

**Joint submission to the UN Universal Periodic Review of Myanmar by ARTICLE 19,  
Myanmar Independent Living Initiative and Myanmar Trade Union Federation**

**For consideration at the 23rd session  
of the Working Group in October/November 2015**

23 March 2015

**Executive summary**

1. ARTICLE 19, Myanmar Independent Living Initiative and Myanmar Trade Union Federation welcome the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Myanmar. This submission focuses on Myanmar's compliance with its international human rights obligations to protect and promote the right to freedom of expression and information.
2. Since Myanmar's first review and in particular since the creation of a new government in 2012, restrictions on the right to freedom of expression and information have in some aspects lessened, particularly in major urban areas. Protests are more common yet often dealt with disproportionately and excessive use of force, the internet is open to the few that can access it, and people have increased access to more affordable telecommunications. Despite these steps, Myanmar has failed to show significant progress on the limited commitments it made to reform during its first UPR.
3. The issues of concern we address in this submission include:
  - Failure to ratify major international human rights treaties or to invite UN special procedures;
  - Failure to engage in necessary legal reforms to guarantee the right to freedom of expression
  - Failure to engage in necessary legal reforms to guarantee the right to assembly
  - Failure to prevent discrimination and incitement to discrimination, hostility and violence (including against women, persons with disabilities, and ethnic and religious minorities)
  - Failure to protect digital rights and access to the internet
  - Failure to protect the right to freedom of information

**Failure to ratify major international human rights treaties or invite UN special procedures**

4. During its first UPR, Myanmar accepted recommendations to consider the signing and ratification of the International Covenant on Civil and Political Rights (ICCPR) and other core human rights treaties. Myanmar has made no significant progress towards signing or ratifying these instruments since its first review.
5. Myanmar also committed to continued cooperation with the UN Special Rapporteur on the situation of human rights in Myanmar, but did not accept recommendations to extend a standing invitation to all special procedures, or recommendations to invite specific thematic mandate holders to the country, including on freedom of expression and freedom of peaceful assembly. While Myanmar continues to cooperate with the UN Special Rapporteur on the situation of human rights in Myanmar, for example, by facilitating her access across the country, we note that when the Rapporteur came under highly personal misogynist criticism from religious leaders in 2015, the government did not publicly condemn the criticism nor show support for her mandate. Myanmar has not extended a standing invitation to all special procedures, nor responded positively to any request from mandate holders for visits.

## Failure to engage in necessary legal reforms to guarantee the right to freedom of expression

6. Myanmar accepted some recommendations to bring its domestic laws into compliance with international human rights standards, including to “take steps” to review domestic laws in order to guarantee freedom of expression, association and assembly.
7. Positive developments since the first UPR include the abolishment by administrative decision of the Press Scrutiny and Registration Division in 2013, which ended the state mechanism for comprehensive pre-publication censorship of the media. However, two new laws adopted governing assembly and telecommunications fail to fully comply with international standards on freedom of expression. Together with existing highly punitive laws, the situation for freedom of expression remains highly precarious.

## 2008 Constitution of Myanmar

8. Myanmar did not accept a recommendation during its first review to amend the 2008 Constitution to bring it into compliance with international human rights standards. As Myanmar faces its second review, this remains a pressing concern.
9. Although protections for freedom of expression exist in Article 354 (liberty of expression and publication), and Article 365 (freedom of artistic expression), they do not comply with international standards:
  - **The scope of the right is too narrow**, and is not framed to capture all elements of freedom of expression guaranteed in international law;
  - **The right is not guaranteed to all people**, but is limited to nationals only, despite freedom of expression being guaranteed to all people under international law regardless of citizenship status.<sup>1</sup> This is particularly concerning in Myanmar, where an estimated 810,000 people are without citizenship.<sup>2</sup>
  - **Domestic laws take precedence over constitutional rights**, which are protected only to the extent that they are not in contradiction with existing laws;
  - **The permissible limitations to freedom of expression are too broad**, as they include aims not listed in Article 19(2) of the ICCPR, such as “national solidarity”, “the interests of one of several other national races”, and “community peace and tranquillity”;
  - **The threshold for imposing restrictions on freedom of expression is too low**. Rather than the high test of “necessary in a democratic society” required by international law, rights may be restricted where their exercise is merely “contrary to”, “detrimental to”, or “adversely affects” the broad range of interests listed.

