



Sector Wide Impact Assessment

Draft for Consultation, June 2015

Myanmar ICT Sector-Wide Impact Assessment



© Myanmar Centre for Responsible Business
Workers digging trenches for fibre cables.

About this Draft for Consultation

This draft for consultation of the Impact Summaries of the ICT Sector-Wide Impact Assessment (SWIA), was produced by the Myanmar Centre for Responsible Business (MCRB) in cooperation with the Institute for Human Rights and Business (IHRB). It should not be cited without the permission of the authors.

There are three objectives of the consultations

- To identify whether the key draft findings of the ICT SWIA are relevant and complete i.e. have we missed or misdiagnosed key issues?
- To elicit recommendations for actions by the Government, companies and other stakeholders (local and foreign) in relation to the ICT sector that will improve the outcomes of ICT businesses for the benefit of Myanmar society and improve the framework for responsible investment.
- To further identify and highlight on-going or planned initiatives that are relevant to the ICT sector and could provide relevant linkages to the follow-up actions (referred to as “linked initiatives” in the draft).

Commenting on the ICT SWIA draft

- MCRB welcomes comments from all interested stakeholders on this draft to kamran.emad@myanmar-responsiblebusiness.org with a subject line of “ICT SWIA Consultation Draft Feedback” by 10 July 2015.
- Please see the objectives of the consultation on the following page and please continue to monitor the MCRB website www.myanmar-responsiblebusiness.org for further updates on SWIA developments.
- Submission of written feedback to the e-mail above will be posted on the MCRB website with each commentator’s submitted name and organisation unless you tell us that you do not want your comments posted on our website. We will respect any request to keep comments confidential.
- In making comments, please be as specific as possible, including identifying the relevant section or example being discussed.

Contents

EXECUTIVE SUMMARY	5
PART 1: INTRODUCTION	11
PART 2: GOVERNMENT STRUCTURE & LEGAL FRAMEWORK	
NB: This section has not been included in the draft for consultation, but will be published as part of the final ICT SWIA.	
PART 3: SECTOR-LEVEL IMPACTS	46
PART 4: OPERATIONAL-LEVEL IMPACTS	56
ICT-Specific Impacts:	
4.1 Freedom of Expression and Censorship	
4.2 Hate Speech	
4.3 Surveillance and Lawful Interception	
4.4 Privacy	
4.5 Cyber-Security	
Other Impacts Relevant to the ICT Sector:	
4.6 Labour	
4.7 Land	
4.8 Groups at Risk	
4.9 Stakeholder Engagement & Grievance Mechanisms	
4.10 Conflict and Security	
PART 5: CUMULATIVE-LEVEL IMPACTS	171
PART 6: RECOMMENDATIONS	202
6.1 to the Government of Myanmar	
6.2 to ICT Companies	
6.3 to Human Rights Defenders and CSOs	
6.4 to Development Partners / Home Governments	
6.5 to Investors in Myanmar's ICT Sector	
6.6 to Users	
Annex to the Recommendations: Legal Framework Models for Lawful Interception Standards	
Annex A: Additional Information on SWIA Methodology [to follow]	
Annex B: ICT Operations and Operators in Myanmar [to follow]	

TERMS

Amyotha Hluttaw: The “House of Nationalities”, which is the Upper House of the National Legislature and has 224 representatives – 168 are elected in equal numbers from each Region and State, i.e. 12 representatives from each Region or State. The 12 must include one elected representative from each Self-Administered Division or each Self-Administered Zone. 56 representatives are nominated by the Commander-in-Chief of the Defence Services, including 4 representatives from each Region or State. (Constitution of the Republic of the Union of Myanmar (2008), Article 141)
Constitution: The 2008 Constitution of the Republic of the Union of Myanmar which came into operation on January 2011, the first day of the first session of the Pyidaungsu Hluttaw.
Hluttaw: A Burmese equivalent of “legislature.” Myanmar has a National (Union) Hluttaw, and Hluttaws in each State and Region.
Pyidaungsu Hluttaw: The National (Union) Legislature, which is bicameral and composed of the Amyotha Hluttaw and the Pyithu Hluttaw.
Pyithu Hluttaw: The “House of Representatives” or the “People’s Assembly”, which is the Lower House of the National Legislature and has 440 representatives. 330 representatives are elected from township-based constituencies. 110 representatives are nominated by the Commander-in-Chief of the Defence Services. (Constitution, Article 109)
Tatmadaw: The Tatmadaw refers to the armed forces of the Union of Myanmar. The main armed force is the Defence Services, and all armed forces in the Union are under the command of the Defence Services. (Constitution, Articles 337 and 338)
Union Government: The Union Government comprises the President, the two Vice-Presidents, the Ministers of the Union, and the Attorney-General of the Union. (Constitution, Article 200)

ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of South-East Asian Nations
DICA	Directorate of Investment and Company Administration
CESD	Centre for Economic and Social Development
ESIA	Environmental and Social Impact Assessment
FESR	Framework for Economic and Social Reforms
FPIC	Free, Prior and Informed Consent
ICT	Information and Communication Technologies
IFC	International Finance Corporation
IFI	International Financial Institution
MDRI	Myanmar Development Resource Institute
MIC	Myanmar Investment Commission
MOECF	Ministry of Environmental Conservation and Forestry
MNPED	Ministry for National Planning and Economic Development
NLD	National League for Democracy
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PPE	Personal Protective Equipment
OHCHR	UN Office of the High Commissioner for Human Rights
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
SWIA	Sector-Wide Impact Assessment
UNDP	United Nations Development Programme
USDP	Union Solidarity Development Party
WBG	World Bank Group

EXECUTIVE SUMMARY

[To be refined on the finalization of the report]

The roll-out of ICT in Myanmar is having a transformative impact on the country. Mobile phone penetration has increased from 7% to 33% between 2012 and 2014 and continues to rise. It has been estimated that by 2030 the ICT sector could contribute \$6.4 billion to Myanmar's GDP and employ approximately 240,000 people.

However, greater access to, and dependency, on ICT brings challenges, particularly in a country in which policy and legislative frameworks are lacking, both for the rollout of the network but also the societal impacts associated with greater ICT use. Furthermore, there is a low level of awareness and interest by users in the negative human rights impacts of misuse of information technology, such as impacts on privacy.

Myanmar is emerging from decades of ethnic conflict, authoritarian rule and economic isolation. But it is, and will remain for some time, a high-risk country with poor governance. Responsible business conduct in the ICT sector in Myanmar therefore requires enhanced due diligence to determine what impacts business activities may have on society, including on human rights, as well as active engagement by companies and others to promote informed debates. This must include robust approaches to managing negative impacts in a manner that provides benefit to Myanmar, its people, and business alike.

In partnership with its co-founders, the Institute of Human Rights and Business (IHRB) and the Danish Institute of Human Rights (DIHR). The Myanmar Centre for Responsible Business (MCRB) has conducted its third sector-wide impact assessment (SWIA), this time focused on Myanmar's information and communications technologies (ICT) sector. Previous SWIAs addressed oil and gas, and tourism.

A SWIA is intended to provide guidance to underpin responsible business conduct in the ICT sector. It draws on established environment and social impact assessment methodologies, but applies a human rights lens. The scope of a SWIA goes beyond a particular project. It is about a whole sector and involves assessing not only impacts on individuals and groups that may arise from particular projects, but also the potential for the sector's impact on society as a whole. It therefore looks at impacts on three levels.

Firstly, a SWIA examines sector level impacts; these cover the aggregate impacts of the sector and paint the "bigger picture" of the interaction between the sector and Myanmar society.

Secondly, it looks at project or operational level impacts over ten areas. The first five are specific to the ICT sector: Freedom of Expression and Censorship; Hate Speech; Surveillance and Lawful Interception; Privacy; and Cyber-Security. The other operational impacts are relevant to many sectors in Myanmar and include Labour, Land, Groups at Risk, Stakeholder Engagement & Grievance Mechanisms, and Conflict and Security

Thirdly, it considers the potential for cumulative level impacts at subnational/local level, in addition to those cumulative impacts which are national and reflect societal changes.

The SWIA is based on both desk-based and field-based research in Mandalay Region, Sagaing Region, Yangon Region, Shan State, Mon State, and Kayin State. It includes in-depth analysis of existing Myanmar policy and legal frameworks relevant to the sector, which are complex, little understood, and rapidly changing, as well as the historical, political and economic context.

The intended audiences are multiple: the Myanmar Government, including Parliament, and the Myanmar Human Rights Commission, companies in the ICT sector value chain, both Myanmar and overseas, institutional investors, civil society including the local media and trade unions, development partners and home governments, and ICT users themselves. The analysis and the recommendations targeted to each intended audience will enable them to take steps to prevent and mitigate risks, minimise the negative outcomes and amplify positive outcomes for the sector. This may be achieved variously through changes in policy, law, investment choices and operations.

The SWIA highlights relevant international standards of responsible business conduct, particularly from the United Nations (UN), the International Finance Corporation (IFC) and the Organization for Economic Cooperation and Development (OECD). It makes recommendations on how these standards can be incorporated into policy-making and practice to increase responsible business conduct at a time of increased investment.

The SWIA can assist companies – international and Myanmar – in the ‘human rights due diligence’ which they are expected to conduct in accordance with [the UN Guiding Principles on Business and Human Rights](#) (UNGPs). It highlights issues companies should consider, and how these have played out in other countries, and points to international standards, codes and useful toolkits. The SWIA is also intended to support the Myanmar Government in its role as regulator and policy maker; and civil society organizations (CSOs) in their roles as monitors of company performance, and advocates for user rights, peace, and the protection of social and cultural values. The media should play a particularly important role in raising awareness of the opportunities and risks of ICT usage.

Research for this report was carried out over a year, starting in July 2014 at a time the operators were rolling out and launching their new networks under severe time pressure. The research demonstrated a hunger and enthusiasm for mobile phone connectivity, and rapid uptake, particularly of social media, but little user awareness of either the wider opportunities – many of which are not yet available with Myanmar content - or the risks.

The research also showed that very few civil society groups, human rights defenders or media, had an understanding of the human rights issues associated with the ICT sector, which can be quite technical. This report is partly intended to raise wider awareness.

As with other sectors, the government in the ICT sector is reliant on a small handful of overworked civil servants with the technical capacity to pursue their ambitious e-agenda.

