

**BRIEFING PAPER:**

**FREEDOM OF EXPRESSION  
CONCERNS RELATED TO  
MYANMAR'S COVID-19  
RESPONSE**

August 2020

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**PROTECT**  
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## ARTICLE 19

Free Word Centre  
60 Farringdon Road  
London EC1R 3GA  
United Kingdom

**T:** +44 20 7324 2500

**F:** +44 20 7490 0566

**E:** [info@article19.org](mailto:info@article19.org)

**W:** [www.article19.org](http://www.article19.org)

**Tw:** [@article19org](https://twitter.com/article19org)

**Fb:** [facebook.com/article19org](https://facebook.com/article19org)

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## INTRODUCTION

In late March 2020, Myanmar authorities reported the first case of COVID-19 in Myanmar.<sup>1</sup> The announcement came on the heels of weeks of concern about the lack of transparency in the Myanmar government’s response to the virus and the failure to take seriously the risk of domestic infections.<sup>2</sup> Many questioned the accuracy of government claims that there were no domestic COVID-19 cases given the relatively low rate of testing in Myanmar.<sup>3</sup> However, at the time of writing Myanmar had documented less than 510 COVID-19 cases and only six deaths.<sup>4</sup> While the pandemic is likely to persist for several more months, and cases could rise in Myanmar, the reportedly low rate of COVID-19 infection to date is encouraging.

Nevertheless, Myanmar’s COVID-19 response has aggravated human rights challenges in the country. The COVID-19 pandemic has impacted Myanmar as it prepares for general elections scheduled for 8 November 2020.<sup>5</sup> The confluence of these two events appears to have further pressurised an already tense environment for expression in Myanmar.

During the pandemic, authorities have aggressively pursued a crackdown on the right to freedom of expression, at times relying on the COVID-19 pandemic as an excuse. Authorities have prosecuted several individuals, including journalists, for allegedly reporting or posting online false information about the virus. Some have already been convicted and are now serving terms of up to two years’ imprisonment.

Moreover, the Myanmar government has moved to implement drastic measures that will impact freedom of expression far beyond the end of the pandemic. Its decision to block several ethnic news outlets is a bold act of censorship that marks a new level of repression in the country under the National League for Democracy. The implementation of measures requiring the registration of SIM cards has exacerbated concerns around access to online information that were already heightened by the shutdown of mobile Internet service in townships in Rakhine and Chin States.

The Myanmar government has also pursued a problematic legislative agenda. It has sought to insert a ‘fake news’ provision into an updated communicable diseases law. The law has been passed by one house of Parliament and is awaiting a vote in the other. While the government has taken some positive steps to address ‘hate speech’, the intention behind these measures remains unclear given longstanding efforts to develop anti-‘hate speech’ legislation that would likely facilitate further discrimination.

The implementation of emergency measures designed to slow transmission has at times been counterproductive to that goal. For example, authorities have imprisoned hundreds of individuals who have

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<sup>1</sup> Reuters, ‘Myanmar reports first cases of coronavirus’, 23 March 2020, available at: <https://www.reuters.com/article/us-health-coronavirus-myanmar/myanmar-reports-first-cases-of-coronavirus-idUSKBN21B0HB>.

<sup>2</sup> Aung Zaw, ‘The Myanmar Govt Has Been Spared a Real Test on Coronavirus—but No One’s Luck Lasts Forever’, *Irrawaddy*, 16 March 2020, available at: <https://www.irrawaddy.com/opinion/commentary/myanmar-govt-spared-real-test-coronavirus-no-ones-luck-lasts-forever.html>; Phil Robertson, Human Rights Watch, ‘Myanmar Denials Define COVID-19 Response’, 17 March 2020, available at: [hrw.org/news/2020/03/17/myanmar-denials-define-covid-19-response](https://www.hrw.org/news/2020/03/17/myanmar-denials-define-covid-19-response).

<sup>3</sup> Khine Lin Kyaw and Philip Heijmans, ‘Myanmar’s poorest take coronavirus fight into their own hands’, *Bloomberg*, 14 May 2020, available at: <https://www.bloomberg.com/news/articles/2020-05-13/diy-lockdowns-and-barricades-how-myanmar-is-fighting-the-virus>.

<sup>4</sup> Website of Myanmar’s Ministry of Health and Sports, <https://mohs.gov.mm/page/2966> (reviewed 27 July 2020).

<sup>5</sup> For analysis of freedom of expression concerns related to Myanmar’s upcoming elections, see, ARTICLE 19, ‘The Right to Freedom of Expression in the Context of Myanmar’s 2020 General Election’, April 2020, available at: <https://www.article19.org/wp-content/uploads/2020/04/2020.04.17-Myanmar-Election-Briefing-Paper-final.pdf>.

violated social distancing guidelines, potentially jeopardizing the efficacy of the COVID-19 response. There have also been allegations of discriminatory application of COVID-19 suppression measures.

This briefing paper explores freedom of expression and civic space issues during the COVID-19 pandemic in Myanmar, addressing four main topics: (1) prosecution of those exercising their right to freedom of expression, (2) 'hate speech', (3) access to information, and (4) emergency measures. It examines government action against international human rights law and standards and provides recommendations that Myanmar can take forward to continue to suppress transmission of COVID-19 without suppressing expression.

## THE RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)<sup>6</sup> and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> Although Myanmar is not a party to the ICCPR, there is strong consensus that the protections contained in Article 19 of the UDHR are incorporated into customary international law. The right is affirmed in the ASEAN Human Rights Declaration, although broad limitations to the right are permissible.<sup>8</sup>

While the right to freedom of expression is fundamental, it is not absolute. States may restrict the right in order to protect legitimate interests, including public health. However, the UN Human Rights Committee has stated that restrictions must be exceptional and meet a strict three-part test.<sup>9</sup> Any restriction must be:

- **Provided for by law:** restrictions must be given effect by a law or regulation formulated with sufficient precision to enable individuals to adapt their conduct accordingly;
- **In pursuit of a legitimate aim:** any restriction must target one of the interests enumerated in Article 19(3), listed exclusively as respect for the rights or reputations of others, the protection of national security, public order or public health or morals; and
- **Necessary and proportionate:** the state must demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.

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<sup>6</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). The UDHR, though adopted by a resolution of the UN General Assembly, is not strictly binding on states. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see: *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> circuit).

<sup>7</sup> International Covenant on Civil and Political Rights, 16 December 1966, Treaty Series, vol. 999, p. 171.

<sup>8</sup> Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012.

<sup>9</sup> Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011, paras. 21-36.

# PROSECUTIONS OF HUMAN RIGHTS DEFENDERS, JOURNALISTS, ARTISTS, AND OTHERS DURING THE CORONAVIRUS PANDEMIC

During the COVID-19 pandemic, the government of Myanmar has continued to arrest human rights defenders, journalists, and others for exercising the right to freedom of expression.<sup>10</sup> Many of these prosecutions have been linked to COVID-19 and government efforts to control narratives around the pandemic.