## 1957 Penal Code and the Official Secrets Act

10. One of the most significant and common tools for restricting freedom of expression, including of human rights defenders and journalists, is the Penal Code. A number its criminal prohibitions are contrary to international human rights standards and should be repealed through comprehensive legislative reforms.
11. **Sedition (Article 124a and 505b)**: The offence of sedition, defined as defaming or bringing disaffection against or contempt of the government, are against international standards on freedom of expression. States can easily use such laws to limit public debate concerning public figures in the political domain, such as politicians, or to defend public institutions, where there is no connection between the expression at issue and a threat to a legitimate State interest, such as protecting national security or public order.

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<sup>1</sup> ICCPR, Article 2(1). United Nations Human Rights Committee, General Comment No. 15 on the position of aliens under the covenant, 11 April 1986.

<sup>2</sup> UNHCR 2015 country operations profile

12. In October 2014, five media workers at *Bi Mon Te Nay Journal*, Kyaw Zaw Hein, Kyaw Min Khaing, Aung Thant, Win Tin, and Yin Min Tun, were sentenced to two years imprisonment for sedition and had all their equipment confiscated. They reported a political activist's claims that an interim government was being formed. Prosecutors refused to bring the case under the News Media Law. While sedition is incompatible with international human rights law, it is also contrary to international standards to prosecute journalists for reporting the words of others, where the journalist is simply reporting newsworthy statements without necessarily endorsing them.
13. **Promoting enmity or hatred (Article 153a):** The offence of promoting enmity or hatred is written in terms that are too broad; it has a chilling effect on legitimate reporting around issues affecting racial and religious minorities, while at the same time allowing for arbitrary interpretation that enables impunity for genuine acts of incitement to national, racial or religious violence. The provision should be brought in line with international standards, in particular Article 20(2) of the ICCPR, so that it is clear that it covers intentional acts of advocating hatred to incite others to violence, hostility or discrimination against protected persons. This should be implemented in line with the guidance provided in the Rabat Plan of Action.<sup>3</sup>
14. **Obscenity (Articles 292, 294):** The provisions on obscenity are very subjective, and may be abused to enforce out-dated concepts of "public morals" that do not reflect diverse or evolving public attitudes, or to discriminate against individuals or groups. Such provisions should be amended to comply with the three-part test set out in Article 19(3) of the ICCPR.
15. **Insulting religion or religious feelings (Articles 295a, 298):** Prohibitions on criticising religion – commonly known as blasphemy – are not compatible with international standards on freedom of expression, and they should not be abused to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>4</sup> Such prohibitions are not necessary, as acts of incitement to discrimination, hostility or violence should be dealt with under prohibitions as envisaged by Article 20(2) of the ICCPR.
16. **Criminal defamation (Articles 499 – 502):** criminal defamation carries a prison sentence of up to two years or an unspecified fine. UN and regional independent mechanisms on freedom of expression have called on States to decriminalise defamation, since criminal laws on defamation fail to strike the proper balance between individuals' reputation rights and freedom of expression.<sup>5</sup> Individuals' reputations can be protected more effectively, with proper safeguards against abuse, through the civil law. The UN Human Rights Committee has also called on States to consider decriminalising defamation.<sup>6</sup>
17. **Other criminal provisions are abused to stifle media freedom.** Prosecutions have been reported following journalists' contacting government officials or departments for comments on allegations of wrongdoing. Rather than investigate the wrongdoing, the response has been to prosecute the journalist under harsh criminal law provisions, ignoring lighter forms of dispute resolution available under the 2014 News Media Law.

### **Failure to engage in necessary legal reforms to guarantee the right to assembly**

18. Myanmar did not accept a recommendation during its first review to bring its legal framework governing the right to assembly into compliance with international human rights standards. Since the first review, the government has adopted and later amended (2014) the Right to

<sup>3</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, OHCHR, 5 October 2012.