Development partners such as the World Bank can and are supporting the gaps with technical assistance (as demonstrated by the transparent process for awarding the telecoms licences in 2013). But they can't substitute for day to day staff grappling with a legal framework which is not designed for the IT age. Complex land laws and processes for granting change of use for the erection of telecoms towers were just one of the many problems face by the government and the operators when it came to attempting to roll out the network.

The rush to expand mast coverage meant that many companies, and their local subcontractors, were learning on the job. Some brought with them established governance, HSE and labour compliance frameworks and monitored them with spot checks. Some did not. The human rights impacts observed by the research team were not major, but they regularly included safety violations and in some cases poor working conditions. One operator has extensive compliance monitoring and publicly reports its findings.

The findings and recommendations in this report cluster in four main themes:

- 1) **Access:** The importance of an investment climate which supports the extensive of the network and strong competition to bring down prices, universal access, accessibility of ICT services, including through use of local languages and standardized Unicode fonts which allow full searchability and access to information. This will ensure that the whole country can enjoy the positive human rights impacts already being felt by some.
- 2) **'Digital Dangers':** With the benefits of greater access, come the risks and digital dangers seen elsewhere. These include risks to data privacy, various forms of cybercrime including child sexual abuse images and revenge porn, cyberbullying and stalking, and hate speech, on which the SWIA did a two month monitoring of social media (see Chapter 4.2). Other digital dangers include the wider consequences of internet shutdown, or the selective blocking of websites. Companies, government and the media need to educate the public around these issues, and highlight safe behaviours (eg encryption, posting/emailing personal information) including through Burmese language comms material e.g. software/app agreements, media articles etc.
- 3) **Gaps in the regulatory framework:** Modern laws do not exist for most of these issues, and in particular Lawful Interception, (LI) data privacy, access to information, certification bodies, cybersecurity, and cybercrime. Myanmar needs to fill the regulatory gaps through a rights-based approach which learns from good (and bad) practice elsewhere
- 4) **'Traditional human rights issues':** These are particularly relevant to network rollout, and in. These include labour rights and safety, processes for land acquisition and compensation, and risks around corruption/permitting. Rapidly changing labour laws and low awareness of rights means workers and in some cases, employers, are not well informed of even the most basic labour rights

protections. While that function is often filled by trade unions in other countries, in Myanmar, trade unions are only just emerging after many years of prohibition. The forced labour previously associated with the last military government has almost disappeared. But new forms of forced labour are emerging in the private sector, such as workers required to work for a businessman to pay off debts.

As with other sector-wide assessments, engagement and two-way communication at the field level was lacking, particularly in association with the roll-out. This is particularly important in **ethnic minority and post-conflict areas** where it is essential to take the time to engage directly with as wide a range of stakeholders as possible to get a more complete picture of the conflict and communal dynamics, and to understand what concerns or questions local people may have about ICT.

ICT has the potential to be used to impact positively or negatively on the rights of **groups at risk**, including children. The SWIA identifies the situation concerning **discrimination** in Myanmar, which is based both on legislation and societal attitudes towards a number of groups including religious minorities; women; people living with disabilities, and lesbian, gay, bisexual and transgendered people (LGBT). Generally the trend in Myanmar is towards reduced discrimination and increased legal recognition of minority rights. However religious discrimination and related violence is a growing problem and in recent times particularly impacting the Muslim community. Use of ICT and in particular the social media, has been shown to have a negative impact on some of these groups through anti-Muslim hate speech as the study demonstrates. However ICT has the potential to improve the situation of some groups such as people with disabilities, including by providing them with services or income generation opportunities for excluded groups.

With little to no in-country manufacturing, and a country still able to recycle its mobile phones to other users, issues seen in other countries such as e-waste or environmental pollution have yet to emerge. Due to the absence of manufacturing, the report does not cover 'conflict minerals' such as gold, tin, tungsten and tantalum (although the first three are all produced in Myanmar).

The recommendations (see below) will be shared with stakeholders and MCRB will work to raise awareness of some of the issues, working in particular with the small number civil society actors in the ICT field, and the media, as well as advocacy on ICT-related draft laws with relevance for human rights.

RECOMMENDATIONS

Summary of ICT SWIA Recommendations

Government of Myanmar

1. Establish a coherent policy framework for the ICT sector with adequate safeguards.
2. Improve ICT legislative and regulatory reforms to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.
3. Improve legislative and regulatory reforms in other related areas to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.
4. Make a commitment to break from Myanmar's history of being a "surveillance state" by committing to a rights respecting lawful interception model (see Annex) and maintaining open access to the internet.
5. Improve data protection standards and cybersecurity.
6. Demonstrate a commitment to free and open communication through a modern Freedom of Information Law and build meaningful transparency systems across Government.
7. Accelerate the implementation of Myanmar's universal service commitment
8. Improve education of users and potential workers in the sector and send clear signals about respectful use of ICT's.

ICT Companies

1. Understand local operating contexts and histories.
2. Apply international standards of responsible business conduct in the absence of developed national legal frameworks.
3. Adopt a policy commitment to responsible business conduct, including a commitment to respecting human rights, and ensure the policy is embedded across the company and communicated widely to stakeholders.
4. Take account of local complexities and legacies when assessing the impacts both operations and business partners may have, and integrate and act on these findings.
5. Track responses to risks and impacts and communicate externally on the effectiveness of responses.
6. Engage with potentially affected stakeholders, particularly workers, communities, customers and users, to build understandings and demonstrate transparency and accountability.
7. Put in place mechanisms that can address concerns and grievances quickly and effectively.
8. Take collective action where appropriate to address human rights, social and environmental issues.
9. Develop strategies for creating positive impacts at the local, regional and national level.

Human Rights Defenders and CSOs

1. Engage actively in commenting on and debating ICT policy, legal and regulatory framework changes.
2. Hold companies to account on responsible business conduct, including around human

rights.

3. Encourage companies and government to engage in multi-stakeholder discussion on human rights, social and environmental issues within the ICT sector.
4. Initiate and support efforts to educate the Myanmar public about safe and peaceful behaviour online, including counter-speech.
5. Increase media reporting on ICT sector.

Development Partners/Home Governments

1. Support the strengthening of human rights and social and environmental considerations within policy, legal and regulatory framework improvements, especially those highlighted in Recommendations 2 and 3 to the Myanmar Government.
2. Support implementation of the corporate responsibility to respect human rights by Myanmar and international companies.
3. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.

Investors

1. Conduct due diligence on companies in their portfolios that are involved in the ICT sector in Myanmar.
2. Engage with investee companies involved in the ICT sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.
3. Urge companies doing business in the ICT sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.

Users

1. Undertake basic steps to protect your privacy and security while using ICTs.

Part 1

INTRODUCTION

In this section:

- A. Why a Sector-Wide Impact Assessment (SWIA) on the ICT Sector in Myanmar
- B. Expectations for Responsible Business in Myanmar
- C. The Reference Framework for the SWIA
- D. SWIA Methodology

A. Why a Sector-Wide Impact Assessment (SWIA) on the ICT Sector in Myanmar

Myanmar currently has one of the least developed ICT sectors in ASEAN. However, concerted efforts are underway to rollout an extensive telecommunications network to spur the development of the ICT sector and enable other industries dependent on modern communications to flourish. It is estimated that by 2030 the ICT sector could contribute \$6.4 billion dollars to Myanmar's GDP and employ approximately 240,000 people.¹ With foreign investment in the telecommunications sector estimated to contribute over \$2 billion of \$8.1 billion in total FDI in 2014/2015,² Myanmar is finally bridging the "digital divide."

ICT is considered a high-risk sector for human rights. Certain impacts of the ICT industry on human rights have been well documented, for example, working conditions in hardware manufacturing.³ However, other types of impacts, particularly on freedom of expression and privacy, have only come into focus more recently.

Emerging from decades of ethnic conflict, authoritarian rule and a long period of economic sanctions, Myanmar is considered a high risk destination. As investments in the sector are increasing rapidly, all stakeholders – companies, Government, civil society and donors – need to understand the potential impacts of the sector if it is to improve the outcomes for Myanmar and all of its people. This Sector Wide Impact Assessment (SWIA) aims to aid that understanding.⁴

The ICT sector is often described as a complex "ecosystem". Its elements range from telecommunications service providers to large equipment manufacturers to small software

¹ See Page 3, McKinsey Global Institute, "[Myanmar's Moment: Unique Opportunities, Major Challenges](#)"

² Deal Street Asia, "[Myanmar 2014-2015 FDI swells to \\$8.1b: govt agency](#)" (April 2015)

³ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (herein "SRSG"), "[Addendum, Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse](#)", AHRC/8/5/Add.2 23 (2008).

⁴ MCRB, IHRB and DIHR have already carried out two other SWIA on important areas of the Myanmar economy – [oil and gas](#) and [tourism](#).

or web-based startups. Individual companies in the sector may also play multiple roles, for example, manufacturing mobile phones and network components, or providing both mobile telecommunications and Internet access services.⁵ Part 3 provides a brief description of the ICT value chain and the kinds of companies (foreign and national) involved in Myanmar's ICT sector. This SWIA for the ICT sector looks at the entire value chain of ICT activities in Myanmar, other than manufacturing which is very limited in Myanmar but includes some focus on the telecommunications operators, infrastructure and network equipment providers, and some "over the top" service providers in Myanmar – both local Myanmar companies as well as foreign companies.

The SWIA does not address technical operating standards for the ICT industry. Instead, it looks at the sector through the lens of responsible business and the international standards that set out the expectations for responsible business (See Section B below). It involves assessing impacts on individuals and groups that may arise from individual projects and operations in the sector as well as the sector's potential impact on the society as a whole. It is set in the context of the operating environment in Myanmar. A SWIA is intended to sensitise planners, decision-makers, businesses and civil society, including the media, by highlighting the likely risks and impacts of business activities in the ICT sector, so that appropriate steps can be taken at an early stage to prevent and mitigate risks and amplify positive human rights impacts through changes in policy, law, contracts, operations or other relevant measures.

