I asked for.”

RTI Auditor, Bago

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1. UN Human Rights Committee, General Comment 34, paragraph 19.
Most officials unaware of RTI or the government’s own MSDP

International standards on RTI: Governments have a responsibility to ensure effective access to information.⁸ Effective access requires that officials (RTI Duty Bearers) are made aware of their duties through internal training and awareness-raising.

Each RTI Auditor tested the RTI Duty Bearers on their general awareness of the public’s right to information. Their assessment included testing whether the RTI Duty Bearers were aware of the government’s commitments on RTI including in the MSDP and SDGs.

Less than 50% of RTI Duty Bearers had any awareness of RTI. Those that did have some RTI awareness were all based in major cities, and they only had a very limited level of understanding (in most cases, they had simply heard the name before). 0% of RTI Duty Bearers based outside of major cities had any RTI awareness whatsoever.

RTI Duty Bearers that were unaware of RTI did not seek advice or intervention from their colleagues or managers. A minority asked the RTI Auditors to speak to an institutional “spokesperson”. However, a spokesperson should not be confused with an RTI Duty Bearer. A spokesperson’s role is primarily to control or filter information by presenting the public with the opinion of the institution, such as through

⁸ UN Human Rights Committee, General Comment 34, paragraph 19.
RTI Auditors concluded that RTI Duty Bearers are not aware of the SDGs or MSDP.

Press releases. However, an RTI Duty Bearer’s role is to provide open, unfiltered, access to information held by the institution. Furthermore, a spokesperson may refuse to respond, whereas an RTI Duty Bearer should not.

Spokesperson (noun): Provides the public with filtered information, usually the institution’s opinion.

RTI Duty Bearer (noun): Provides the public with access to unfiltered information.

10% of the RTI Duty Bearers were aware of the SDGs or MSDP.

The RTI Auditors concluded that RTI Duty Bearers are unaware of RTI, and unaware of the government’s commitments to RTI in the MSDP and the SDGs.

“Only very few government officials are aware of RTI. Officials outside of major cities are completely unaware of RTI.”

RTI Auditor, Yangon
Some information procedures exist, but officials do not seem to follow

International standards on RTI: Governments have a responsibility to make rules that enable the public to access information, either through an RTI law or through RTI procedures. Rules must be accessible and clear enough for the public to understand.

Each RTI Auditor monitored whether RTI Duty Bearers had, or appeared to have, specific internal procedures for responding to requests for information. If an RTI Duty Bearer appeared to have a specific procedure, the RTI Auditor monitored to see any signs that the procedure was being followed.

0% of the RTI Auditors were able to see a procedure themselves, for example in writing, to reliably confirm the existence of a procedure. Furthermore, no procedures were proactively published by the government on websites or office noticeboards. In a small minority of cases, the RTI Duty Bearer asked the RTI Auditor to complete a form or letter outlining the request for information but did not assist the RTI Auditor to do so. However, in most cases, the entire process was verbal.

Less than 20% of RTI Duty Bearers appeared to have some form of internal procedure for dealing with information requests. RTI Duty Bearers appeared to make decisions arbitrarily and following their interests, rather than following a procedure.

The RTI Auditors concluded that some internal procedures on information requests may exist but the response of RTI Duty Bearers indicates that they often decide individually and arbitrarily according to the given context.

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9 UN Human Rights Committee, General Comment 34, paragraph 19.
10 UN Human Rights Committee, General Comment 34, paragraph 25.
“There did not appear to be any formal RTI procedures in any of the government or parliamentary offices I visited. However, officials did refer to procedures when I requested information. It seemed to me like these unknown and inaccessible procedures were used simply to hold power over us.”

RTI Auditor, Ayeyarwady
Officials show a presumption for secrecy

International standards on RTI: Governments have a responsibility to disclose all information unless an exemption is clearly defined in rules and is necessary to achieve a legitimate democratic aim. Therefore, the presumption of disclosure means that a person requesting information should not need to give a reason or demonstrate a direct or personal interest in the information. The only purpose of asking for a reason is to dissuade requests or to deny access.