<sup>4</sup> UN Human Rights Committee, General Comment Number 34, 12 September 2011, CCPR/C/GC/34, at para. 48

<sup>5</sup> Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002

<sup>6</sup> HR Committee, General Comment No. 34, *op. cit.*, at para. 47

Peaceful Assembly and Peaceful Procession Law. However, the amendment failed to significantly improve the law or bring it into line with international standards. As a result, the number of protesters being arrested and charged for assembling or carrying out processions without prior approval from the police is in the hundreds. Problems in the amended law include:

- **Requiring prior-authorisation of assemblies.** While parliamentarians believed they had amended the law to create a system of notification, the amended law instead leaves a prior-authorisation regime of undetermined scope intact. The ambiguity of Article 5 requires the granting of approval only when a request is made in accordance with the criteria for approval, but does not specify the criteria.
- **Requiring organisers to provide the police with the “purpose”, “topic” and “chants” of an assembly in advance,** but is unclear whether the police may consider these factors when deciding whether the request meets the aforementioned criteria for approval. As such, this can only be interpreted as a potential and likely system for prior-censorship of assemblies.
- **Requiring organisers to seek authorisation five days before the assembly.** International human rights standards consider notification of assemblies to only be necessary when a large number of participants are expected that could impact the ability of the relevant authorities to facilitate an assembly.
- **No longer requiring police to communicate their decision or the reason for rejection, and no longer providing a right to administrative appeal,** potentially resulting in a legal situation that is worse for those exercising their right to assembly than under the previous law.
- **Containing unnecessary criminal penalties.** The prescribed six-month prison sentence for conducting a peaceful assembly without permission is disproportionate and unnecessary. One-year’s imprisonment for “disturbing” or “annoying” assembly attendees could be used to sanction peaceful counter-demonstrations. Three-month’s imprisonment for engaging in conduct prohibited by “local rules” is vague, and could be abused easily to criminalise conduct not foreseen as prohibited by participants.
- **Content restrictions unacceptable under international standards.** For example, it remains unlawful to chant words that have not been authorised by the police, or that the police believe to be “rumours” of “incorrect” information.
- **Allowing the revocation of permission and the immediate dispersal of assemblies if the assembly no longer follows the permitted content, manner or place.** International law is clear that dispersal of any assembly should only ever be used if there is an imminent threat of violence, and where other more proportionate measures such as negotiation and mediation have been exhausted. Counter to this, these provisions encourage methods of public order management that serve to escalate possibilities for violence rather than reduce them.

19. While the number of assemblies has grown substantially, the lack of legal clarity results in arbitrary and selective implementation of the law by police. In addition, township and even district level police still claim not to have been instructed regarding the change to law. The police ignore some assemblies carried out without prior approval. However, if an assembly touches on a sensitive issue, such as labour rights, land confiscation, ethnic or religious minorities’ rights, corruption or national security, the police often close down the assembly and arrest the leaders for failing to gain prior approval. Journalists are also prevented from interviewing protesters or taking photos, sometimes with violence.

20. In the most sensitive cases, police have used unnecessary and disproportionate force, including lethal force, to disperse participants.

- In November 2012, the police fired military-issue incendiary grenades into a peaceful assembly protesting against a Chinese mine in Monywa. The grenades contained white phosphorous, and caused horrendous physical burns to dozens of participants, many of whom were monks. The Myanmar parliament and an independent scientific institution identified the phosphorous, but no charges have been brought.
- In December 2014, a woman was shot dead by law enforcement officials using live bullets, in the same area during another assembly. No charges have been brought.

21. Due to their long history of being at the forefront of demands for democratisation, students are also vulnerable. Since January 2015, hundreds of students have travelled in a planned procession to Yangon from the second city of Mandalay, protesting against a draft education bill that had not included a proper consultation process. After facing harassment, including blocked roads and eviction from their nightly camps, the students were joined by other protests across the country, many of which faced retaliation from the government, including the threat that any student caught protesting would be ejected from their studies.
22. Many students and their supporters have been arrested since January. According to the Assembly Law, the students now face prosecution and potential one-year imprisonment in each of the 20 or more townships they passed through without prior approval.
23. On 6 March 2015, the President's Office posted on their Facebook page a photo of Article 128 of the colonial 1898 Code of Criminal Procedure, which provides that the government can use civilian units (essentially paramilitaries) to break up assemblies (approved or otherwise) and "arrest" or "confine" participants. "Swan Ah Shin", a paramilitary group that was used by previous military governments to quash protests, including during the 2007 "Saffron Revolution", has now been resurrected to crush dissenting peaceful assemblies. "Swan Ah Shin" members are sometimes identified by an armband carrying the word "duty", but are otherwise unidentified and allowed to act freely by the police.
24. Also on 6 March 2015, protesters outside the Yangon City Hall were seen being abused, including by being placed in chokeholds, by people in plainclothes. It is unclear whether the perpetrators were plainclothes police or "Swan Ah Shin". On 8 March 2015, either plainclothes police or "Swan Ah Shin" broke up an assembly in Hmawbi Township for not having received prior approval. The 20 students were protesting against police violence towards other student protesters. Similar plainclothes interventions occurred in Sule Pagoda (5 March) and Letpadan (6 March). At least a dozen participants were arrested.
25. Powerful individuals, including business leaders, can call upon the police to implement the law to punish criticism, sometimes in cases outside the scope of the law. In one case, the private company Kan Kaung Chin Yadanar ("Lucky Jewel") used its close links with the authorities to pressure the district police to arrest and detain employees, claiming that their collective union action was an assembly without permission and a breach of public order.
26. Human rights defenders and members of civil society organisations are also punished for their activities and expression by the unclear rules on association. In June 2013, three activists from the Nattalin Social Network and the Meikhtila Social Network were detained in Pegu Division and charged with belonging to an unregistered CSO under the junta-era Association Law, after they had supported farmers' protests against land-grabbing.<sup>7</sup>