Uses for the ICT SWIA

Because a SWIA is a new concept and because human rights issues round the ICT sector are relatively unknown in Myanmar, the report is extensive and provides detailed explanations of the core human rights considerations to contribute to the knowledge base in the country. Targeted at multiple audiences, it aims to:

- Inform **companies** conducting operational-level due diligence and help them understand the overall potential impact of their sector and their operation(s) on the country and on human rights in particular. The SWIA provides a strategic review of the broader policy and legal frameworks relevant to the sector, their implications for businesses, and their impacts on human rights and society. It also crystallises the acute issues that are central to operating in Myanmar and require proactive management by ICT companies. It highlights a number of issues that will be best served if tackled collectively. Readers from business, who are keen to understand the immediate implications for them are encouraged to read in particular the sections entitled "Key Human Rights Implications for the ICT Sector" in the ten chapters of Part 4 on Operational Level Impacts.
- Help the **Government and Parliamentarians** as they shape ICT-relevant policy and law, enforcement and other initiatives to better prevent and mitigate human rights harms and enhance the potential for positive outcomes. Adequate attention to longer-term

⁵ For a broader understanding of the ways in which the ICT sector can impact human rights, and how the UN Guiding Principles can be operationalised, see: European Commission, "[ICT Sector Guide on the UN Guiding Principles on Business and Human Rights](#)" (2013).

impacts on human rights supports more equitable growth and poverty reduction for the broader Myanmar population.

- Support **local communities and users** to engage with companies and the Government and to enable them to call on international standards to support their engagement.
- Support **trade unions, workers, civil society organisations** so that they can participate in policy development and project planning, leveraging international standards and approaches in their interventions.
- Inform the **media** so that they can report effectively on policy and legislative developments and promote user understanding of ICT.
- Enable **development partners** to align their support and policies to the sector such that human rights are better respected and protected.
- **Build the capacity of local researchers** to better understand international standards relevant to operations of the sector in Myanmar and to be able to assess performance in light of those standards.

A more detailed description of the SWIA methodology and the scope and coverage of the field research carried out to support the sections on “Field Research Findings” included throughout the Report, will be set out in an Annex to the final ICT SWIA.

B. Expectations of Responsible Business Conduct in Myanmar

Some of the many challenges and opportunities of operating in Myanmar are set out in this Report. It presents the context that companies must either change where appropriate or adapt to in order to run operations in a responsible manner, rather than simply accepting the deficiencies as they are. Companies operating in a high-risk environment have a particular responsibility to influence that operating environment, within the bounds of their own impacts (which may be broader than just their own operations) by operating according to international standards. Where appropriate, this includes engaging with the Myanmar national and local governments, quietly, collectively or even publicly, to prompt them to take up those same standards. This includes engaging on broader issues that can affect the business environment and society – peace, security, human rights, good governance. A transparent approach to applying international standards on responsible business conduct will help provide a common baseline for all. The choices companies make in responding to these conditions will play a major role in whether the ICT sector is seen as a positive contributor to national development in Myanmar.

Expectations of the Myanmar Government

The President of Myanmar, U Thein Sein, Daw Aung San Suu Kyi, leader of the National League for Democracy (NLD), numerous governments and international organisations, have all called for “responsible business” in Myanmar. Together with the OECD, the Government recently conducted an “investment policy review” of the country. The 300+ page report starts with a chapter on responsible business, focused on human and labour rights and how international standards of responsible business conduct can be introduced

in the country (See Table 1 below).⁶ In discussing the report, the Myanmar's Union Minister of National Planning and Economic Development, Dr Kan Zaw, "praised the comprehensive nature of the report and said that it would help to guide the Government in solidifying investment climate reforms and in promoting more and better investment."⁷ This points to a Government interested and willing to re-join the international community and align itself with international standards.

Table 1: Recommendations from the OECD as part of the Myanmar Investment Policy Review Chapter on Responsible Business Conduct⁸

- Ratify major international human rights, labour and environmental conventions
- Enact and enforce domestic legislation consistent with these standards
- Strengthen the independence and expand the mandate of the National Human Rights Commission
- Promote revenue transparency
- Ensure that domestic enterprises, including state owned enterprises, conform to the new standards of behaviour and prosecute lawbreakers
- Expand the role of civil society (labour unions, local community organisations) to help ensure that businesses obey the law
- Prepare sectoral master plans which include responsible business conduct (e.g. tourism)
- Provide adequate protection of property rights, including for customary land
- Free, prior and informed consent (FPIC) for land acquisitions, relocations, etc.
- Develop grievance mechanisms in other areas and provide redress to victims
- Work with home governments to promote respect for the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Require foreign investors receiving a permit from the MIC to commit to these principles.

However, the hard work of translating those commitments into relevant laws, policies and practices throughout the country is just beginning to take root. The legacy of over fifty years of military government and isolation will have to be addressed to ensure that the benefits of a modern telecommunications network and ICT sector contribute to widespread development. While Myanmar has taken significant steps towards reintegration into the global community, it is still a "high risk" or "weak governance" country, requiring a higher level of rigour and sensitivity in conducting business. Entrenched elite interests, widespread corruption, lack of state capacity and a lack of comprehensive social policies have led to low levels of state legitimacy, social cohesion and trust. While high-risk countries like Myanmar badly need investment, companies can cause detrimental economic, social and political impacts if their operations are not carried out responsibly.

⁶ OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014).

⁷ ASEAN Secretariat News, "[Myanmar Welcomes International Support for Responsible Investment](#)" (March 2014).

⁸ OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014) pg. 32.

Expectations of Home Governments

Home governments also play a key role in expressing and incentivising expectations for the behaviour of companies based in their jurisdiction and operating abroad -- and then following up to ensure that those expectations are being met. In lifting its sanctions on Myanmar, the EU noted that it would “[p]romote the practice of the highest standards of integrity and corporate social responsibility.”⁹ In 2013 the G8 welcomed the Government’s commitment to responsible investment.¹⁰ However the US’s Burma Responsible Investment Reporting Requirements¹¹ (see Table 2 below) are the only example to date of explicit home country requirements on businesses investing in Myanmar. They are intended to prompt businesses entering the country to consider and address key risks upfront.

Table 2: US Reporting Requirements on Responsible Investment in Burma¹²

Companies subject to the US reporting requirements must, inter alia notify the US Department of State of their policies and procedures on human rights, labour rights, land rights, community consultations and stakeholder engagement, environmental stewardship, anti-corruption, arrangements with security service providers, risk and impact assessment and mitigation, payments to the Government, and any investments with and contact with the military or non-state armed groups.¹³

International operators are expected to act as industry leaders on environmental, social and human rights performance in Myanmar. There is intense scrutiny of companies entering or operating in Myanmar, with a particular focus on whether they are in line with the UN Guiding Principles on Business and Human Rights¹⁴ and other relevant international standards. To fully understand the direct and indirect risks that arise from weak governance, enhanced due diligence is needed to understand and manage those risks.¹⁵ As noted in OECD guidance on weak governance zones, “because legal systems and political dialogue in weak governance zones (almost by definition) do not work well, international instruments that provide guidance on acceptable behaviours are particularly useful in these contexts.”¹⁶ Several companies across a range of industry sectors have already faced “specific instances” claims under the OECD Guidelines on Multinational

⁹ Council of the European Union, “[Council Conclusions of 22 July 2013 on the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma](#)” (2013). The Council Conclusions go on to name the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights and the EU CSR Strategy 2011-2014 as sources of these standards.

¹⁰ UK Foreign & Commonwealth Office, “[G8 Foreign Ministers' meeting statement](#)” (April 2013).

¹¹ US Department of the Treasury, Office of Foreign Assets Control (OFAC) “[Burma Responsible Investment Reporting Requirements](#)” (2012).

¹² US Department of the Treasury, Office of Foreign Assets Control (OFAC) “[Burma Responsible Investment Reporting Requirements](#)” (2012).

¹³ [TPG Holdings I](#), filed a report on behalf of TPG Growth II, which jointly owns Apollo Towers Myanmar Ltd. with TPG Asia VI, L.P. It is the only company in the ICT sector to have filed a report so far under the US Reporting Requirement.

¹⁴ Office of the High Commissioner for Human Rights (OHCHR), [UN Guiding Principles on Business and Human Rights](#) (2011)

¹⁵ IHRB, “[From Red Flags to Green Flags, The Corporate Responsibility to Respect Human Rights in High-Risk Countries](#)” (2011), pg. 21.

¹⁶ OECD, “[OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#).” (2006).

Enterprises procedures for their actions in Myanmar.¹⁷ None have yet involved the ICT sector, though several specific instances concerning ICT in other countries have been lodged.¹⁸

Expectations of Investors

Investors are demanding information on company actions in Myanmar. Investment research providers are now providing specialised information on Myanmar.¹⁹ As one investor blog notes, “[c]ompanies investing in Burma are exposed to a complex business environment and those that are seen to benefit from violations of human rights face serious reputational risks.”²⁰

C. The Reference Framework for the SWIA

The language and meaning of “human rights” and “responsible business”

“Responsible business conduct,” and the standards that help define that conduct, require businesses to take responsibility for the impacts they have on society. “Impacts on society” is understood very broadly to include human rights, and social, environmental, ethical, and consumer concerns. The standards that cover such conduct are diverse and they are not always labelled as “human rights”, but they are intimately intertwined with human rights.

Some impacts on human rights will be **direct**. Suppression of a protest by a company has an immediate impact on the right to freedom of expression. Other impacts may be **indirect**. Pollution can degrade the quality of the soil or water so that crops can no longer be grown or grown in sufficient quantities, impacting on the right to food. Wider governance issues, including corruption and a lack of transparency²¹ have indirect impacts as they can weaken the accountability systems needed to hold those responsible for abuses accountable and to provide remedies to victims.

When the “human rights” label or terminology becomes a stumbling block to positive outcomes, the use of other terms may be appropriate. But it will still be important for those dealing with these issues in companies and with stakeholders, to have an understanding of internationally-recognised human rights and their implications for company processes in order to ensure that a company is indeed meeting responsible business standards.

¹⁷ See a list involving the UK, Canadian, French, the Netherlands, South Korean and US NCPs considering specific instances regarding activities in Myanmar up to 2011 here:

<http://www.tuacoecdmguidelines.org/cases.asp>

¹⁸ See a list involving the Japan, French, Brazil and Czech Republic NCPs regarding the [Electrical and Electronics Manufacturing](#) sector. See also a list involving the Argentina, Mexico, US, German, New Zealand, and France NCPs regarding the [Telecommunications](#) sector.

¹⁹ EIRIS, “[New service enables investors to manage conflict-related investment risks in Burma/Myanmar](#)” (May 2014).

²⁰ Eiris, “[An Australian perspective on human rights, conflict risk and investment](#)” (June 2014).

²¹ While this SWIA Report addresses corruption because it has an impact on the quality of governance more generally and the resources governments have available to fulfil human rights, it does not include a specific review of all the steps that would be needed to reduce corruption in the country. See for example, Devex, “[How Myanmar can curb corruption to boost development](#)” (30 Jan 2014).