After making their request for information, each RTI Auditor monitored the RTI Duty Bearer’s response. This included an assessment of whether the RTI Duty Bearer’s response revealed an underlying presumption for disclosure or a presumption for secrecy.

In 100% of cases, the RTI Auditor had to give a reason or reasons for why they were requesting the information. If the RTI Auditor did not give a reason, the RTI Duty Bearer would not proceed and would refuse the request. Furthermore, the RTI Duty Bearer required a strong justification from the RTI Auditor.

The RTI Auditors concluded that the RTI Duty Bearers demonstrated a strong underlying presumption for secrecy.

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11 UN Human Rights Committee, General Comment 34, paragraph 22.
Officials were suspicious and dismissive

International standards on RTI: Governments have a responsibility to protect the dignity of all persons, to give due respect to any request for information, and to punish those officials who wilfully obstruct access to information.

Each RTI Auditor assessed the RTI Duty Bearer’s attitude and behaviour in response to their request for information. RTI Auditors looked for positive and negative behaviours as well as signs of positive and negative attitudes. If the RTI Duty Bearer’s response was professional it was graded positive, and if their response was polite and respectful, it was graded very positive. A dismissive or suspicious response was graded negative, and a rude and abusive response was graded very negative. RTI Auditors also monitored for legal threats, physical threats, and requests for bribes. RTI Auditors self-assessed their own feelings of anxiety or heightened stress too.

100% of RTI Duty Bearers showed negative attitudes and behaviours when asked for information. Most were suspicious and dismissive. Some used negative bureaucratic tactics, such as requesting letters from offices located elsewhere, intending to dissuade the RTI Auditor from asking for information. Some RTI Duty Bearers showed a few limited signs of positive behaviour, such as politeness. However, in each case, the RTI Duty Bearer’s overall response was assessed as negative.

None of the RTI Duty Bearers demanded a financial bribe, or another form of inducement, or implied that a bribe would increase the likelihood that the information would be disclosed to the RTI Auditor. None of the RTI Auditors offered a bribe or inducement to the RTI Duty Bearers to test their real response.

Those RTI Duty Bearers with some limited awareness of RTI did not show any substantial difference in attitude or behaviour compared to those RTI Duty

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13 UN Universal Declaration of Human Rights, Article 1.
14 UN Universal Declaration of Human Rights, preamble.
The RTI Auditors concluded that RTI Duty Bearers were generally suspicious and dismissive.

"The officials did not ask us for bribes because they are unaccustomed to being asked for information and they are apprehensive about whether we are going to share our experiences in the media. Officials are fearful of being named in public and therefore avoid otherwise common bribery."

RTI Auditor, Rakhine

Bearers who were unaware of RTI. Despite having some awareness, they did not show greater positivity or willingness to disclose information to the RTI Auditors.
Most officials did not disclose information, and those that did gave too little too late

International standards on RTI: Governments have a responsibility to disclose all information unless an exemption is clearly defined in rules and is necessary to achieve a legitimate democratic aim. Information should be disclosed in a comprehensive and timely manner.

Each RTI Auditor assessed the extent to which the RTI Duty Bearers disclosed information. The assessment included the length of time between the RTI Auditor’s submission of their request for information and either receiving it or being refused. The assessment also included a measure of the level of comprehensiveness of any information received.

75% of RTI Duty Bearers did not disclose any information whatsoever.

Just 25% of RTI Duty Bearers disclosed some or all of the information requested by the RTI Auditor. Most of the RTI Duty Bearers who did disclose information did so only after repeated requests and follow-up. Disclosure took between three days and a month, with an average of two weeks. Differences in the time taken were mostly due to the nature of the relationship between the RTI Auditor and the RTI Duty Bearer.