**Failure to tackle discrimination and prevent and prohibit the advocacy of hatred constituting incitement to discrimination, hostility and violence**

27. During its first UPR, Myanmar accepted some recommendations to tackle discrimination in the country. It agreed to provide fundamental human rights to and end discrimination against ethnic, religious and linguistic minorities (Slovenia, Poland), and prevent violence against women (Norway, Slovenia, Iran). Myanmar also committed to promoting interreligious dialogue (Philippines) and promote and protect the human rights of groups in Rakhine (Bangladesh). Despite its acceptance, Myanmar has failed to adopt any significant change to its legal framework.

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<sup>7</sup> <http://www.irrawaddy.org/burma/csos-mps-draft-progressive-association-registration-law.html>

28. While statistics are difficult to obtain due to a lack of disaggregated data in the country as a whole, women, ethnic, linguistic and religious minorities, persons with disabilities, and lesbian, gay, bisexual and transgender people (LGBT) face a variety of additional violations to the right to freedom of expression.
29. Women protesters and women human rights defenders are often singled out by the police for arrest, usually by male police officers who then escort the women under unknown charges to unknown locations. This has a chilling effect on other women who fear gender-based or sexual violence.
30. Women human rights defenders experience increasing harassment online, particularly on Facebook, as a consequence of speaking out or criticising powerful interests. Some of the harassment appears to be systematic in nature, indicating a degree of organisation. When women human rights defenders report either online or offline harassment as a result of their activities, the police place blame on the women's activities and ask the women to self-censor. Such a victim-blaming response is well known among women and many women view the online civic space as a dangerous environment.
31. Recently, four bills (the Religious Conversion Bill, the Population Control Healthcare Bill, the Buddhist Women's Special Marriage Bill and the Monogamy Bill) put forward to Parliament politicise religion and limit the rights of women, in particular.<sup>8</sup> They are largely seen by civil society as new tools with which to target human rights defenders working on religious and gender issues.
32. Disability rights activists face discrimination when exercising their right to freedom of expression. Most commonly, civil society organisations working on disability issues are never invited to voice their opinions within formal discourse or participate in decision-making, regardless of whether the decision is about disability or not. The government sees persons with disabilities as charity recipients rather than as rights holders. As a result, no government department produces information in an accessible format, there is no television programming for persons with disabilities or that includes sign language, and representation of persons with disabilities in the media is either absent, stereotyped or demeaning.
33. Disability activists also face discrimination when imprisoned. Political prisoners without the use of their legs or with other physical impairments report being locked in "htate tone" (wooden blocks designed to prevent those who have the use of their legs from walking or moving) or "chay kyin" (hard steel shackles and leg irons).
34. Advocacy of hatred that constitutes incitement to discrimination, hostility or violence, as understood under Article 20(2) of the ICCPR, is an intermittent but persistent issue in Myanmar. Incitement to violence is directed at religious and ethnic minorities, and incitement to hostility and discrimination is also directed towards foreigners, as well as to a lesser but more subtle extent to persons with disabilities, women, LGBT groups and individual human rights defenders, particularly women.
35. Measures to prevent or at least mitigate incitement are non-existent. Those who advocate hatred constituting incitement to violence, which Article 20(2) prohibits, are not properly investigated or held to account. While instances of incitement are frequent, the President has made only one qualified statement (during the 2014 Mandalay riots) to speak out against incitement or violence committed as a consequence of incitement.<sup>9</sup>