The Key International Standards as a Framework for the SWIA

As the ICT SWIA is particularly focused on human rights, the [UN Guiding Principles on Business and Human Rights](#) (the “Guiding Principles”)²² are its primary benchmark. The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now the authoritative global reference point on business and human rights. The UN Guiding Principles provide operational guidance to States and business for the implementation of the [UN “Protect, Respect and Remedy” Framework \(2008\)](#),²³ which defines the complementary but distinct roles of States and business in protecting and respecting human rights. At a minimum business must ensure that its activities do not infringe the human rights set out in the International Bill of Human Rights,²⁴ the principles concerning fundamental rights set out in the International Labour Organisation’s [Declaration on Fundamental Principles and Rights at Work](#),²⁵ as well as other human rights instruments on specific vulnerable or marginalised groups where a company may adversely impact them.²⁶

The ICT SWIA also incorporates other key international standards relevant to responsible business conduct, particularly those concerning impacts of business on human rights:

- the [OECD Guidelines on Multinational Enterprises](#) (which apply to companies domiciled in an OECD country and the 10 additional countries adhering to the OECD Guidelines).²⁷ The human rights chapter of the OECD Guidelines on Multinational Enterprises is aligned with the UN Guiding Principles.
- [ISO 26000 and the UN Global Compact](#) are also aligned with the UN Guiding Principles and important references in the region.
- the sustainability policies of international financial institutions (Asian Development Bank and World Bank Group), and in particular, the [IFC Performance Standards](#) and [World Bank Group Environmental, Health and Safety \(EHS\) Guidelines](#). The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector, contain quite detailed standards for many areas relevant to ICT operations, and specifically cover and are aligned with many human rights standards.
- guidance from leading industry groups such as [Global Network Initiative](#) (GNI), [Telecommunications Industry Dialogue](#), and [Global e-Sustainability Initiative](#) (GeSI), amongst others

²² See: OHCHR, [UN Guiding Principles on Business and Human Rights](#) (2011).

²³ See: OHCHR, [UN “Protect, Respect and Remedy” Framework \(2008\)](#).

²⁴ Comprised of the UN Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

²⁵ International Labour Organisation’s [Declaration on Fundamental Principles and Rights at Work \(1998\)](#).

²⁶ See: OHCHR, [“The Core International Human Rights Instruments and Their Monitoring Bodies”](#) (accessed 15 July 2014).

²⁷ Additional signatories to the OECD Guidelines are: Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Mexico, Peru, and Tunisia.

Building on the UN Guiding Principles on Business and Human Rights

The SWIA Report and the process of field research leading up to it and the dissemination of the Report following its publication are designed to support the implementation of the UN Guiding Principles within Myanmar as follows:

- **Pillar I: The State Duty to Protect** against human rights abuses by third parties, including businesses, means the State should adopt effective policies, legislation, regulations and adjudication to prevent, investigate, punish and redress human rights abuses as a result of domestic business operations. As the Government of Myanmar and Parliamentarians develop sectoral policies and laws, they will be making choices about the future direction of the country, balancing potential negative and positive impacts of their decisions. The ICT SWIA provides an analysis that helps inform law, policy and administrative procedures in ways that prevent and mitigate harms and enhance positive outcomes. Foreign governments supporting economic development in Myanmar can also use the SWIA to better understand the human rights impacts of the ICT sector in Myanmar, and align their foreign investment support and policies.
- **Pillar II: The Corporate Responsibility to Respect** human rights, means that companies should avoid infringing the human rights of others and address negative impacts with which they are involved. The ICT SWIA provides a better understanding of potential human rights impacts at the operational level and a preview of factors contributing to a sectoral “social license to operate”. This should assist ICT companies into incorporating attention to human rights issues into their own human rights due diligence around their investments and operations (See Table 3 below).
- **Pillar III: Access to Effective Remedy** for victims of business-related human rights abuses should be provided through both judicial and non-judicial means. While the ICT SWIA is not a comprehensive review of rule of law and access to justice in Myanmar, provides a brief overview of the currently limited avenues for access to effective remedy in Myanmar. It therefore encourages businesses to put in place grievance mechanisms that enable users, communities and workers to raise their concerns regarding ICT sector impacts, in order that they can be addressed as early and effectively as possible. As such, the SWIA supports workers, users and local communities in understanding and protecting their rights.

The Corporate Responsibility to Respect Human Rights

Companies should not assume that complying with Myanmar national law will be sufficient to meet the responsibility to respect human rights. The evolving domestic legal framework still lags behind international standards, and compliance with national law is unlikely to be sufficient to meet international standards in many areas.

The UN Guiding Principles and the OECD Guidelines on Multinational Enterprises require companies to assess and manage their potential adverse impacts as a core part of meeting the corporate responsibility to respect human rights. Being as transparent as possible, including communicating the dilemmas they face and the measures they are

taking to address them is part of “knowing and showing” that a company is taking steps to respect human rights.²⁸

Table 3: The Corporate Responsibility to Respect Human Rights

Under the [UN Guiding Principles on Business and Human Rights](#), companies are expected to respect human rights. That means that companies should avoid infringing on the human rights of others and address negative impacts with which they are involved. In order to be able to “know and show” that they are indeed avoiding negative impacts on human rights, companies should take the following steps:

- Adopt a **policy commitment** that commits the company to respecting human rights (this may be a standalone commitment or integrated with other commitments to responsible business conduct)
- Carry out **human rights due diligence** (which can be integrated into other types of due diligence procedures that assess and manage the company’s impacts on society and the environment).²⁹ This includes:
 - **Identifying** and assessing actual and potential human rights impacts
 - **Acting on and integrating** the assessment findings into a management plan for operations
 - **Tracking and monitoring performance** in managing impacts
 - **Communicating** that performance to relevant stakeholders
- Providing or cooperating in **remedying** actual impacts caused or contributed to either through the company’s own grievance mechanism or other grievance mechanisms (including judicial and non-judicial mechanisms, whether state-based or non-state based)

Key Points for Human Rights Due Diligence

Human rights due diligence is crucial to companies’ operations in Myanmar for several reasons:

- Because situations and operations change, due diligence should be an on-going activity, carried out particularly before new activities or business relationships commence or the surrounding context alters. There should be continuous assessment of potential impacts during the full lifecycle of operations or a company’s role in operational activities.
- Human rights due diligence should be built on a recognition that different types of activities can have quite distinct impacts on different human rights and can affect different groups, or some individuals within certain groups differently. For example, impacts can be more severe where individuals or groups are marginalised or at risk (see Part 4.8 on Groups at Risk in Myanmar).³⁰

²⁸ See the International Chamber of Commerce, “[Guidelines for International Investment](#)” (2012) that call on businesses to respect human rights in line with the UN Guiding Principles, pg. 18.

²⁹ See, European Commission, “[ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)” (2013).

³⁰ To see some indicative examples of impacts on different stakeholders during different ICT activities, see: European Commission, “[ICT Sector Guide on Implementing the UN Guiding Principles](#)” (2013), pg 10.

- The current fluidity in the national legal framework is another reason why all companies should look to international standards as an anchor for their social, human rights and environmental due diligence. Benchmarking due diligence against national requirements is difficult, given the difficulties of obtaining copies of existing or emerging legislation, and could result in benchmarking against outdated laws.
- Due diligence should also cover risks that business relationships pose to human rights (see Box 4 below). While all companies – international and local – operating in the sector, including suppliers, have their own standalone responsibility to respect human rights, they must also assess and address the impacts business partners cause that are directly linked to their operations, products or services.³¹

Business Relationships in the ICT Sector in Myanmar

Companies will need to carry out careful due diligence on the background, ownership, policies and practices of potential business partners, including whether they are or have been subject to any current or former US sanctions lists involving Myanmar.³² As many of the larger Myanmar companies are involved in other sectors, it will be relevant to look across operations to understand how they conduct their business in those other sectors.

Finding the right business relationships in Myanmar will therefore require enhanced due diligence throughout the life of the particular relationship:

- **Before entering into the relationship:** Carry out due diligence on business partners and their policies and practices for addressing environmental, social, human rights impacts and corruption.
- **Documenting the terms of the relationship:** Include contractual requirements on meeting relevant international standards.
- **Supporting the relationship:** Provide advice, training, and capacity building on how business partners or entities in the value chain should responsibly conduct themselves. A relationship provides the opportunity to promote better corporate governance and share policies and practices on managing environmental, social and human rights impacts.³³
- **Monitoring the relationship:** Include requirements ranging from self-assessment and reporting, visual inspections, to third party monitoring, depending on the business relationship's level of risk.
- **Ending the relationship:** Include provisions to escalate and permit termination of the contract if for example there are findings or credible allegations of severe human rights violations or failure to take the required corrective actions.

³¹ UN Guiding Principle 11, Commentary: “*The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.*”

³² See: <http://www.treasury.gov/ofac/downloads/prgrmlst.txt> and an overview of current US sanctions: <http://burma.usembassy.gov/sanctions-overview.html>

³³ See, IHRB, “[State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#)” (Dec 2013).

D. SWIA Methodology

The methodology for this ICT SWIA has been developed by IHRB and DIHR in cooperation with MCRB. An Annex containing more details on the methodology will be included in the forthcoming final ICT SWIA.

Myanmar is undergoing rapid changes so companies operating in the sector will need to be well-equipped to assess and manage change. This SWIA, building on existing impact assessment and management techniques and on the UN Guiding Principles, emphasises the ongoing management of potential negative and positive impacts as well as the need to use management systems that can adapt to situations (i.e. actual impacts) that were not predicted at the design stage of a project.

Table 4: SWIA Mitigation Hierarchy

Companies should seek to address potential human rights impacts using a mitigation hierarchy:

- first to anticipate potential impacts in order to **avoid or prevent** them
- where avoidance is not possible, then to **minimise** the impacts that occur and
- to **remedy** impacts that occur.