Some arrests during the COVID-19 pandemic appear motivated by a desire to silence any criticism of the government's response to COVID-19 or to discourage the sharing of information that differs from the narrative put forward by the government. In May 2020, the owner of a Facebook account named 'Nyan Lin Htat Referee' was prosecuted under section 124A of Myanmar's Penal Code, which criminalises sedition and carries a maximum punishment of twenty year's imprisonment and a fine. The account holder claimed that the government, including State Counsellor Aung San Suu Kyi, was not following its own measures implemented to combat COVID-19, including the ban on mass gatherings.<sup>11</sup> Further, three individuals from Bago Region were charged under section 66(d) of the Telecommunications Act and section 505(b) of Myanmar's Penal Code for 'verbally abusing' online the Bago Chief Minister in relation to the closure of factories for the purpose of conducting medical examinations of workers.<sup>12</sup> In July 2020, local Sagaing politician Zaw Naing Oo was charged under section 505(b) of the Penal Code after he circulated a letter critical of the response of the regional government to the pandemic.<sup>13</sup> International standards do not permit restrictions on the right to freedom of expression that are made in order to protect the state or its symbols, and heads of state or other public officials are legitimately subject to criticism and political opposition.<sup>14</sup>

On 3 April 2020, three artists were charged under section 295A of the Penal Code after a complaint that a mural urging people to 'stay home and save lives' contained an image of the grim reaper that resembled a monk.<sup>15</sup> In July 2020, the artists were released from prison.<sup>16</sup> Section 295A of the Penal Code, which provides for up to two years of imprisonment for 'outraging religious feelings', has in the past been used against religious minorities and individuals speaking out against extremism. Blasphemy provisions such as article 295A violate the right to

<sup>10</sup> See, e.g., Assistance Association for Political Prisoners, *Cases Related to COVID-19 pandemic, May 2020*, available at: <https://aappb.org/wp-content/uploads/2020/06/Chronology-of-COVID-19-in-May-English.pdf>.

<sup>11</sup> 'Facebook user faces sedition charge for criticising Aung San Suu Kyi', 15 May 2020, *Myanmar Mix*, available at: <https://myanmarmix.com/en/articles/facebook-user-faces-sedition-charge-for-criticising-aung-san-suu-kyi>.

<sup>12</sup> Assistance Association for Political Prisoners, 'Cases Related to COVID-19 Pandemic For May 2020', available at: <https://aappb.org/2020/06/11306/>.

<sup>13</sup> The Voice, 16 July 2020, available at: <http://thevoicemyanmar.com/news/42553-ndf>.

<sup>14</sup> See, ARTICLE 19, 'Myanmar Briefing Paper: Criminalisation of Free Expression', May 2019, available at: <https://www.article19.org/resources/myanmar-criminalisation-of-free-expression/>.

<sup>15</sup> Human Rights Watch, 'Myanmar: 3 Charged for COVID-19 Street Art', 8 April 2020, available at: <https://www.hrw.org/news/2020/04/08/myanmar-3-charged-covid-19-street-art>.

<sup>16</sup> Zaw Zaw Htwe, 'Artists Freed After Anti-Buddhist Claims Dropped Against COVID-19 Mural in Myanmar', Irrawaddy, 17 July 2020, available at: <https://www.irrawaddy.com/news/burma/artists-freed-anti-buddhist-claims-dropped-covid-19-mural-myanmar.html>.

freedom of expression, and are incompatible with international standards, such as those set forth in the Rabat Plan of Action.<sup>17</sup>

The government has also used prosecuted social media users who have allegedly spread false information about the COVID-19 pandemic. On 4 April 2020, Bhone Myint Moe posted an update on Facebook claiming that COVID-19 had been found in his township. He was later charged under section 27 of the Natural Disaster Management Law for allegedly spreading false information.<sup>18</sup>

The prosecution of journalists reporting on the pandemic has been highly problematic. The guarantee of freedom of expression applies with particular force to the media. International human rights bodies have repeatedly emphasised the ‘pre-eminent role of the press in a State governed by the rule of law’<sup>19</sup> and the essential role of the media in a democratic society.<sup>20</sup> The Special Rapporteur on the right to health has specifically highlighted the importance of media in ensuring accountability in health systems.<sup>21</sup>

Myanmar has failed to respect the importance of the media during the COVID-19 outbreak, instead targeting individuals who have attempted to share information about the pandemic. In May 2020, a court convicted chief editor of the Hpa-An-based Dae Pyaw news agency, Zaw Min Oo (also known as Zaw Ye Htet), under Section 505(b) of Myanmar’s Penal Code after a news update about a COVID-19 death on the Thai-Myanmar border later proved false. Zaw Min Oo is now serving a two-year prison sentence.<sup>22</sup> On 1 July 2020, police filed a case against *Eleven Myanmar* journalist Aung Ko Ko under section 68(a) of the Telecommunications Act for allegedly spreading misinformation with intent to harm the State. The case relates to a Facebook post in which Aung Ko Ko criticised underreporting and delayed news releases by the Ministry of Health and Sports in relation to COVID-19.<sup>23</sup> Section 68(a) of the Telecommunications Law carries a maximum penalty of one year’s imprisonment and a fine.

While the government has justified these actions on the basis that the information shared was false, its decision to criminally prosecute these individuals is a disproportionate and unhelpful response. Myanmar’s prosecution of journalists or others sharing information on the pandemic – even if that information ultimately has proved false in some cases – has had a chilling effect on the media sector and has undermined government accountability for its response to COVID-19.

<sup>17</sup> Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011; Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, UN Doc. A/HRC/22/17/Add.4, 5 October 2012.

<sup>18</sup> တံတားဦးနှင့်ရေတူရှည်မှ အမျိုးသားနှစ်ဦးကို COVID-19နှင့်ပတ်သက်၍ အရေးယူ, *Myanmar Times*, 5 April 2020, available at: <https://myanmar.mmtimes.com/news/138004.html>.

<sup>19</sup> See, e.g. European Court for Human Rights (the European Court), *Thorgeirson vs Iceland*, 25 June 1992, App. No. 13778/88, para 63 or *Castells vs Spain*, 24 April 1992, App. No. 11798/85, para 43.

<sup>20</sup> European Court, *Dichand and others vs Austria*, 26 February 2002, App. No. 29271/95, para 40.

<sup>21</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 11 August 2008, UN Doc. No. A/63/263, para 11.

<sup>22</sup> Toe Wai Aung, ‘Editor in Kayin State sentenced to jail over COVID-19 story’, *Myanmar Times*, 21 May 2020, available at: <https://www.mmtimes.com/news/editor-kayin-state-sentenced-jail-over-covid-19-story.html>.