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<sup>8</sup> UN TECHNICAL REVIEW OF THE GOVERNMENT OF MYANMAR'S PROPOSED LAWS ON RELIGIOUS CONVERSION, POPULATION CONTROL HEALTHCARE, BUDDHIST WOMEN'S SPECIAL MARRIAGE AND MONOGAMY

<sup>9</sup> <http://www.irrawaddy.org/burma/burmese-president-warns-media-mandalay-riots.html>

36. The underlying motivation for incidents of incitement to violence, hostility or discrimination are complex. One well-known religious leader, states that his intention when speaking about religious and ethnic minorities is to protect “traditional values”. At the same time, he also takes a party political stand when urging the government not to amend Article 59(f) in the Constitution, which prevents Aung San Suu Kyi, leader of the opposition, from becoming president.
37. Little attempt is made by government to heal communal tensions through positive policy interventions that seek to prevent or counter circumstances of the building inter-communal pressure and unrest. Instead, there have been instances where government officials further stoke the unrest by making statements that discriminate towards the target group. No government official or other responsible person has been held accountable for such acts.
38. At the same time, we witness the abuse of incitement laws against human rights defenders. In August 2014, lawyer and long-time rights advocate U Kyaw Hla Aung appeared in the Sittwe Regional Court charged with incitement. However, according to his lawyer, the court was presented with no evidence or witnesses. It is suspected that charges are a consequence of the critical stance he has taken.
39. Organised groups, such as the “Blink Hacker Group”, have also target the media and human rights groups by defacing their websites where they provide coverage or comment on incitement committed against minorities.<sup>10</sup> This creates a climate that limits the ability of independent media to play a positive role in countering incitement.

#### **Failure to protect digital rights and access to the internet**

40. Myanmar received no recommendations in the first review relating to the internet or telecommunications in the country. While the high volume of political cases prosecuted under telecommunications laws has stopped, the legal situation remains highly threatening for those exercising their freedom of expression online.
41. The Electronic Transactions Law (2004) created a range of offences far broader than the already expansive Penal Code, and with no safeguards for the right to freedom of expression. Following strong criticism, the Government committed to repealing the law as part of the package in the Telecommunications Act (2013), but later reneged on its commitment, retaining both laws and merely reducing some of the available prison sentences. While the Electronic Transactions Law is not currently being used, it poses a significant threat to those who exercise the right to freedom of expression online, and therefore has a chilling effect far beyond its current implementation.
42. The Telecommunications Act also includes overly broad criminal sanctions to punish expression. Article 68 provides imprisonment and a fine for the “communication, reception, sending, distribution or sharing” of the subjectively defined “incorrect information”, under the broadly worded “dishonest intention”. This essentially enables the government to criminalise any online expression it disagrees with.
43. The right to access digital technologies, including the internet, is extremely. An internet penetration rate of just 1.2 per cent and one of the lowest mobile phone penetration rates in the world severely inhibits freedom of expression and access to information.<sup>11</sup> There are two forms of telecommunications access:
  - **Landline connections:** Until 2014, the Government controlled all telecommunications gateways, including the internet. Decades of significant under-investment in

<sup>10</sup> <https://citizenlab.org/2013/07/southeast-asia-cyberwatch-june-2013/#myanmar>

<sup>11</sup> International Telecommunication Union, “Percentage of Individuals Using the Internet, 2000-2013,” <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

telecommunications as an active policy choice in order to limit access to information and the means to communicate has led to a chronically weak and expensive network. Broadband connections, available only in large cities, are often out-of-stock for months, and as a result the black-market price for second-hand connections is often over \$1,000. Outside of Yangon and Mandalay, landline internet connections are almost non-existent. Once connected, bandwidth is often so congested that it runs at below dial-up speeds and stops working entirely during peak hours – a single webpage can often take up to five minutes to download. The government’s control over all landline gateways enables them to filter all content and monitor all internet traffic.