The Three Pillars of the UN Guiding Principles and SWIA Three Levels of Business Impact: Sector, Project and Cumulative

The SWIA responds to the three pillars of the UN Guiding Principles as follows:

- **Pillar I. State Duty to Protect:** This includes a detailed examination of whether Myanmar's ICT policies and laws can promote or hinder responsible business. The analysis looks in particular at whether they are aligned with relevant international human rights standards. Where they are not, it identifies the gaps.
- **Pillar II. Corporate Responsibility to Respect:** Within this Pillar, the SWIA looks at a range of operations across the ICT sector and examines the impacts of the sector at the **three levels of impacts** identified below.
 - **Sector-level:** This level of assessment considers the broader, aggregate, country-wide impacts, positive and negative, of the sector on the national economy, the country's governance and the overall environment and society. In order to be able to address the root cause of potential negative impacts, the SWIA includes an analysis of the relevant policy and legal frameworks that helps shape business conduct (where available) and the national context that businesses and civil society need to address in order to achieve more responsible business conduct. The SWIA also draws out recommendations on opportunities to improve human rights outcomes at the sectoral level. A sectoral view should help stakeholders see the "bigger picture" of potential negative impacts of projects in a whole sector, as well as potential opportunities for positive human rights outcomes, and to make choices based on a broader perspective.
 - **Cumulative level:** Where there are numerous ICT operations in the same area, this may create cumulative impacts on surrounding society and the environment that are different and distinct from impacts of any single company or operation. Managing

those impacts typically requires the government authorities to participate or take a leading role. However, company-Government cooperation or at least company-company cooperation is also essential. The SWIA identifies potential areas or activities that may lead to cumulative impacts and identifies options for collective sectoral action to address the impacts observed in and predicted for Myanmar.

- **Operational level:** The SWIA looks across a range of existing operations in the ICT sector in Myanmar. The findings represent common operational-level impacts that are relevant to the ICT sector, recognising that impacts are often very context-specific and importantly can be avoided or shaped by (good and bad) company practices. In addition to looking at actual and potential negative impacts from operations in the sector, the SWIA also catalogues positive impacts observed in Myanmar during the SWIA desk and field research so that stakeholders can learn from these examples.
- **Pillar III. Access to Effective Remedy:** This includes a review of the options for remedy of negative human rights impacts by companies or the government, looking at the current ecosystem of potential judicial and non-judicial remedies available in the country.

Part 3

Sector-Level Impacts

In this section:

- A.** Introduction
- B.** Current State of the ICT Sector in Myanmar
 - The Current State of the Telecommunications Sub-Sector
 - The Current State of Internet and Internet Services Sub-Sector
- C.** Sector-Wide Impacts
 - Economic Impacts
 - Governance Impacts
 - Cultural Impacts
 - Social Impacts
 - Environmental Impacts

A. Introduction

As the number of Internet users in Myanmar, and mobile penetration, continues to increase, various opportunities and potential human rights risks require the attention of government, private sector, and civil society organizations. This section of the report examines aggregate level “sector-wide impacts” on human rights - both positive and negative – which can result from the ICT rollout in Myanmar. These include economic, social and governance impacts – many of them positive - on human rights such as the right to livelihood, education and health. Some examples are included in Table 5

Sector-wide impacts are often a consequence of government action or inaction. This includes the choices government makes in designing its policies and laws and its practices in enforcing them (or not). An absence of clear expectation by home and host government, set out in policy, law or other expressions of government guidance of responsible business behaviour, leaves the field wide open for responsible or irresponsible company behaviour. As such, impacts often arise from a combination of Government legislation, action or policy (or lack thereof), and company action.

Table 5: ICT Sector-Wide Impacts

Positive Sector-Wide Impacts	Rights Implicated	Negative Sector-Wide Impacts	Rights Implicated
Economic and livelihood benefits (e.g. real-time market data for farmers or traders)	Right to an adequate standard of living Right to education	Internet or telecommunications shutdown	Right to information Right to education Right to health
Impact on remittances through mobile-money	Right to an adequate standard of living	Cyberbullying Online harassment Non-consensual pornography	Right to privacy Right to effective remedy Right to life, liberty and security of person
Improved governance (civic technology, e-governance, and open data)	Right to Information Right to take part in the conduct of public affairs	Digital Exclusion due to low digital literacy and low levels of local language content	Right to Information Right to freedom of expression Right to take part in cultural life
Access to information such as health (mhealth) or online educational resources	Right to information Right to highest attainable standard of health, Right to education	Electronic Waste (E-Waste)	Right to highest attainable standard of health
Disaster risk reduction and GIS	Right to information Right to safety	Energy consumption from telecommunications infrastructure	Right to adequate standard of living

This Chapter is intended to highlight the importance of Government considering the broader implications of policies and regulation or the lack of it. For companies, it identifies wider risks the operating context in Myanmar poses to responsible business conduct and in turn the wider impacts that business operations can create for Myanmar society. Where

gaps exist, there may be a need for collective action, possibly with a range of stakeholders. The analysis begins with a consideration of the ICT value chain that is emerging in Myanmar.

Table 6: Key Terms with the ICT Value Chain

Fibre optic cable	Fibre optic cables allow for digital information to be transmitted over long distances and at high speeds. These cables are typically installed underground in trenches or underwater along ocean seabed for international internet connectivity.
Tower companies	Tower companies are responsible for site acquisition – leasing land from landowners. They sub-contract tower construction (including civil work and tower erection). In some cases they can also manage power generation (diesel generators or hybrid with battery). Once the tower is built, they lease space on the tower to network operators who install their equipment on the tower.
Power generation	Power is required to power base-transceiver stations (BTS) located at tower sites. Power is also required to power larger data centres used in telecommunications. Depending on the business model, separate companies can provide and maintain diesel generators or hybrid diesel generator battery combinations. These companies are responsible for bringing additional fuel. In some cases, companies also sub-contract security to protect against tampering or fuel theft.
Network equipment providers	<p>The role of the network vendor (or active network equipment suppliers) is typically to build, and in some cases manage, the telecommunication infrastructure that provides the basis for all fixed and mobile communications, including calls and data. A network vendor's main customers are telecoms operators (see below). A network vendor ensures that connectivity occurs across services, operators, and borders, and also ensures that the network is capable of handling the increasing demands for data and access, by supplying what is known as the "radio network". A vendor may also provide physical hardware, known as the "core network", to perform specific tasks, such as lawful interception.</p> <p>Once towers are constructed, the network vendor companies then fix their radio signal receiver and transmitter equipment on the tower. Transmitters can also be housed in nearby base stations, which are normally a few feet away from the tower. Mobile phones continually emit signals that are picked up by the nearest receiver on the nearest cell towers when a call is made or a text</p>

	<p>message sent. Once the call is connected, the transmitters in base stations then carry the information (such as a conversation) to the mobile phone of the intended recipient. When the user is in transit (for example on a train) and moves out of range of one tower, the connectivity is maintained because the next closest tower picks up the communication.</p> <p>Inherent in all mobile networks is the ability to find a user placing or receiving a call or message in order to connect the two. Without this inherent feature, there would be no connectivity. This means that at any given time, the location of someone carrying a mobile phone can be determined. Mobile operators routinely collect this location information mainly to use for billing purposes and to determine if a call was made locally, or while roaming nationally or abroad.</p>
Mobile network operators	Operators are companies that provide mobile and Internet services directly to the user for a fee. The telecommunications industry is generally highly regulated by governments and telecommunications operators must have on-going relationships with governments in countries where they operate, as they require licenses to operate and to obtain frequency (spectrum) allocations. The contract to provide telecommunications services is between the government and the operator; therefore the legal obligation to provide interception capabilities (when such a law is in place) lies with the operator.
Internet service providers	Internet service providers (ISPs) provide customers with access to the global internet, usually for a monthly fee. Internet service providers can offer fixed line or wireless connections. Mobile network operators also typically function as internet service providers, as customers pay for wireless data access.
'Web based Service providers	Web based service providers, (sometimes referred to as 'Over the Top' service providers) provide online services or platforms for users. This includes social networking, search engines, e-commerce, messaging applications, or cloud computing services.
Software developers	Software developers create applications that run on ICT hardware, including mobile phones, wearable technology (e.g, smart-watches), laptops, desktop computers, and servers.

The tables at the end of this chapter also provide a fuller explanation of the ICT value chain and some of the main companies operating in Myanmar in each part of the value chain.

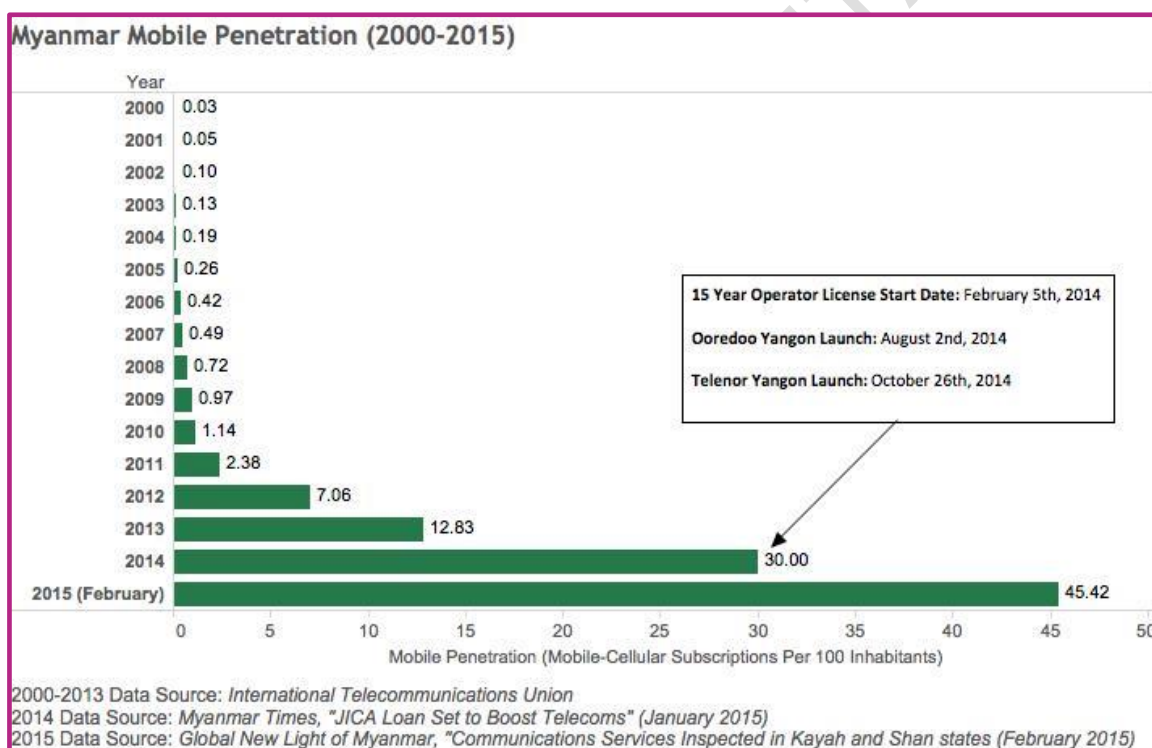
B. The Current State of the ICT Sector in Myanmar

The Current State of the Telecommunications Sub-Sector

Until 2012, Myanmar was at the bottom of the global league table on mobile penetration. In 2012, only North Korea (6.97%) and Eritrea (4.98%) had lower mobile penetration rates than Myanmar (7.06%)³⁴. However, mobile penetration rate has increased rapidly since the 2011 reform process; the 2014 Census reports that 32.9% of the population had access to a mobile phone at the time the census was conducted in March-April 2014.³⁵

The Ministry of Communication and Information Technology's (MCIT) policy framework for developing Myanmar's telecommunications sector centres on increasing overall tele-density/mobile penetration, improving the affordability of telecommunication services in urban and rural areas, and providing citizens and enterprises the freedom to choose their telecommunications services and providers.