The information disclosed by RTI Duty Bearers was almost always limited. The limited information was less than the minimum requested by the RTI Auditor.

The RTI Auditors concluded that most RTI Duty Bearers did not disclose the requested information, and if they did it was delayed and less than comprehensive.

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16 UN Human Rights Committee, General Comment 34, paragraph 22.
17 UN Human Rights Committee, General Comment 34, paragraph 19.
Officials never gave reasons for refusing to disclose information

International standards on RTI: Governments have a responsibility to give reasons for any refusal to disclose the requested information. This includes having oversight mechanisms that can hear appeals and follow up with officials who fail to respond to information requests.

In those cases where information requests were explicitly refused by RTI Duty Bearers or were implicitly refused by their failure to disclose, RTI Auditors monitored for any reasons given, and whether those reasons were legitimate. RTI Auditors were monitoring for reasons such as a lack of data, privacy requirements, or references to the Official Secrets Act. RTI Auditors also monitored for any opportunities to appeal the refusal to a more senior RTI Duty Bearer.

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18 UN Human Rights Committee, General Comment 34, paragraph 19.
19 UN Human Rights Committee, General Comment 34, paragraph 19.
0% of RTI Duty Bearers gave a reason or any justification for refusals or failures to disclose the requested information. Less than 10% of RTI Duty Bearers referred the RTI Auditors to another department or official for further attempts to request the information. RTI Auditors were unclear whether the information request had been formally reviewed internally according to any procedures.

The RTI Auditors concluded that RTI Duty Bearers never give reasons for refusing to disclose information.

### RTI Auditors faced threats

**International standards on RTI:** Governments have a responsibility to ensure people do not face muzzling or attacks aimed at silencing them, including from officials, business persons, and others.20

Some government officials benefit from corruption and wrongdoing. Therefore, requesting information can be risky, especially when disclosure threatens such corruption and wrongdoing.21 In the recent past, Myanmar journalists have been killed for investigating corruption.22 RTI Auditors together self-assessed their risk and a risk mitigation plan was developed. RTI Auditors monitored their risk exposure.

50% of RTI Auditors self-diagnosed that they had experienced increased feelings of anxiety and heightened stress as a result of the negative attitudes and behaviour shown by the RTI Duty Bearers. RTI

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20 UN Human Rights Committee, General Comment 34, paragraph 23.
21 See for example, the hundreds of RTI users attacked in India: http://attacksonrtiusers.org
22 See for example, See Moe Tun who was killed on 13 December 2016 [https://cpj.org/data/people/soe]
Auditors were particularly concerned that the RTI Duty Bearers would bring legal cases against them.

Several RTI Auditors also experienced continued negative interactions and explicit threats in the weeks following their information requests. The sources of the threats were third parties with an interest in the information requested.

“I requested information related to the government’s dealings with businesses and later received several direct threats of legal action from persons representing the businesses involved.”

RTI Auditor, Tanintharyi

“အများသောစီးပွားရေးရာသူများအားလည်း ေးရူသည် ကိုန်ုန်းတဲ့ စီးပွားရေးရာသူများ ေရာင်းသားချက်ပြုစုကောင်းသော အကြောင်းအရာနှင့် စီးပွားရေးရာသူများ၏ စီးပွားရေးရာသူများထက်ကြီးမားသော စီးပွားရေးရာသူများကဲ့သို့ စီးပွားရေးရာသူများအားလည်း ေရာင်းသားချက်ပြုစုကောင်းသော အကြောင်းအရာနှင့် စီးပွားရေးရာသူများထက်ကြီးမားသော စီးပွားရေးရာသူများကဲ့သို့ စီးပွားရေးရာသူများ

RTI Auditors were frequently targeted...
### Assessment summary (UN SDG format)

The UN has requested that UNESCO monitor the implementation of SDG 16.10. UNESCO developed the following form to collect information on SDG 16.10. The assessment results have been included in the UN’s form.