- **Wireless connections:** In 2014, two international companies, Telenor and Ooredoo, entered the telecommunications services and infrastructure market, joining two national suppliers, the state-owned Myanmar Post Telecommunication (MPT) and the military-linked Yatanarpon Teleport (YTP). Telenor in particular established the first independent link to the international internet,<sup>12</sup> raising hopes among human rights defenders of a means in which to access information and communicate online without direct government surveillance.

44. Years of pre-publication censorship offline and extremely slow internet connections preventing web browsing have led to increased use of social media platforms and low-bandwidth applications, particularly Facebook, to access news, share information and initiate collective action (online and offline). Most online and offline human rights campaigns, such as the 2015 campaign by student groups to influence a proposed education bill, are initiated and gain support in the relatively open online civic space.
45. Filtering of websites and other content is not currently widespread, with only some file-sharing and sexual content being arbitrarily blocked by Internet Service Providers (ISPs) whether state-owned or owned by those close to the government or military. While the government is not yet actively filtering, most likely due to low penetration levels and weak technical understanding, legislation allows filtering of content without judicial oversight or recourse for webhosts to appeal the filtering, should they wish.
46. Widespread surveillance of online communications content or data is not yet apparent, also likely due to low penetration levels and weak technical understanding, although human rights defenders regard it as highly likely that the government monitors high profile activists online, just as they do offline. Surveillance is established in the Telecommunications Act under Article 75, which provides unknown government agents with the authority to intercept any information that “affects national security or rule of law” and includes no protection for the right to privacy or mechanisms to prevent abuse. Article 76 authorises the government to inspect or seize any such information from telecommunications companies without a warrant.
47. Identification and registrations is required to purchase a mobile phone sim card, resulting in the government being able to identify the owner of each connection. Telenor and Ooredoo have committed to protecting the identity and communications of users, but it is unclear how they can do so given the legislative requirement to release information to the government, even when no justification is provided and no judicial order is presented.<sup>13</sup>
48. Human rights defenders, activists and journalists have reported experiencing online attacks including seemingly organised email threats, and that news of such attacks is often shared simultaneously on social media, demonstrating a level of pre-planning.<sup>14</sup>

## Failure to protect the right to freedom of information

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<sup>12</sup> <http://research.dyn.com/2014/03/telenor-activates-historic-link-myanmar/>

<sup>13</sup> [http://elevenmyanmar.com/index.php?option=com\\_content&view=article&id=4002:telenor-to-protect-its-customers-from-bugging&catid=44&Itemid=384](http://elevenmyanmar.com/index.php?option=com_content&view=article&id=4002:telenor-to-protect-its-customers-from-bugging&catid=44&Itemid=384)

<sup>14</sup> [https://elevenmyanmar.com/index.php?option=com\\_content&view=article&id=2447:hackers-a-major-threat-to-independent-media-in-myanmar&catid=44&Itemid=384](https://elevenmyanmar.com/index.php?option=com_content&view=article&id=2447:hackers-a-major-threat-to-independent-media-in-myanmar&catid=44&Itemid=384)



49. Myanmar received no recommendations in the first review relating to the right to freedom of information. Myanmar has no constitutional guarantee or legislation that protects the right to information for all people.
50. Access to even the most basic information is largely unattainable, in part because important information is not collected or stored. At the national level, statistics published by the government are minimal and civil society questions its accuracy and timeliness. While the tender process for the two telecommunications contracts (won by Ooredoo and Telenor) were largely regarded as open and transparent, most tenders are opaque and public adverts are often deemed by civil society to have been published after the contract has been awarded. There is no public audit of the national budget and civil society generally believes that auditors collude with local officials in covering up corruption. At the local level, civil society is unaware of either the total or the detail of township budgets, hospital budgets, school budgets or other local public expenditure.
51. The lack of information is a significant problem even at the highest levels of government. Members of Parliament (MPs) cannot get access to government or administrative information to enable them to make decisions, and the national Parliament does not allow public access. Even when MPs get access to information distributed in Parliament, they remain afraid that such information remains covered by state secrets rules. Civil society has reported that MPs have refused to share national budget information, as they believe such distribution could be sanctioned. MPs in the regional State Parliaments do not even have access to the official minutes of parliamentary debates.
52. For journalists, the News Media Law (2014) provides for a vague right to “request” (6.a) and “collect” information (4.d), including from non-government organisations or businesses that are in receipt of public funds (6.b). However, no mechanism exists with which journalists can exercise this limited right and, despite government commitments, some ministries still lack spokespeople, public relations departments or publicly advertised contact details.
53. Requesting access to information is particularly dangerous, in particular for journalists and MPs, when concerned with military expenditure or large development projects, such as dams or mines. Requesting even the most basic information quickly results in the threat of criminal sanctions under Penal Code Article 353, which punishes the “intent to prevent or deter [a public servant] from discharging his duty” with a two year prison sentence and fine. The government successfully prosecuted and imprisoned the journalist Zaw Phay under Article 353 after he asked a local education department official for information on the implementation of a scholarship programme within which he suspected corruption.
54. Public officials also obstruct requests for information by claiming that they do not know who is authorised to make such a decision to release the information. For example, in one case, a Director General (junior only to the minister) within the Ministry of Social Welfare informed a disabled rights organisation that he was unaware of the budget provided for disability services.
55. Public officials are sanctioned severely for exposing wrongdoing in the public interest by whistleblowing. In 2013, a police officer was investigated for releasing on an anonymous Facebook page information showing that celebrities and other powerful individuals were involved in taking illicit drugs.<sup>15</sup> At least three former public officials were imprisoned, with two sentenced to death, for leaking information about underground military tunnels and trips to North Korea.<sup>16</sup>