Figure 2: Myanmar Mobile Penetration Rate 2000-2015



³⁴ International Telecommunications Union, Statistics: "[Time Series by Country, Mobile Cellular Subscriptions](#)"

³⁵ [The Republic of the Union of Myanmar, the 2014 Myanmar Population and Housing Census, Census Report Volume 2-A, May 2015](#),

National Telecommunications Rollout

Issuing telecoms operator licenses provided an opportunity for the Government to set ambitious targets for improvement in the coverage and types of ICT services on offer. MCIT awarded 15-year operator licenses to wholly owned subsidiaries of Norway's Telenor Group (Telenor Myanmar Limited), and Qatar's Ooredoo (Ooredoo Myanmar Limited) which took effect on February 5th 2014.

The targets included in the licences set out an ambitious vision for improvement of voice and data service coverage throughout the country:

- “Commercial launch no later than 9 months after the effective date of the Licence;
- Geographic coverage for voice services of 25% and for data services of 10% within 12 months;
- Geographic coverage for voice services of 75% and for data services of 50% within 60 months;³⁶

The two international licencees each achieved 1 million subscribers within the first 2-3 weeks of operations, each seeking to gain a first mover advantage.³⁷

Each operator licence includes the requirement that after three years (assuming network rollout targets are met) each operator must contribute 2% of annual revenue to a universal service fund managed by MCIT. This fund is intended to subsidize the cost of telecommunications service in areas where infrastructure deployment is not economically viable for network operators.

To support the rollout targets, MCIT also issued new rules for telecommunications licences. As of April 2015, MCIT issues several types of licences to 20 companies to provide telecommunications services (see the Tables at the end of this chapter). These licences differ from the licences to operate national telecommunications networks held by Telenor, MPT, and Ooredoo. Each class of licence permits companies to engage in specific activities as follows:

Table 7: Classes of Telecommunications Licences in Myanmar

Class of Telecommunications Licence	Example of activities
Network Facilities Service (Individual)	Construct, maintain, operate, and provide telecommunications services over: <ul style="list-style-type: none">■ Terrestrial fixed line transmission facilities■ Terrestrial radio transmission facilities■ Mobile base stations

³⁶ MCIT PDF

³⁷ TowerXchange, “The Myanmar tower rollout: FAQs (updated November 2014)”.

	<ul style="list-style-type: none"> ■ Submarine cable facilities ■ International Gateway Services facilities ■ Satellite earth station facilities ■ Other Myanmar-based satellite facilities that can transmit telecommunications services
Network Facilities Services (Class)	Deploy and maintain passive network infrastructure for civil engineering and non-electronic elements, including but not limited to: Towers; Masts; Ducts; Trenches; Poles; Dark fiber.
Network Services	Provision of the following telecommunications services: <ul style="list-style-type: none"> ■ Resale of wire-line connectivity services ■ International and domestic network transport and switching services ■ Resale of International Gateway Services
Application Services	Provision of the following telecommunications services: <ul style="list-style-type: none"> ■ Public payphone services ■ Public Switched data services ■ Audio text hosting services provided on an opt-in basis ■ Directory services ■ ISP services ■ Public Access center services ■ Messaging services ■ Private line voice and/or data services (including leasing Wide Area Network capacity to third parties) ■ Value-Added services

Source: VDB-LOI, "[Telecom Myanmar Update](#)" (September 2014)

Improving Coverage and Mobile Phone Reception

Mobile towers provide improved reception for mobile phone users. Each mobile tower has a range of 1-5 miles; the closer the user is to the tower the better their signal will be. Nearly eight months after the launch of Telenor and Ooredoo, mobile towers dot the horizon or are perched on rooftops in many of Myanmar's major cities. As of March 2015 there are over 5,000 mobile towers providing voice and data coverage to Ooredoo, Telenor, MPT, and MEConnect customers (see further the Tables at the end of this chapter). On average a mobile tower can take approximately 3 weeks to construct, excluding weather delays, or difficulties obtaining the required permits authorizing land use, rezoning, and construction. Each operator has subcontracted land acquisition and construction to specific tower companies, who typically subcontract portions of the process (e.g, civil work) to additional companies.

Cost of Access

Prior to the licencing of new mobile network operators in Myanmar, SIM card prices had historically been high. In April 2013, Myanmar Posts and Telecommunications began selling SIM cards to winners of a public lottery at a price of 1,500 kyats. During the lottery's first month, an initial batch of 320,000 SIM Cards was made available with each administrative ward receiving a limited allocation of 100 SIM cards.³⁸ In this lottery, many winners sold their SIM cards to third party brokers and phone shops. Overall SIM prices were reduced, but black market prices remained too high for most users to afford.

As a result of the recent liberalization, SIM card prices have further reduced in price and can now be purchased for 1,500-3,000 MMK. In some areas, android smartphones can be purchased for as little as 50,000 MMK, making owning an Internet connected mobile phone financially realistic for many people for the first time in Myanmar's history.

The Current State of Internet and Internet Services Sub-Sector

The nation-wide rollout of telecommunications networks in Myanmar comes at time when the global internet has reached an unprecedented scale. Globally, there are now more internet-connected devices than people.³⁹ Many users in Myanmar are connecting to the internet for the first time. While mobile penetration has steadily increased following the Ministry's liberalization of the sector, fixed-line internet penetration remains low. The 2014 Census reports that as of March-April 2014 only 6.2% of the population had access to the internet at home.⁴⁰ ISPs have struggled to balance Myanmar's limited internet capacity with customer demand. Both MPT and Yatanarpon Teleport stopped accepting applications for new fibre connections in November 2014.⁴¹

Internet Rollout

While new mobile towers have improved voice coverage nationally, Internet speed remains poor due to the quality of Myanmar's underlying Internet backbone and an immense demand for Internet services. Connectivity to the global Internet is important, because the majority of content users are attempting to access is hosted on servers outside Myanmar. This includes Myanmar specific content and international software services. For example, the popular Myanmar language news site "7 Day News" is currently hosted on servers maintained by Amazon Web Services in Singapore.⁴² For many Myanmar companies, the decision to host their website outside Myanmar is due to lower cost and increased reliability of electricity. Popular services such as Facebook, Google Search and Gmail, Youtube, and Viber also require international Internet access. These services connect with servers located outside of Myanmar, where data is stored and processed. For example, Google currently has 13 data centres globally, all located outside of Myanmar.

³⁸ Telegeography Research Services, "[Govt: You Can't Win the SIM Card Lottery if You Don't Buy a Ticket](#)" (April 2013)

³⁹ APNIC

⁴⁰ The Republic of the Union of Myanmar, "[the 2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)", May 2015,

⁴¹ Aung Kyaw Nyunt, "[Fiber Connection Freeze from Leading ISPs](#)", Myanmar Times (November 2014)

⁴² See Website and IP location at <http://check-host.net/ip-info?host=http://www.7daydaily.com/>

Internet backbone has been described as a freeway system.⁴³ The bandwidth capacity of infrastructure (the majority provided by submarine and terrestrial fibre optic cables) is similar to lanes on a freeway. Myanmar has a limited number of lanes connecting users to the global Internet. One component of a strong backbone is fibre optic cable. Fibre optic cable can be either submarine or terrestrial. Myanmar is currently served by only one submarine Internet cable, South East Asia-Middle East-Western-Europe-3. Myanmar Posts and Telecommunications (MPT) is a member of global consortium for the South East Asia-Middle East-Western Europe 5 cable and the Asia-Africa-Europe-1 cable and will also jointly manage the AAE-1 cable landing station in Ngwe Saung in 2016.^{44,45} The addition of these international links, combined with further over-land fibre optic cables extending into neighbouring countries such as Thailand, India, and China will improve the capacity of Myanmar's Internet. Private companies such as Singapore's Campana Group have announced plans to deploy additional submarine cable.⁴⁶ Other firms are installing thousands of kilometres of terrestrial fibre cable, providing increased connectivity to major cities and last mile connectivity to remote areas.

Currently, if many Internet users are streaming videos, downloading music, and posting photos at the same time, there will be a 'traffic jam' as bandwidth is congested. As of January 2013, Myanmar Computer Federation estimated Myanmar's Internet backbone bandwidth to be 14 gigabits per second.