<sup>23</sup> Nay Yaing, ‘EMG reporter from Nay Pyi Taw sued for Facebook comment about Covid-19’, *Eleven Myanmar*, 2 July 2020, available at: <https://elevenmyanmar.com/news/emg-reporter-from-nay-pyi-taw-sued-for-facebook-comment-about-covid-19>.

## ‘HATE SPEECH’

The government of Myanmar has taken several proactive steps, some of which are related to the coronavirus, to address ‘hate speech’ in Myanmar. Nevertheless, longstanding xenophobia and racism and a legal framework ill-suited for addressing ‘hate speech’ are causes for concern in the government’s pandemic response.

Under Article 20(2) of the ICCPR, states must prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Prohibitions should focus on speech that is intended and likely to incite the audience of that speech to engage in acts of discrimination, hostility or violence against a protected group, rather than advocacy of hatred without regard to intent or likelihood of inciting a prohibited action against a protected group. Still, any responses to ‘hate speech’ must meet the three-part test of legality, legitimacy, and necessity and proportionality.<sup>24</sup> Responses that over-criminalise speech risk exacerbating the roots causes of discrimination, whereas positive policy measures, such as those set out in Human Rights Council Resolution 16/18, can play a major role in combatting intolerance.<sup>25</sup>

During the pandemic, ‘hate speech’ has reportedly been directed at coronavirus patients, health care workers, returning migrant workers, Christians, and the Rohingya population in Myanmar.<sup>26</sup> ARTICLE 19 reviewed hundreds of Facebook posts including incendiary rhetoric and ‘hate speech’ related to COVID-19. While the sample size was not large enough to ascertain the overall volume of ‘hate speech’ relating to COVID-19, ARTICLE 19 concluded that the pandemic has, at a minimum, become a vector for the spread of intolerant and incendiary rhetoric.

The most hateful and violent language on social media has often been directed at the Rohingya community, often derogatorily referred to as ‘Bengalis’ as a way of asserting foreign origins. Social media accounts—including those supportive of the USDP, the military, MaBaTha, and ultra-nationalist groups—have spread misinformation or uncorroborated accounts of groups of individuals entering Myanmar from Bangladesh, raising suspicions that they may be carrying the virus. Some have called for government action, including the killing of those trying to enter the country.

Human rights organisations have reported that a Facebook account linked to the military posted content alleging that ‘the [Arakan Army] was “bringing COVID-19 into Rakhine State” by “secretly importing Bengalis” into the country across the Bangladeshi border’, reflecting a longstanding anti-Rohingya propaganda effort by the Myanmar military.<sup>27</sup> As in other countries, COVID-19 has also brought out significant anti-Chinese sentiment.<sup>28</sup>

During the pandemic, the government has taken several steps aimed at combatting ‘hate speech’. Some of these appear to have been motivated by the ongoing case at the International Court of Justice, where Myanmar has

<sup>24</sup> See, Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011.

<sup>25</sup> For further information on proposals to combat ‘hate speech’ in Myanmar, see, ARTICLE 19, ‘Myanmar Briefing Paper: Countering “Hate Speech”’, February 2020, available at: <https://www.article19.org/wp-content/uploads/2020/05/2020.02.04-A19-Hate-Speech-Law-Policy-Paper-final-3.pdf>.

<sup>26</sup> Ye Mon, ‘Patients, medical workers battle discrimination as well as disease’, *Frontier Myanmar*, 4 May 2020, available at: <https://frontiermyanmar.net/en/patients-medical-workers-battle-discrimination-as-well-as-disease>.

<sup>27</sup> Progressive Voice, ‘A Nation Left Behind, Myanmar’s Weaponization of COVID-19’, p 35, available at: [https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final\\_PV-COVID-19\\_Report-2020.pdf](https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final_PV-COVID-19_Report-2020.pdf).

<sup>28</sup> Thompson Chau, ‘Beijing urges citizens to take precautions, asks Myanmar to tackle crimes against Chinese’, *Myanmar Times*, 18 May 2020, available at: <https://www.mmtimes.com/news/beijing-urges-citizens-take-precautions-asks-myanmar-tackle-crimes-against-chinese.html>; Reuters, ‘Anti-Chinese Sentiment Spreads Abroad Along With Coronavirus’, 31 January 2020, available at: <https://www.irrawaddy.com/news/asia/anti-chinese-sentiment-spreads-abroad-along-coronavirus.html>.



been accused of genocide. Other measures appear to be direct responses to the COVID-19 pandemic. On 20 April 2020, the Office of the President issued Directive No. 3/2020, requiring all levels of government to ‘denounce and prevent all forms of hate speech’, and to support anti-‘hate speech’ activities.<sup>29</sup>

Under the directive, ministries and state and regional governments are required to report to the Office of the President on the measures taken to do so.<sup>30</sup> The directive defines ‘hate speech’ as ‘communications of any kind that denigrate or express animosity towards a person or a group on the basis of religion, ethnicity, nationality, race, gender or other identity factor’. To address the spread of hate against suspected coronavirus patients, State Counsellor Daw Aung San Suu Kyi further ‘called on the public to encourage and support rather than blame patients, and to avoid accusing particular patients of spreading the virus’ in a video conference on 15 April 2020.<sup>31</sup> The same month, Union Minister for Social Welfare, Relief and Resettlement Dr Win Myat Aye held a videoconference with state and region officials on the prevention of ‘hate speech’, and called on all officials to avoid engaging in ‘hate speech’.<sup>32</sup>

These steps are laudatory and could be built upon to develop more specific policies aimed at combating intolerance during the pandemic and beyond. For example, the government could continue anti-stigmatisation campaigns aimed at combating ‘hate speech’ against those affected by COVID-19 during the pandemic. In the long term, the Attorney General’s office could develop prosecutorial guidelines that constrain the criminalisation of ‘hate speech’, in line with the Rabat Plan of Action. Further, the Ministry of Education could review all curriculum to prevent discrimination and teach tolerance in Myanmar’s classrooms. Trainings of government officials at local levels on appropriate responses to ‘hate speech’ – with a focus on a nuanced understanding of the concept that takes into account Myanmar’s discriminatory rhetoric against ethnic and religious minorities – would also be a welcome step.

However, the longstanding effort to pass problematic anti-‘hate speech’ legislation casts a shadow over more recent attempts to quell ‘hate speech’. The legislation criminalises an overly broad range of expression and is likely to have a chilling effect on ethnic and religious minorities. While the timeline for passing the legislation is unclear, a December 2019 document published by the Ministry of Foreign Affairs stated that the legislation had been expedited for passage by Parliament. Instead of passing the flawed legislation, the government of Myanmar should follow its more recent approach, promoting positive policy measures that can be implemented quickly and without resort to excessive penalties, particularly criminal ones.<sup>33</sup> Those instances of ‘hate speech’ that require a criminal response, for example extreme instances of advocacy of discriminatory hatred that constitutes incitement to violence, can be dealt with under existing laws, which should be reformed to comply with international human rights law.