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<sup>15</sup> <http://www.nationmultimedia.com/aec/Police-investigates-online-leak-of-old-drug-scanda-30222222.html>

<sup>16</sup> Myanmar Freedom on the Net 2014 <https://freedomhouse.org/report/freedom-net/2014/myanmar>

## Recommendations

56. Based upon the above observations, ARTICLE 19, Myanmar Independent Living Initiative and Myanmar Trade Union Federation call upon the Government of Myanmar to significantly improve the overall conditions for freedom of expression and information in the country. In particular, the Government of Myanmar should:
- i. Sign and ratify all major international human rights instruments, in particular the International Covenant of Civil and Political Rights;
  - ii. Extend a standing invitation to all UN Special Procedures, and in particular invite the mandate on promoting and protecting the right to freedom of opinion and expression to officially visit the country;
  - iii. Amend the 2008 Constitution to guarantee the supremacy of rights over other laws, and to fully guarantee for all people, the rights to freedom of expression, freedom of information and freedom of assembly in accordance with international standards;
  - iv. Urgently amend the 1957 Penal Code to repeal the provisions on Sedition (Article 124a and 505b), insulting religion (Articles 295a, 298), criminal defamation (Articles 499 – 502), and to amend the offences of promoting enmity or hatred (Article 153a), and obscenity (Articles 292, 294), to bring them into conformity with international standards on freedom of expression;
  - v. Amend the Right to Peaceful Assembly and Peaceful Procession Law to create a notification regime that facilitates assemblies, removing all criminal sanctions for non-violent conduct, and ensure that law enforcement authorities are properly equipped and trained to facilitate assemblies;
  - vi. Immediately and unconditionally release students and human rights defenders detained for the exercise of their right to freedom of peaceful assembly;
  - vii. Ensure prompt, effective and impartial investigations into violations of the rights of protesters, including on the use of excessive and disproportionate force;
  - viii. Repeal Article 128 of the 1898 Code of Criminal Procedure, and disband all paramilitaries, ensuring effective and impartial investigations and full accountability for any violations of human rights committed by their members;
  - ix. Reject the Religious Conversion Bill, the Population Control Healthcare Bill, the Buddhist Women's Special Marriage Bill and the Monogamy Bill;
  - x. Repeal the Electronic Transactions Act and Article 68 of the Telecommunications Act;
  - xi. Implement a programme, together with the private sector, to provide affordable and open access to the internet for all people nationwide, with a particular emphasis upon rural populations and other marginalised groups;
  - xii. Enact a comprehensive non-discrimination law, with the full and effective participation of all stakeholders, safeguarding against discrimination on the basis of ethnicity, religion, language, sex, gender identity, sexual orientation, age, or disability, in accordance with international human rights standards
  - xiii. Enact a right to information law in accordance with international human rights standards and with the full and effective participation of all stakeholders in its drafting;
  - xiv. Implement the United Nation Human Rights Council resolution 16/18 and the OHCHR Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence, including, *inter alia*, by speaking out against incidents of incitement and creating a conducive legal framework for independent public service media to challenge discrimination and strengthen community cohesion.