Table 8: Comparison of Broadband and Mobile Download Speed across ASEAN

Country	Average Broadband Download Speed	Average Mobile Download Speed
Singapore	121.8 mbps	17.5 mbps
Thailand	19.9 mbps	5.4 mbps
Vietnam	18.5 mbps	1.7 mbps
Cambodia	9.1 mbps	5.8 mbps
Brunei	7.7 mbps	10.1 mbps
Malaysia	7.0 mbps	6.6 mbps
Indonesia	6.5 mbps	4.1 mbps
Myanmar	6.5 mbps	2.5 mbps
Laos	5.8 mbps	3.1 mbps
Philippines	3.6 mbps	4.4 mbps
ASEAN Average	20.64 mbps	6.12 mbps

⁴³ Page 6, Nicholas Economides, "[The Economics of the Internet Backbone](#)" (2005)

⁴⁴ Submarine Cable Networks, "[China Unicom Announces to Land AAE-1 Cable in Myanmar](#)" (November 2014)

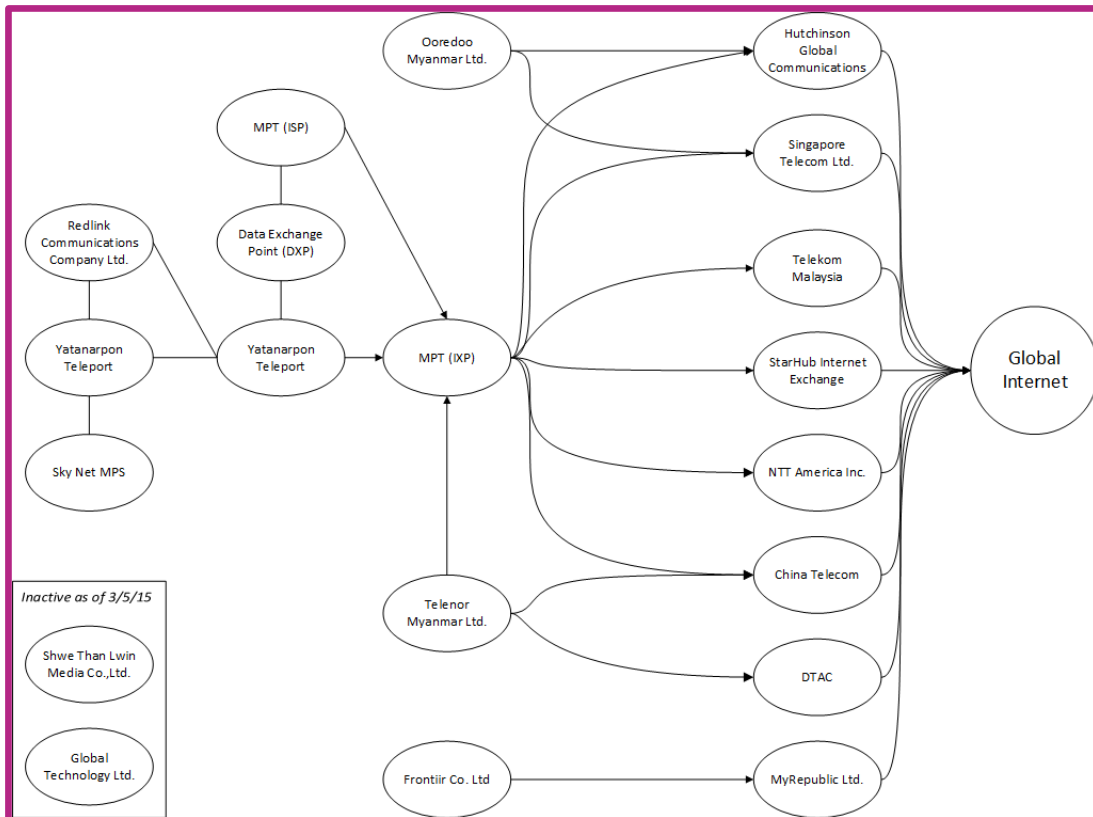
⁴⁵ Submarine Cable Networks, "[SEA-ME-WE 5 Consortium Concludes Construction Agreement](#)" (March 2014)

⁴⁶ Myanmar Times, "[MYTHIC set to compete](#)" (February 2015)

Current Configuration of Access to Global Internet

The diagram below is a simplified version of how Myanmar's Internet traffic is routed to the global Internet through high-speed hubs.

Figure 3: How Myanmar's Internet Traffic is Routed



Source: Yatanarpon Teleport, Hurricane Electric BGP Tool Kit, <http://bgp.he.net/> (May 2015)

While this diagram demonstrates an increased number of companies offering international Internet connectivity, it also shows that Myanmar is still at risk of an Internet service disruption due to the current configuration of Internet services. MPT carries the majority of Internet traffic, including serving approximately 8.4 million mobile customers (Telenor and Ooredoo currently serve 6.4 million and 3.3 million mobile customers respectively).⁴⁷ Disabling MPT's routing would effectively disable internet access for 8.4 million mobile subscribers, and fixed-line internet subscribers from Redlink (wireless broadband), Elite fibre to the home, Fortune fibre to the home, and Yatanarpon Teleport from accessing the global Internet.

Cost of Access

The price of Internet access in Myanmar (both fixed line and mobile) remains a barrier for many potential customers. A study of broadband infrastructure in the ASEAN region by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

⁴⁷ Jared Ferrie, "[SIM Sales Soar as Myanmar Races to Catch Up in Telecoms](#)" (May 2015)

highlighted the disproportionate cost of Internet access in Myanmar relative to nominal GDP per capita compared to its ASEAN neighbours.

Table 9: Comparison of Broadband Access Costs Across ASEAN

Country	1Mbps broadband subscription (including installation) as a percentage of nominal GDP per capita
Myanmar	132.8%
Cambodia	48.75
Lao PDR	27.4%
Philippines	11.2%
Vietnam	7.05%
Indonesia	5.5%
Thailand	0.5%
Singapore	0.1%

Source: UNESCAP, [“An In-Depth Study of Broadband Infrastructure in the ASEAN Region”](#) (August 2013)

In March 2015 Myanmar joined the Alliance for Affordable Internet (AFAI). The Alliance for Affordable Internet is an ICT sector coalition that focuses on combining advocacy, research, and knowledge sharing to influence broadband policy. AFAI's goal is to realize the “UN Broadband Commission’s target of entry-level broadband priced at less than 5% of monthly income”.⁴⁸ Following a signing ceremony in Yangon, a multi-stakeholder meeting was held between members of civil society, private sector and government.⁴⁹ As a result of the meeting, some priority areas were established: infrastructure sharing, taxation, data collection, and a universal service fund. Quarterly multi-stakeholder meetings are envisaged. While it is unclear how all this will be implemented, the approach of working through issues in the sector in a multi-stakeholder approach is something that would have been unprecedented even a few years ago.

C. Sector-Wide Impacts

Economic Impacts

In the current fiscal year, foreign investment in the telecommunications sector in Myanmar has been estimated to contribute over \$2 billion of \$8.1 billion in total FDI.⁵⁰ In terms of total FDI, the Myanmar Directorate of Investment and Company Administration (DICA) ranks “Transport and Communication” fourth behind oil and gas, power, and

⁴⁸ Alliance for Affordable Internet, [“Vision and Strategy”](#)

⁴⁹ Alliance for Affordable Internet, [“Working Toward Universal, Open & Affordable Internet in Myanmar”](#) (March 2015)

⁵⁰ Deal Street Asia, [“Myanmar 2014-15 FDI Swells to 8.1b: Govt Agency”](#) (April 2015)

manufacturing.⁵¹ A robust ICT sector can be economically transformative, reshaping existing industries through increased efficiency and productivity, facilitating cross-sector growth, and raising GDP per capita. The World Bank has estimated that in developing countries, a 10% increase in tele-density (defined as the number of telephone connections per 100 people) correlates with a 0.8% increase in GDP per capita, while a 10% increase in internet penetration (internet connections per 100 people) and broadband penetration (broadband connections⁵² per 100 people) result in 1.12% and 1.38% increases in GDP per capita respectively.⁵³ It has been estimated that by 2030 the ICT sector could contribute \$6.4 billion to Myanmar's GDP and employ approximately 240,000 people.⁵⁴

Impacts on Agricultural Productivity

ICTs can improve the availability and sharing of market information (pricing and demand), via SMS text messaging or voice calls. The agricultural value-chain in Myanmar is comprised of farmers, fisherman, input suppliers (seeds, fertilizer, pesticide, etc), processors, brokers, direct buyers, and transport/logistics providers. While specific studies on the economic impacts of ICTs on Myanmar's agricultural sector are lacking, the World Bank notes that in other regional markets the effect of increased market information from ICTs on farmer income and prices is generally positive, while traders leveraging ICTs can also boost margins.⁵⁵ Outside of providing market information, ICTs can also be used to distribute pest or weather alerts and subsequent management advice. In Myanmar Ooredoo has released a mobile agriculture application called "The Farmer" which is designed to promote knowledge sharing among farmers, and to boost crop yields through highlighting best agricultural practices.⁵⁶ In the future, technologies like wireless sensing will improve farmer's ability to collect and utilize information. This might include measuring the nutrient content of soil or measuring nitrogen levels in crop, which can further boost productivity.⁵⁷

Impact of ICTs on SMEs and Services

Increased access to market information through ICTs is also impacting small and medium enterprises. During MCRB's field research, merchants in Shan State also noted that ICT usage has decreased travel time and logistics cost. Instead of traveling to the Chinese border at Muse to assess market conditions, merchants now utilise messaging applications such as Line, WeChat, and Viber to check available stock, coordinate bulk purchases, and arrange transport for goods e.g. textiles from Muse to Taunggyi.

Adoption of ICTs is supporting the growth of new businesses and startups in Myanmar.

⁵¹ See DICA's "[Foreign Investment by Sector \(April\)](#)"

⁵² The World Bank defines broadband as high-speed access to the public Internet (a TCP/IP connection), at downstream speeds equal to, or greater than, 256 kbit/s. This includes cable modem, DSL, fiber-to-the-home/building and other fixed (wired)-broadband subscriptions.

⁵³ Christine Zhen-Wei Qiang, "[Mobile Telephony: A Transformational Tool for Growth and Development](#)", (Accessed May 4th 2015)

⁵⁴ See Page 43, McKinsey Global Institute, "[Myanmar's Moment: Unique Opportunities, Major Challenges](#)"

⁵⁵ The World Bank aggregated data from 10 regional studies measuring the impacts of additional market data facilitated by ICTs on farmers, traders, and consumers. See Page 208 of the World Bank's [ICT in Agriculture Sourcebook](#) for further analysis.

⁵⁶ For further information, see Ooredoo Myanmar's [mAgriculture](#) website

⁵⁷ The World Bank, "[Increasing Crop, Livestock, and Fishery Productivity through ICT](#)" (2012)

Improved telecommunications access has also resulted in new payment options for e-commerce. Myanmar's national payment network recently offered cardholders (nearly 900,000 in Myanmar) the ability to pay for purchases online using their debit cards.⁵⁸ While logistics and shipping pose a challenge to e-commerce providers in Myanmar, local e-commerce offerings are beginning to emerge.⁵⁹ McKinsey estimates that Myanmar's consuming class could expand to 19 million people by 2030.⁶⁰ Services are also experiencing growth. A call centre based in Yangon serving customers of mobile-network operators reports receiving around 30,000 calls per week.⁶¹

In addition to e-commerce platforms and services, start-ups have emerged in Myanmar offering educational mobile applications, classified listings for automobiles and jobs, health services, social networks, and search-engines. Many startups continue to face operational challenges including hiring qualified employees and accessing capital. To support entrepreneurship, the United Nation's Economic and Social Commission for Asia and the Pacific (UNESCAP) has recommended that policy makers "subsidize start up costs partially through seed capital and startup loan programmes."⁶² While access to capital is a problem, ICT startups face additional challenges related to "copy-cat" applications given Myanmar's lack of intellectual property protections and challenges monetizing their services. Paid applications or direct carrier billing are currently not available in the Google Play app store, forcing start-ups to rely on advertising revenue.