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<sup>29</sup> Republic of the Union of Myanmar, Office of the President, Directive No. 3/2020, available at: <https://www.president-office.gov.mm/en/?q=briefing-room/news/2020/04/21/id-10007>.

<sup>30</sup>Ibid.

<sup>31</sup> Ye Mon, ‘Patients, medical workers battle discrimination as well as disease’, *Frontier Myanmar*, 4 May 2020, available at: <https://frontiermyanmar.net/en/patients-medical-workers-battle-discrimination-as-well-as-disease>.

<sup>32</sup>Global New Light of Myanmar, ‘Union Minister Dr Win Myat Aye holds meeting on prevention of hate speech, incitement to violence’, 25 April 2020, available at: <https://www.globalnewlightofmyanmar.com/union-minister-dr-win-myat-aye-holds-meeting-on-prevention-of-hate-speech-incitement-to-violence/>.

<sup>33</sup> ARTICLE 19, ‘Myanmar Briefing Paper: Countering “Hate Speech”’, February 2020, available at: <https://www.article19.org/wp-content/uploads/2020/05/2020.02.04-A19-Hate-Speech-Law-Policy-Paper-final-3.pdf>.

## LACK OF ACCESS TO INFORMATION

Myanmar has failed to proactively provide full and prompt information on all aspects of its COVID-19 response. Further, during the pandemic, it has continued to push through measures that decrease the public's ability to access information. These include laws further criminalising the spread of 'false information', mobile Internet restrictions in western Myanmar, the blocking of ethnic news websites, and the implementation of SIM registration requirements. With access to information a key component of an effective public health response, the Myanmar government should urgently seek to improve access to information about the pandemic.

International human rights law on the right to health requires states to ensure public access to information.<sup>34</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Myanmar is a party, states that everyone has the right to 'the enjoyment of the highest attainable standard of physical and mental health.'<sup>35</sup> The UN Committee on Economic, Social and Cultural Rights has noted that the right to health is 'closely related to and dependent upon the realisation of other human rights ... [including] ... access to information,' which it considers as addressing 'integral components of the right to health.'<sup>36</sup>

States are obliged to 'provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.'<sup>37</sup> The Committee noted in a footnote that, 'This general comment gives particular emphasis to access to information because of the special importance of this issue in relation to health.' The UN Special Rapporteur on the Right to Health has found that states have an obligation to inform the public in public health emergencies and that 'an effective emergency response system requires the public to be provided with useful, timely, truthful, consistent and appropriate information promptly throughout.'<sup>38</sup>

### Failure to proactively disclose information

Myanmar's legal framework fails to require proactive disclosure of information. In a July 2019 report, ARTICLE 19 concluded that Myanmar's laws contain only piecemeal provisions providing limited access to certain kinds of information with no overarching right to information framework. In addition to recommending repeal of repressive legislation and enactment of a comprehensive right to information framework, the report highlighted an urgent need for whistleblower protection.<sup>39</sup>

Instead, recent legislation has exacerbated transparency concerns. The National Records and Archives Law, passed in late 2019, entrenches a presumption of government secrecy, rather than openness. It provides for lengthy classification periods and applies criminal sanctions to those who access information without permission.

<sup>34</sup> ARTICLE 19, 'A healthy knowledge: Right to information and the right to health', 27 September 2012, <https://www.article19.org/resources/healthy-knowledge-right-information-right-health/>.

<sup>35</sup> UN, International Covenant on Economic, Social and Cultural Rights, Article 12, [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf).

<sup>36</sup> OHCHR, Committee on Economic, Social and Cultural Rights (CESCR) general comment no. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, available at: <https://www.refworld.org/pdfid/4538838d0.pdf>.

<sup>37</sup> OHCHR, Committee on Economic, Social and Cultural Rights (CESCR) general comment no. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, <https://www.refworld.org/pdfid/4538838d0.pdf>.

<sup>38</sup> UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. Addendum: Mission to Japan, A/HRC/23/41/Add.3, 31 July 2013, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3_en.pdf).

<sup>39</sup> ARTICLE 19, 'Report: The right to information and natural resources in Myanmar', 31 July 2019, available at: <https://www.article19.org/resources/myanmar-the-right-to-information-and-natural-resources/>.

The law does not make any improvement to the overarching right to information framework, and fails to advance key transparency principles, such as the duty to provide access to data held by the government and proactive publication of data.

In the early stages of the pandemic, human rights organisations raised concern about the lack of government transparency regarding the number of COVID-19 cases in the country.<sup>40</sup> Journalists reported that they were denied access to certain locations, thus impeding their ability to report on emerging information relating to the coronavirus.<sup>41</sup> The government of Myanmar has since become more active in disclosing information about the pandemic and has generally been more transparent in its pandemic response. The Ministry of Health and Sports' 'Surveillance Dashboard' provides information on the number of tests conducted, recovered patients, patients under monitoring, and deaths.<sup>42</sup> A separate page details State and Regional COVID-19 response activities. Nevertheless, gaps remain in Myanmar's legal framework preventing the level of transparency required to mount an effective COVID-19 response.<sup>43</sup>

During a pandemic, sharing of government information is a necessary component of an effective public health response. At a minimum, governments should disclose the number of coronavirus cases and deaths, as well as information about testing, facilities, drug trials and contingency planning. They should disclose the details of all contracts, grants, loans, support to companies, and other spending related to the pandemic response. The names and biographies of the members of all committees providing scientific, economic or other advice to public bodies, as well as copies of all minutes of meetings, working documents and advice provided to governments should be publicly disclosed. Further, governance, human rights and law enforcement information relating to the pandemic should be made publicly available.<sup>44</sup>

The government of Myanmar has provided some of this information to the public. The names of committee members involved in the COVID-19 response have been made public, improving accountability for government decisionmakers. Reports on meetings relating to COVID-19 are often published in state-owned media.<sup>45</sup> However, the government has failed to make public or failed to make easily accessible the minutes of committee meetings, working documents, or expert advice provided to the government. This curtails the ability of the public to assess the degree to which Myanmar is following expert opinion and the various policy responses being considered.

<sup>40</sup> Phil Robertson, Human Rights Watch, 'Myanmar Denials Define COVID-19 Response', 17 March 2020, available at: [hrw.org/news/2020/03/17/myanmar-denials-define-covid-19-response](https://www.hrw.org/news/2020/03/17/myanmar-denials-define-covid-19-response).