<table>
<thead>
<tr>
<th>Question</th>
<th>UNESCO Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional provision, primary legislation, secondary legal instrument/regulation, binding policy document?</td>
<td>No constitutional provision; no specific primary legislation on RTI; some general legislation (see News Media Law[^23])</td>
</tr>
<tr>
<td>Guiding strategies, non-binding policies, or roadmaps?</td>
<td>Myanmar Sustainable Development Plan, Action Plan 1.5.3.</td>
</tr>
<tr>
<td>Central body for oversight of the RTI system?</td>
<td>None.</td>
</tr>
<tr>
<td>Public guide disseminated to citizens explaining how to make a request for information under RTI rules?</td>
<td>None.</td>
</tr>
<tr>
<td>Efforts made by authorities to raise public awareness about the RTI?</td>
<td>None.</td>
</tr>
<tr>
<td>Independent polling of the public to ask about their awareness of RTI?</td>
<td>None.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>English Question</th>
<th>Myanmar Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular (annual) central report on how RTI rules have been implemented, produced by a public authority?</td>
<td>None.</td>
</tr>
<tr>
<td>Legal provision that information about serious violations of human rights may not be classified?</td>
<td>None.</td>
</tr>
<tr>
<td>Officials with responsibilities for implementing RTI?</td>
<td>None.</td>
</tr>
<tr>
<td>Published contact details for officials responsible for RTI?</td>
<td>None.</td>
</tr>
<tr>
<td>Physical or online forms for making RTI requests?</td>
<td>None.</td>
</tr>
<tr>
<td>Types of information made available on a proactive basis?</td>
<td>None.</td>
</tr>
</tbody>
</table>

Conclusion

“Unfortunately, secrecy, once accepted, becomes an addiction – it is difficult to kick the habit.”


The Myanmar government has committed to adopting an RTI law before 2030. Its commitment was made to both the international community in the SDGs as well as to the domestic public in the MSDP. It has not yet done so and it should be planning now if it is to achieve a working law by 2030.

The delay in adopting an RTI law does not excuse the government of its broader RTI commitments in the SDGs and MSDP, namely to reform policy and practice. However, this report has shown that the government has made very little progress – if any – in the six years since it adopted the SDGs and the three years since it published the MSDP.

Myanmar retains a pervasive culture of official secrecy. Information on topics of public interest, such as on policies and budgets, is still not proactively disclosed by the government. Officials who bear RTI duties are largely inaccessible. If found, they are unaware of their RTI responsibilities and are dismissive of public demands for transparency. Their defence of secrecy in turn helps them avoid public accountability.