<sup>41</sup> See, e.g., Lapyae Ko, Facebook post, 23 January 2020, available at: <https://www.facebook.com/100009392004396/posts/2560218004301241/>; Hein Thar, 'Blocked numbers and no access: the challenges of reporting a pandemic', *Frontier*, 6 July 2020, available at: <https://www.frontiermyanmar.net/en/blocked-numbers-and-no-access-the-challenges-of-reporting-a-pandemic/>.

<sup>42</sup> Website of Myanmar's Ministry of Health and Sports, <https://mohs.gov.mm/page/2966>.

<sup>43</sup> For more information on the right to information during the COVID-19 pandemic, see ARTICLE 19, 'Ensuring the Public's Right to Know in the COVID-19 Pandemic', May 2020, available at: [https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic\\_Final-13.05.20.pdf](https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic_Final-13.05.20.pdf).

<sup>44</sup> ARTICLE 19, 'Ensuring the Public's Right to Know in the COVID-19 Pandemic', May 2020, available at: [https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic\\_Final-13.05.20.pdf](https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic_Final-13.05.20.pdf).

<sup>45</sup> See, e.g., Global New Light of Myanmar, 'Inter-ministerial coordination committee meets for preventing 2019 Novel Coronavirus', 13 February 2020, available at: <https://www.globalnewlightofmyanmar.com/inter-ministerial-coordination-committee-meets-for-preventing-2019-novel-coronavirus/>; Global New Light of Myanmar, 'Central Committee on Prevention, Control and Treatment on COVID-19 holds 2nd meeting', 24 April 2020, available at: <https://www.globalnewlightofmyanmar.com/central-committee-on-prevention-control-and-treatment-on-covid-19-holds-2nd-meeting/>.

Myanmar has committed to a large stimulus program to ameliorate the economic consequences of COVID-19.<sup>46</sup> However, information regarding economic stimulus programs has been released inconsistently. At times, the names of businesses receiving loans have been publicly released,<sup>47</sup> while at other times the names remain undisclosed.<sup>48</sup> The full disclosure of the details of this extraordinary stimulus program is essential to ensuring public oversight over the program and to avoiding corruption.

Data on law enforcement activities relating to the enforcement of emergency measures has not been forthcoming, leaving many journalists and human rights organisations to guess at the true level of incarceration resulting from pandemic-related arrests. The lack of a culture of transparency and proactive information sharing continues to stymie efforts to assess and hold accountable the government for its public health actions.

## Communicable diseases law

During the COVID-19 pandemic, the government of Myanmar has pushed legislation to prevent public discourse about crises. It has developed legislation that could prevent individuals from speaking out about concerns relating to infectious diseases.<sup>49</sup> In mid-February, a draft Prevention and Control of Communicable Diseases Bill was published in state-owned newspapers for public consultation. Section 20 of the draft Bill, which would replace an existing law of the same title, empowers the Ministry of Health to delegate authority to local officials to prohibit speaking, writing, receiving or publishing news on contagious and communicable diseases that could ‘cause panic’. First-time offenders would face a fine of between 50,000 and 100,000 kyats, and repeat offenders would face imprisonment of up to six months and a fine of between 300,000 and 500,000 kyats.

At the time of publication, the Upper House of Parliament had yet to vote on the bill. As noted above, such broad provisions cannot be justified under international human rights law and are very often implemented in an arbitrary manner. In addition to violating the right to freedom of expression of the individuals prosecuted, such laws severely curtail the broader public’s right to access information.

## Internet access restrictions

21 June 2020 marked the first anniversary of an Internet shutdown in Myanmar’s Rakhine and Chin States.<sup>50</sup> While in August 2020 the government of Myanmar restored 2G access to all township affected by the order, early reporting indicates that Internet speeds are so slow that mobile users are unable to load webpages or use apps, calling into question the significance of the government’s change in policy.<sup>51</sup> Increasing cases in Rakhine State demonstrate the urgency of restoring full Internet access to the area.<sup>52</sup>

<sup>46</sup> Charltons, COVID-19 Myanmar Relief Measures, available at: <https://www.charltonsmyanmar.com/covid-19-myanmar-relief-measures/>.

<sup>47</sup> See, e.g., Ministry of Hotels and Tourism, available at: <https://tourism.gov.mm/coronavirus-disease-2019-covid-19-announcement/>; Ministry of Hotels and Tourism, available at: <https://www.facebook.com/402576259861147/posts/3023014547817292/>.

<sup>48</sup> See, e.g., Ministry of Hotels and Tourism, available at: [https://tourism.gov.mm/announcement\\_9th\\_april/](https://tourism.gov.mm/announcement_9th_april/).

<sup>49</sup> ARTICLE 19, ‘Myanmar: Restriction on expression in communicable diseases bill would undermine COVID-19 response’, 12 May 2020, available at: <https://www.article19.org/resources/myanmar-restriction-on-expression-in-communicable-diseases-bill-would-undermine-covid-19-response/>.

<sup>50</sup> ARTICLE 19, ‘Myanmar: One year on, Internet shutdown imperils human rights in Myanmar’, 19 June 2020, available at: <https://www.article19.org/resources/myanmar-one-year-on-internet-shutdown-imperils-human-rights-in-myanmar/>.

<sup>51</sup> Lei Lei, ‘Myanmar Govt Restores Internet in Rakhine, Locals Complain of Weak Signal’, *Irrawaddy*, 5 August 2020, available at: <https://www.irrawaddy.com/news/burma/myanmar-govt-restores-internet-rakhine-locals-complain-weak-signal.html>.

<sup>52</sup> Dr Nay Lin Tun, ‘Rakhine is in a State of Emergency’, *Frontier*, 24 August 2020, available at: <https://www.frontiermyanmar.net/en/rakhine-is-in-a-state-of-emergency/>; Kaung Hset Naing, ‘Complacency turns to fear

The Internet restrictions pose an extreme obstacle to obtaining relevant public health information for people in western Myanmar, where the Internet is overwhelmingly accessed through mobile phones.<sup>53</sup> Humanitarian groups have reported that many in areas affected by the restrictions are unaware of the COVID-19 pandemic.<sup>54</sup> Arakan National League for Democracy MP Htoot May stated, ‘When I ask people in my constituency whether they are aware of COVID-19, I have to explain the global pandemic to them from the beginning. I have to explain to them what social distancing is and how to practice proper hand hygiene.’<sup>55</sup> Advocates have repeatedly raised alarm that the shutdown inhibits dissemination of information relating to safety and security, prevents civilians from contacting one another in case of an emergency, impedes access to healthcare, impedes the operations of organisations working and delivering aid in rural areas, and frustrates attempts by journalists and human rights organisations to document ongoing human rights abuses.<sup>56</sup> They have also cast doubt on the efficacy of blocking Internet access as a means of preventing the detonation of landmines and improvised explosive devices, a reason the government has recently put forward as a justification for the shutdown.<sup>57</sup>