It will take time for the government to counter decades of entrenched secrecy. While the government has committed to RTI reform in the SDGs and MSDP, so far there is no evidence that these commitments are anything more than on paper. Six years after Myanmar adopted the SDGs and three years after they published the MSDP, how long will the public have to wait for real action?
ဗိုလ်ချုပ် ဆိုင်ရာ အနုပညာ ကောလိုများကို နိုင်ငံတော် အုပ်စုမှ မြန်မာ စင်္ကိုင် စားသော ဗိုလ်ချုပ် အနုပညာ ဆိုင်ရာ အနုပညာ နိုင်ငံတော် အုပ်စုမှ မြန်မာ စင်္ကိုင် စားသော များထားသည်။ ထို့အတွက် အနုပညာ များစစ်သည့် အနုပညာ များကို မြန်မာ စင်္ကိုင် စားသော များထားသည်။
<table>
<thead>
<tr>
<th>RTI Auditors’ Assessment Framework</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Background of the Intervention</strong></td>
<td><strong>Background of the Intervention</strong></td>
</tr>
<tr>
<td>1. RTI Duty Bearer: Department and location originally asked; Other departments and locations sent to; Rank of official originally asked; Rank of highest official interacted with.</td>
<td>1. RTI Duty Bearer: Department and location originally asked; Other departments and locations sent to; Rank of highest official interacted with.</td>
</tr>
<tr>
<td>2. Intervention setting: Intervention medium (visit, phone, email); Time of the day; Intervention venue (office, canteen, street outside).</td>
<td>2. Intervention setting: Intervention medium (visit, phone, email); Time of the day; Intervention venue (office, canteen, street outside).</td>
</tr>
<tr>
<td><strong>Awareness</strong></td>
<td><strong>Awareness</strong></td>
</tr>
<tr>
<td>3. Was the RTI Duty Bearer aware of the public’s right to information?</td>
<td>3. Was the RTI Duty Bearer aware of the public’s right to information?</td>
</tr>
<tr>
<td>a. Did the RTI Duty Bearer ask other officials for advice or to intervene (for example, their boss or from another department)?</td>
<td>a. Did the RTI Duty Bearer ask other officials for advice or to intervene (for example, their boss or from another department)?</td>
</tr>
<tr>
<td>b. Did the RTI Duty Bearer tell you to speak to a specific person who is responsible for the information or the media?</td>
<td>b. Did the RTI Duty Bearer tell you to speak to a specific person who is responsible for the information or the media?</td>
</tr>
<tr>
<td>4. Was the desired information already published/available (for example, on a website, on a notice board, etc.)?</td>
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</tr>
<tr>
<td><strong>Procedures</strong></td>
<td><strong>Procedures</strong></td>
</tr>
<tr>
<td>5. Did the RTI Duty Bearer have procedures, or talk about procedures for giving out information?</td>
<td>5. Did the RTI Duty Bearer have procedures, or talk about procedures for giving out information?</td>
</tr>
<tr>
<td>a. Did you see the procedures (were they written down)?</td>
<td>a. Did you see the procedures (were they written down)?</td>
</tr>
<tr>
<td>6. Did the RTI Duty Bearer ask you for a reason for your request?</td>
<td>6. Did the RTI Duty Bearer ask you for a reason for your request?</td>
</tr>
<tr>
<td>a. What did you tell them?</td>
<td>a. What did you tell them?</td>
</tr>
<tr>
<td>b. If you did not want to give one, did they ask again?</td>
<td>b. If you did not want to give one, did they ask again?</td>
</tr>
<tr>
<td>7. Did the RTI Duty Bearer ask you to fill anything in (form or letter)?</td>
<td>7. Did the RTI Duty Bearer ask you to fill anything in (form or letter)?</td>
</tr>
<tr>
<td>a. If so, did they help you with it?</td>
<td>a. If so, did they help you with it?</td>
</tr>
</tbody>
</table>
Attitudes and behaviour

8. Was the RTI Duty Bearer’s attitude/behaviour towards you positive or negative?
   a. Positive: (Low-level positive) Were they professional? (High-level positive) Were they polite and respectful?
   b. Negative: (Low-level negative) Were they dismissive? Suspicious? (High-level negative) Were they rude? Abusive? (Very high-level negative) Were they threatening (legally or physically)? Or did they advise you that it would not be good or someone else (third party) would be unhappy?
   c. Was there a request for a bribe or a hint that a bribe would help? (financial or another kind of bribe)
   d. Did you have feelings of anxiety or heightened stress during or shortly after the intervention?

9. (Question for women and non-Bamar ethnic journalists only) Did you notice any difference in the way that you were treated?