In March 2020, freedom of expression experts for the United Nations, the Inter-American Commission for Human Rights, and the Organization for Security and Co-operation in Europe issued a statement reiterating the importance of Internet access and highlighting the particular need for access during public health emergencies. They called on all states to ‘ensure immediate access to the fastest and broadest possible internet service’ amidst the coronavirus and emphasised that national security concerns cannot justify broad restrictions on access to the Internet.<sup>58</sup>

The Human Rights Council has repeatedly condemned measures that deliberately disrupt access to or dissemination of information online, and called on States to refrain from such practices.<sup>59</sup> The Special Rapporteur on the situation of human rights in Myanmar called on the government of Myanmar to ‘reverse its decision to impose the mobile internet ban,’ citing humanitarian concerns.<sup>60</sup> ARTICLE 19 has repeatedly called for the shutdown to be lifted and for Article 77 of the Telecommunications Law, which provides the legal basis

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in Rakhine State amid fresh COVID-19 outbreak’ *Frontier*, 23 August 2020, available at: <https://www.frontiermyanmar.net/en/complacency-turns-to-fear-in-rakhine-state-amid-fresh-covid-19-outbreak/>.

<sup>53</sup> Freedom House, ‘Freedom on the Net 2018: Myanmar,’ available at: <https://freedomhouse.org/report/freedomnet/2018/myanmar>.

<sup>54</sup> Human Rights Watch, ‘Myanmar: End World’s Longest Internet Shutdown’, 19 June 2020, available at: <https://www.hrw.org/news/2020/06/19/myanmar-end-worlds-longest-internet-shutdown>.

<sup>55</sup> Isobel Asher Hamilton, ‘Myanmar has had an internet blackout for a year. Some of its citizens still don’t know there’s a pandemic’, *Business Insider*, 25 June 2020, available at: <https://www.businessinsider.com/myanmar-internet-shutdown-people-unaware-coronavirus-pandemic-2020-6>.

<sup>56</sup> ARTICLE 19, ‘Briefing Paper: Myanmar’s Internet Shutdown in Rakhine and Chin States’, 2 August 2019, available at: <https://www.article19.org/resources/briefing-myanmars-internet-shutdown-in-rakhine-and-chin-states/>.

<sup>57</sup> Human Rights Watch, Myanmar: End Unlawful Internet Restrictions, 27 July 2020, available at: <https://www.hrw.org/news/2020/07/27/myanmar-end-unlawful-internet-restrictions#>.

<sup>58</sup> David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Harlem Désir, OSCE Representative on Freedom of the Media and Edison Lanza, IACHR Special Rapporteur for Freedom of Expression, ‘COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts’, 19 March 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=E>.

<sup>59</sup> Human Rights Council, ‘The promotion, protection and enjoyment of human rights on the Internet’, UN Doc A/HRC/32/L.20, 27 June 2016, para 10.

<sup>60</sup> Yanghee Lee, ‘Myanmar: UN expert ‘fears for civilians’ after Internet shutdown’, 24 June 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24733&LangID=E>.

for the shutdown, to be repealed.<sup>61</sup> Given the ongoing pandemic, the need to end the restrictions has become even more urgent.

## Blocking of ethnic news websites

In March 2020, the government of Myanmar moved to further curtail access to information by ordering telecommunications operators to block access to several ethnic news websites. While a range of websites were covered by the order based on various justifications, the government specifically cited COVID-19 and the alleged publication of false information as the basis for blocking access. The order marked the return of direct and brazen censorship of news outlets in Myanmar and exacerbated the lack of information from conflict-affected areas, further hampering public health responses.

In March 2020, the Ministry of Transport and Communications (‘MOTC’) ordered telecommunications operators in Myanmar to block access to 221 websites. Among these were ethnic news websites that report on alleged abuses by the Myanmar military.<sup>62</sup> Director General of the Directorate of Communications U Myo Swe stated generally that the directive was in part a response to ‘fake news’ about COVID-19. ARTICLE 19’s review of the relevant news websites indicated they had done little to no reporting about COVID-19 at the time the order was issued.<sup>63</sup> However, the sites have subsequently reported on COVID-19, indicating that those who use these sites as a primary means of obtaining information would have lost a source of information about the pandemic. In July, a new directive ordered mobile operators to block an additional two websites.<sup>64</sup> ARTICLE 19 has not been able to identify the websites targeted by the order.

The MOTC’s directives are not necessary or proportionate and lack procedural fairness. Where legitimate aims are in fact threatened, less intrusive measures, such as addressing specific content, rather than blocking entire websites, are available. The blocking of entire websites is an extreme measure that should only be taken in accordance with clear procedural protections. In general, websites should only be blocked by a court or other independent and impartial adjudicatory body that has determined that blocking is necessary and proportionate to a legitimate aim. In any case, those impacted by the blocking, including telecommunications operators, website operators, and civil society organisations, should have an opportunity to be heard in court.

## SIM registration

Further exacerbating access to information concerns is the recent implementation of an order requiring all SIM cards in Myanmar to be registered, potentially preventing millions of people from accessing the Internet.<sup>65</sup> In February 2020, the Post and Telecommunications Department set a deadline of 30 April 2020 for the registration

<sup>61</sup> ARTICLE 19, ‘Briefing Paper: Myanmar’s Internet Shutdown in Rakhine and Chin States’, 2 August 2019, available at: <https://www.article19.org/wp-content/uploads/2019/08/2019.08.01-Myanmar-Internet-Shutdown-briefing-.pdf>.

<sup>62</sup> ARTICLE 19, ‘Myanmar: Immediately lift ban on ethnic news websites’, 1 April 2020, available at: <https://www.article19.org/resources/myanmar-immediately-lift-ban-on-ethnic-news-websites/>.

<sup>63</sup> Thompson Chau, ‘Telenor follows Myanmar orders to block alleged “fake news” sites’, *Myanmar Times*, 31 March 2020, available at: <https://www.mmtimes.com/news/telenor-follows-myanmar-orders-block-alleged-fake-news-sites.html>.

<sup>64</sup> Telenor, ‘Directive from authorities to block additional websites in Myanmar’, 11 July 2020, <https://www.telenor.com.mm/en/article/directive-authorities-block-additional-websites-myanmar-0>.

<sup>65</sup> ARTICLE 19, ‘Myanmar: Restriction on expression in communicable diseases bill would undermine COVID-19 response’, *Myanmar Times*, 12 May 2020, available at: <https://www.article19.org/resources/myanmar-restriction-on-expression-in-communicable-diseases-bill-would-undermine-covid-19-response/>.



of all SIM cards in Myanmar.<sup>66</sup> Registration requires an identity document, such as a passport or national registration card. Yet millions of people living in Myanmar lack access to formal identification. The measure represents yet another major challenge for people in Myanmar to access information about COVID-19. Unregistered SIM cards were deactivated on 30 June, with mobile provider Telenor noting that ‘millions’ of users lost their mobile connections.<sup>67</sup>

Licensing and registration requirements are incompatible with international standards on freedom of expression. The 2011 Joint Declaration on Freedom of Expression and the Internet provided that measures, such as imposing registration and other requirements on service providers, are not legitimate, unless such measures satisfy the three-part test, and are provided by law; pursue a legitimate aim; and conform to the strict tests of necessity and proportionality.<sup>68</sup>

In 2015 and 2018, the Special Rapporteur to the Human Rights Council noted that user identification and mandatory SIM card registration processes threaten ‘access to digital communications and online services’ and the protection of the right to online anonymity.<sup>69</sup> In 2016, the UN Human Rights Council affirmed that states have an obligation to ‘promote and protect the enjoyment of human rights on the Internet.’<sup>70</sup> As noted above, with online information dissemination a crucial part of the COVID-19 pandemic response, the SIM registration requirement is highly problematic for freedom of expression and for mounting an effective response to COVID-19.

## EMERGENCY MEASURES

Like many other states around the world, at the onset of the COVID-19 pandemic, Myanmar adopted emergency measures to slow the transmission of the virus. On 29 March 2020, the government of Myanmar announced it was, ‘beefing up the prevention, control and treatment of the Coronavirus Disease-COVID-19’, citing powers conferred under the Law Amending the 1995 Prevention and Control of Communicable Diseases Law and the 2013 Natural Disaster Management Law.<sup>71</sup> On 16 April 2020, the Ministry of Health and Sport issued order number Order No 37/2020 under Article 21 (b) of the Prevention and Control of Communicable Diseases Law. The order prohibited gatherings of more than five people, with exceptions for certain professions, health issues, and funerals, among others.<sup>72</sup> The Government of Myanmar further suspended all international flights with the exception of relief flights and required domestic travellers to carry a letter of recommendation from their ward

<sup>66</sup> Thompson Chau, ‘Millions in Myanmar risk having mobile phones cut off after SIM registration deadline’, 29 April 2020, available at: <https://www.mmtimes.com/news/millions-myanmar-risk-having-mobile-phones-cut-after-sim-registration-deadline.html>.

<sup>67</sup> Telenor, ‘Open letter to everyone disconnected on 30 June’, 1 July 2020, available at: <https://www.telenor.com.mm/en/article/open-letter-everyone-disconnected-30-june>.

<sup>68</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, ‘Joint declaration on freedom of expression and the Internet’, 1 June 2011, available at: <https://www.osce.org/fom/78309>.

<sup>69</sup> Human Rights Council Resolution A/HRC/29/32, 22 May 2015; Human Rights Council Resolution A/HRC/38/35, 13 July 2018.

<sup>70</sup> Human Rights Council Resolution A/HRC/32/13, 18 July 2016.

<sup>71</sup> Ministry of Social Welfare, Relief and Resettlement, ‘Announcement on laws to be abided by people in time of COVID-19 crisis’ 29 March 2020, available at: <https://www.globalnewlightofmyanmar.com/announcement-on-laws-to-be-abided-by-people-in-time-of-covid-19-crisis/>.

<sup>72</sup> Republic of the Union of Myanmar Ministry of Health and Sports, Order No 37/2020, 9th Waning 1381 ME (16 April 2020), available at: <https://www.globalnewlightofmyanmar.com/republic-of-the-union-of-myanmar-ministry-of-health-and-sports/>.

administrator.<sup>73</sup> Curfews have been imposed under Article 144 of the Criminal Procedure Code, which has been abused by security forces in the past and provides for no oversight.<sup>74</sup> Violation of orders issued under the Prevention and Control of Communicable Diseases Law carry a maximum penalty of six months' imprisonment and a fine of 50,000 kyats. Failure to comply with a directive issued under the Natural Disaster Management Law may be punished with up to one year's imprisonment and a fine.<sup>75</sup>

Some of these emergency measures have been justified. However, the Myanmar government has gone too far with others. For example, the spreading of false information with the intention of causing fear in the public can result in a prison sentence of up to one year and a fine under the Natural Disaster Management Law.<sup>76</sup> Concerns have been raised about the discriminatory implementation of emergency measures to the detriment of Myanmar's ethnic and religious minorities.

While emergency powers may be invoked to safeguard public health, the United Nations Office of the High Commissioner for Human Rights has noted that any emergency powers issued in relation to COVID-19 should be used in line with the standards provided under human rights law.<sup>77</sup>

ARTICLE 19 has further noted that emergency powers relating to COVID-19 should be:

- **Non-discriminatory:** Emergency legislation should contain non-discrimination clauses in order to ensure that extraordinary powers to detain or refuse entry into the country are not implemented in a discriminatory manner against any section of the population.
- **Subject to parliamentary scrutiny and oversight:** As governments enact emergency measures, parliaments must review the necessity of those powers at regular intervals. At a time of crisis, the temptation to accrue exceptional executive power is strong and the need for those powers may well be justified. But they must always be constrained by the rule of law and parliamentary oversight.
- **Subject to sunset clauses:** It is vital that emergency powers are strictly time limited and not permanent or normalised. As such, emergency legislation enacted to deal with the coronavirus pandemic should include sunset clauses.<sup>78</sup>

Unfortunately, not all of Myanmar's emergency measures relating to the pandemic have aligned with international human rights law. While the invocation of the measures has been time-bound – with repeated extensions – a lack of parliamentary oversight has raised the risk of arbitrary implementation. Furthermore, reporting suggests that the measures have been enforced in a discriminatory manner, exacerbating longstanding human rights challenges. Importantly, the overreliance on imprisonment to enforce the emergency measures itself poses a health risk.<sup>79</sup>

<sup>73</sup> Zeyar Hein, 'Recommendation letters required for domestic travel in Myanmar', *Myanmar Times*, 16 June 2020, available at: <https://www.mmtimes.com/news/recommendation-letters-required-domestic-travel-myanmar.html>.

<sup>74</sup> Human Rights Watch, 'Myanmar: Hundreds Jailed for Covid-19 Violations', 28 May 2020, available at: <https://www.hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations>.

<sup>75</sup> Natural Disaster Management Law, Pyidaungsu Hluttaw Law No. 21/ 2013, 2013, Article 30(a).

<sup>76</sup> Natural Disaster Management Law, Pyidaungsu Hluttaw Law No. 21/ 2013, 2013, Article 27.

<sup>77</sup> UN Office of the High Commissioner for Human Rights, 'COVID-19 guidance', <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

<sup>78</sup> ARTICLE 19, 'Coronavirus: Emergency powers must be kept in check', 20 March 2020, available at: <https://www.article19.org/resources/covid-19-emergency-powers-must-be-kept-in-check/>.