10. Did you use any of the language/sources/ideas gained from the training? (For example, speak about “rights” or mention any laws/documents/commitments covered in the training)
    a. If so, what did you use?
    b. Did it seem to affect the RTI Duty Bearer’s attitude/behaviour/response?
    c. Did it have a positive or negative effect on the RTI Duty Bearer’s attitude/behaviour/response?
### Results and appeals

11. Did the RTI Duty Bearer give the information?

a. Yes

i. How long did it take to get the information following the initial intervention? (For example, same day, next day, etc.)

ii. How comprehensive was the information? (Almost nothing, limited, minimum of what I asked, comprehensive info about what I asked, very comprehensive)

b. No

i. Did they give a reason and was it easy to understand?

ii. What reason did they give? (For example, no facility/procedure or unsure, the boss said no, secret information)

iii. Did they refer to a specific law or policy that was preventing them?

iv. Did they say that you could ask someone else (appeal to another person)?

v. Did you ask other officials to intervene? (Either that day or later)

### Responses

12. After the intervention, did you face any further responses? (For example, did they contact you or did you hear something about their attitude to you)
RTI Duty Bearers engaged

1. Chair of Regional Parliament, Chin
2. Chair of Regional Parliament, Magway
3. Chair of Regional Parliament, Mon
4. Chair of Regional Parliament, Rakhine
5. Chief Minister of Regional Government, Magway
6. Chief Minister of Regional Government, Mandalay
7. Chief Minister of Regional Government, Rakhine
8. Chief Minister of Regional Government, Shan
9. Chief Minister of Regional Government, Tanintharyi
10. Chief Minister of Regional Government, Yangon
11. District Administrator, Bago
12. Electricity Supply Corporation Spokesperson, Mandalay
13. Healthcare Officer, Bago
14. Military True News Team
15. Minister of Agriculture, Livestock and Irrigation, Tanintharyi
16. Minister of Planning and Finance, Kachin
17. Minister of Transport and Communications, Kachin
18. Minister of Transport and Communications, Rakhine
19. Ministry of Information, Yangon
20. Ministry of Social Welfare Spokesperson, Chin
21. Municipal Department, Yangon
22. Municipal Officers, Yangon
23. Municipal Minister, Chin
24. Municipal Minister, Magway
25. Municipal Minister, Rakhine
26. Myanmar Bar Council
27. Myanmar Press Council
28. NLD spokesperson
29. Police, Yangon
30. Regional Government Spokesperson, Chin
31. Regional Government Spokesperson, Kachin
32. Regional Government Spokesperson, Magway
33. Regional Government Spokesperson, Mandalay
34. Regional Government Spokesperson, Rakhine
35. Regional Government Spokesperson, Yangon
36. Regional Minister of Social Welfare, Relief and Resettlement, Mandalay
37. Regional Parliament MPs, Mandalay
38. Regional Parliament MPs, Mon
39. Regional Parliament MPs, Rakhine
40. Regional Parliament MPs, Shan
41. Regional Parliament MPs, Yangon
42. Regional Parliament Spokesperson, Chin
43. Regional Parliament Spokesperson, Magway
44. Regional Parliament Spokesperson, Mandalay
45. Regional Parliament Spokesperson, Mon
46. Regional Parliament Spokesperson, Rakhine
47. Regional Parliament Spokesperson, Yangon
48. Township Municipal Officer, Pathein
49. Township Municipal President, Pathein
50. Union President’s Office
Secret State of Myanmar

SDG 16.10 and implementation of the right to information in 2021

Myanmar retains a pervasive culture of official secrecy. Information on topics of public interest, such as on policies and budgets, is still not proactively disclosed by the government. Officials who bear RTI duties are largely inaccessible. If found, they are unaware of their RTI responsibilities and are dismissive of public demands for transparency. Their defence of secrecy in turn helps them avoid public accountability.

In preparation for the SDG Voluntary National Review in 2021, FEM brought together 20 senior journalists and trained them as “RTI Auditors” to methodologically investigate and test the government’s implementation of SDG 16.10 across Myanmar. Although Myanmar does not yet have a specific RTI law, the SDG and MSDP commitments are broader and require widespread changes in policies and practices, each of which can and should be measured.

Countering decades of engrained official secrecy will take time and effort, but the RTI Auditors have found no evidence that this process has even been started yet in Myanmar. The government must urgently reassess and reinvigorate its approach if it is to achieve its international and domestic commitments in the SDGs and MSDP.