<sup>79</sup> Sentences have reportedly ranged from a 5,000 kyat fine to nine months' imprisonment. See, Nwet Kay Khine, 'Hitting where it hurts: Impacts of COVID-19 measures on Myanmar poor', 6 July 2020, available at: [tmi.org/en/article/hitting-where-it-hurts-impacts-of-covid-19-measures-on-myanmar-poor](https://tmi.org/en/article/hitting-where-it-hurts-impacts-of-covid-19-measures-on-myanmar-poor).



An April 2020 amnesty resulted in the release of nearly 25,000 prisoners, nearly a quarter of the prison population.<sup>80</sup> Yet the government's COVID-19 response put hundreds more back in prison, resulting in criticism from human rights organisations that measures meant to combat the COVID-19 pandemic instead risk increasing transmission. In June, the government reported that it had prosecuted more than 8,000 people for violations of COVID-19 measures.<sup>81</sup>

Arrests have been criticised as discriminatory. In May 2020, authorities arrested two pastors who were linked to the spread of 80 cases of COVID-19 as a result of church gatherings they organised.<sup>82</sup> The same month, 12 Muslims were sentenced to three months' imprisonment each under Article 30(a) of the Natural Disaster Management Law after attending a religious gathering.<sup>83</sup> Yangon Chief Minister Phyo Min Thein, who attended a Buddhist religious ceremony with dozens of people during the ban on mass gatherings, received no punishment, leading to criticism that the ban has been implemented in a way that discriminates against religious minorities.<sup>84</sup> In June, several Yangon regional legislators filed a resolution to impeach the Chief Minister for, among other misdeeds, violating the ban.<sup>85</sup>

There have been disturbing reports that the enforcement of COVID-19-related restrictions have been enforced in a discriminatory manner and with excessive penalties against Rohingya individuals. Human Rights Watch found that Rohingya living in displacement camps in Rakhine State faced harsh penalties for failure to wear a mask, yet had not been provided with masks. They also reported that Rohingya were asked for bribes and faced harassment, fines, and physical punishment at checkpoints. Rohingya were told that they would be denied treatment at Sittwe's hospital if they contracted the virus.<sup>86</sup>

Countries around the globe have used curfews and other lockdown measures to slow the spread of the virus. However, the overreliance on imprisonment, which fails to achieve the intended goal of transmission reduction as well as discriminatory implementation renders result in human rights violations. Myanmar authorities should consider less severe ways to enforce COVID-19-related restrictions. Further, while the orders to date have been time-bound, emergency measures should be subject to greater oversight.

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<sup>80</sup> Myanmar typically releases a number of political prisoners during the April Thingyan holiday. 'Myanmar to free almost 25,000 prisoners in largest amnesty in years', *Reuters*, 16 April 2020, available at: <https://www.reuters.com/article/us-health-coronavirus-myanmar-prisoners/myanmar-to-free-almost-25000-prisoners-in-largest-amnesty-in-years-idUSKBN21Z0FR>.

<sup>81</sup> San Yamin Aung, 'Over 8,000 Citizens Prosecuted in Myanmar for COVID-19 Breaches', *Irrawaddy*, 19 June 2020, available at: <https://www.irrawaddy.com/news/burma/8000-citizens-prosecuted-myanmar-covid-19-breaches.html>.

<sup>82</sup> Zaw Zaw Htwe, Pastors Arrested for Holding Gatherings Amid Myanmar's COVID-19 Restrictions, *Irrawaddy*, 20 May 2020, available at: <https://www.irrawaddy.com/specials/myanmar-covid-19/pastors-arrested-holding-gatherings-amid-myanmars-covid-19-restrictions.html>.

<sup>83</sup> Zarni Mann, 'Myanmar Muslims Jailed For COVID-19 Rules Breach', *Irrawaddy*, 9 May 2020, available at: <https://www.irrawaddy.com/news/burma/myanmar-muslims-jailed-covid-19-rules-breach.html>.

<sup>84</sup> Kyaw Phyo Tha, 'Apparently, Myanmar Govt's COVID-19 Rules Don't Apply to Yangon Chief Minister', *Irrawaddy*, 27 May 2020, available at: <https://www.irrawaddy.com/opinion/commentary/apparently-myanmar-govts-covid-19-rules-dont-apply-yangon-chief-minister.html>; Min Wathan, 'Yangon officials criticised over pagoda festival', 27 May 2020, *Myanmar Times*, available at: <https://www.mmtimes.com/news/yangon-officials-criticised-over-pagoda-festival.html>.

<sup>85</sup> Min Wathan, 'Legislators want to impeach Yangon chief minister', 8 June 2020, *Myanmar Times*, available at: <https://www.mmtimes.com/news/legislators-want-impeach-yangon-chief-minister.html>.

<sup>86</sup> Nadia Hardman and Param-Preet Singh, 'Pandemic Adds New Threat for Rohingyas in Myanmar', available at: <https://www.hrw.org/news/2020/05/29/pandemic-adds-new-threat-rohingyas-myanmar>.

## RECOMMENDATIONS

While Myanmar's COVID-19 response has so far brought transmission under control, during the pandemic, the government of Myanmar has continued its attack on freedom of expression. It has advanced legislation and measures that will unnecessarily close civic space. As Myanmar continues to combat COVID-19 transmission, it should modify its approach to ensure respect for human rights. In particular, the government of Myanmar should:

- Cease the prosecution of journalists, human rights defenders, and others exercising their right to freedom of expression, including by speaking out about topics relating to COVID-19.
- Adopt a national action plan to combat 'hate speech' and intolerance consistent with international human rights standards and best practices, including Human Rights Council Resolution 16/18 and the Rabat Plan of Action.
- Refrain from passing the proposed anti-'hate speech' legislation.
- Proactively publish information relating to the pandemic, including:
  - Public health data about coronavirus cases, deaths, testing, facilities, drug trials and contingency planning.
  - Details of all contracts, grants, loans, support to companies, and other spending.
  - Names and biographies of the members of all committees providing scientific, economic or other advice to public bodies.
  - Copies of all minutes of meetings, working documents and advice provided to governments in relation to the pandemic.
  - Governance, human rights and law enforcement information.
- Remove Section 20 from the proposed Prevention and Control of Communicable Diseases Bill.
- Adopt right to information legislation in line with international standards.
- Enact whistleblower protection legislation.
- End all mobile Internet restrictions in Rakhine and Chin States and repeal section 77 of the Telecommunications Law.
- Cease the censorship of ethnic news websites.
- Reverse requirements to register SIM cards.
- Subject emergency measures to parliamentary oversight.
- Cease the discriminatory application of emergency measures and consider non-custodial sentences to enforce the measures.