Economic Impact on Tourism

ICTs are supporting the growth of the tourism sector in Myanmar, which was estimated to contribute USD 905 million to the Myanmar economy in 2014.⁶³ In September 2014, the Ministry of Immigration and Population launched an e-visa system, available to tourists from 41 countries.⁶⁴ This system is accessible online, allowing tourists to apply for and pay the visa fee online. Tourist visa are usually approved in 72 hours. ICTs are also supporting improvements to booking and reservation management for airlines and hotels. Most of Myanmar's major airlines now offer online ticketing options, while hotels and guesthouses are listing rooms on websites such as Agoda, Expedia or Booking.com (to the detriment of local hotel and flight booking agents)⁶⁵. In top tourist destinations such as Bagan and Inle Lake, small business owners are using social media to promote their services to visiting tourists and build a brand. Tourists are able to post reviews and photos, which can increase repeat or future business.

Improved telecommunications is also supporting expanded payment options for visitors. While still not widely accepted, some restaurants and hotels are beginning to accept payment by credit card. This, in addition to the number of ATMs now in operation throughout Myanmar's major cities, provides tourists with greater flexibility to make

⁵⁸ 2C2P, "[2C2P and Myanmar Payment Union Launch Myanmar's First E-Commerce Payment Platform](#)" (February 2015)

⁵⁹ See <http://www.kaymu.com.mm/> and <http://www.zawgyimart.com/>

⁶⁰ See Page 59, McKinsey Global Institute, "[Myanmar's Moment: Unique Opportunities, Major Challenges](#)"

⁶¹ Mizzima, "[I didn't expect the market to open so fast](#)" (February 2015)

⁶² See page 26, UNESCAP, "[A New Policy Framework for Myanmar's SME](#)" (2014 February)

⁶³ Mizzima News, "[Myanmar Tourism to Earn US\\$900 Million in 2014](#)", (December 2014)

⁶⁴ The Straights Times, "[Myanmar Targets 5 Million Tourists with E-Visa](#)" (September 2014)

⁶⁵ [Local tourism companies face online competition](#), Myanmar Times 26 May 2015

unplanned purchases for example of souvenirs and crafts, providing local economic benefits.

Impact on Migration – Communication and Remittances

MCRB's fieldassessment found that it remains common for recent graduates of technological universities in Myanmar to migrate to Thailand or Singapore for better job opportunities. While a new graduate could earn 200-300 USD per month at a local Myanmar ICT company, entry-level salaries in comparable roles ranged from 1300 to 2000 USD per month in Singapore.⁶⁶

Remittances from skilled and unskilled Myanmar migrant workers provide essential support to livelihoods, education, and health.⁶⁷ It is estimated that inbound remittances to Myanmar total approximately \$8 billion per year with half of transactions taking place outside of formal systems⁶⁸ approximately 13% of Myanmar's \$59.4 billion 2012 GDP.⁶⁹ While some are able to send money home with friends, many rely on informal systems such as the 'hundie' network for remittances. This system is based on a network of agents and brokers who can transfer money between countries. Fees can range from 0.01 to 2% depending on exchange rate fluctuations. In other informal transfer systems fees can reach as high as 20%.⁷⁰

Informal systems are generally based on trust and personal relationships, leaving customers with few options for remedy if complications arise during the remittance process. Use of ICTs (both online banking and mobile money) provides an opportunity for increased transparency and accountability for both parties involved in the transaction. Use of ICTs can also improve the speed, reliability, and convenience of sending money domestically and internationally.

Furthermore, the enhanced connectivity of the country now means that Myanmar banks can offer online banking services and international remittances. There are currently four banks (AGD, Aya, KBZ and CB) permitted by the Central Bank of Myanmar to provide formal remittance transfer from Malaysia, Singapore, and Thailand through partner banks. Fees for remittance services range from flat rate, to variable rate depending on the bank's partner agreements and the total amount of money being sent.

However, usage of formal money transfer systems is limited for a variety of reasons. For some, proximity to bank or money transfer branches is problematic. In many rural communities bank or transfer branches don't exist. In the event that branches are nearby, many are reluctant to use formal services due to a broader distrust of Myanmar's banking system. Required paperwork is also problematic for migrants, some of whom do not have national registration cards, work permits, or passports. Alternative money transfer services such as Western Union, Money Gram, and Xpress Money are also now available

⁶⁶ MCRB Field Research

⁶⁷ Andy Hall, "[Myanmar Migrant Workers. Briefing and Recommendations](#)" (April 2012)

⁶⁸ Aye Thidar Kyaw, "[Hundi Remittance Lives On](#)" (Myanmar Times, July 2014)

⁶⁹ 2012 GDP Data from UNDATA (<https://data.un.org/CountryProfile.aspx?crName=MYANMAR>)

⁷⁰ Gwen Robinson, "[The True Cost of Expat Workers Sending Cash Home Remain Hidden](#)" (Financial Times, March 2013)

in Myanmar due in part to increased connectivity, but often include higher transaction fees than using the hundie system.

Mobile Banking and Mobile Money

Distrust of the formal banking system is rooted in historic experiences such as demonetizations of Myanmar's currency in the 1980s and the 2003 bank runs. MDRI-CESD has estimated that formal banking penetration is only around 10% in urban areas and "considerably lower in rural areas".⁷¹ In addition, sending money in Myanmar can be time-intensive and unreliable for both banked and unbanked individuals. If an individual does not use a bank account, transferring in money may require someone to hand carry or ship the money on a bus to its intended destination. "Carrying costs" are often deducted along the way by couriers, resulting in short payments or receipt disputes.

As mobile penetration continues to increase in the country, there is an opportunity for a variety of new financial services that utilize mobile technology. Online banking (sometimes differentiated as "mobile" or "internet" banking) typically refers to customers accessing formal banking services through a mobile or desktop device connected to the Internet. For mobiles, a bank-specific smartphone application is typical, whereas desktop access is typically through a bank's website. In Myanmar, a variety of banks currently offer online banking services which allow customers to view their account balances, send money to fellow customers, check exchange rates, and find ATM locations nearby. In order to use an online banking service (app or desktop based), a user would need to be a bank customer with a checking or savings account.

In contrast to online banking, mobile money (or mobile payments) services are targeted towards unbanked users. Two thirds of Myanmar's population lives in rural areas. A recent report on financial inclusion by Proximity Designs noted long physical distances from a village to the bank and limited business hours deter potential customers who already perceive setting up a formal bank account as a complicated, time intensive process.⁷² Mobile money services attempt to address these issues through a simplified new customer registration process and a network of agents located throughout the country providing cash in and cash out services. After adding money to their account, a user is able to send money to other users, or pay for goods such as mobile top up. For money transfers, mobile money can increase convenience as well as enhance transparency, eliminating transport costs and creating a digital record of transactions visible on both sides of the transaction.

In December 2013, the Central Bank of Myanmar issued the "Mobile Banking Directive" allowing banks to offer mobile money services.⁷³ The Central Bank of Myanmar is reportedly in the process of drafting mobile money regulations that would allow entities outside of financial institutions – such as mobile network operators - the ability to provide mobile money services. Telenor has announced plans to partner with Yoma Bank to offer

⁷¹ See Page 15, MDRI-CESD, "[Cash In Context: Uncovering Financial Services in Myanmar](#)"

⁷² See Page 83, Proximity Designs, "[Afford Two, Eat One: Financial Inclusion in Rural Myanmar](#)" (2014)

⁷³ Edwin Vanderbruggen and Altaz Dharamsi, "[EasyMoney? Mobile Banking, Mobile Money, and Myanmar's Financial Regulation](#)" (May 2014)

mobile money services, pending the necessary regulatory frameworks for non-bank-led mobile payments.⁷⁴ While Ooredoo has not announced specific mobile money plans for Myanmar, Ooredoo is a member of the GSMA's Mobile Money Interoperability (MMI) Programme. MPT and MECtel have partnered with Myanmar Mobile Money. In addition to targeting domestic payments, some operators have expressed interest in also targeting international remittances from sent from Myanmar to migrant workers in Thailand and Malaysia.⁷⁵

Governance impacts

Improving Open Governance

This section examines the ICT sector's contribution to improved governance in Myanmar through its ability to enable inclusive engagement between citizens and government through increased transparency, accessibility of information, and citizen participation. Positive governance impacts can occur through e-government programs, commitment to open governance, and civic technology. The table below captures some of the main ways ICT can contribute to improved governance.⁷⁶

Table 10: The Emergence of Civic Tech

Focus Area	Definition
Visualization and Mapping	Enable users to make sense of and gain actionable insight from civic data sources, specifically through the visualization and mapping of that information
Data Utility	Empower users to analyse government data and leverage data to improve service delivery
Data Access and Transparency	Promote Government data availability transparency and accountability
Voting	Support voter participation and fair election processes
Public Decision Making	Encourage resident participation in large-scale deliberative democracy and community planning efforts
Resident Feedback	Provide residents with opportunities to interact with government officials and give feedback about public service delivery

Source: [“The Emergence of Civic Tech: Investments in a Growing Field”](#), Knight Foundation (December 2013)

⁷⁴ Jeremy Mullins, [“Stay Tuned for Mobile Banking Services from Yoma and Telenor say CEOs”](#), Myanmar Times, November 2014

⁷⁵ On 21st May 2015, Telenor Myanmar held Sustainability briefing in Yangon. During the Q&A portion of this session, an audience member asked about Telenor's mobile money plans. Telenor Myanmar explained that pending needed regulation, Telenor Myanmar would partner with Yoma Bank. Longer term, Telenor Myanmar indicated they are hoping to partner with Telenor Thailand (DTAC) or Telenor Thailand (DiGi) to pursue international remittances through mobile money.

⁷⁶ <http://www.knightfoundation.org/features/civictech/>

Myanmar's Commitment to the Open Government Partnership (OGP)

The Myanmar Government has committed to joining the Open Government Partnership (OGP) by 2016. The OGP is an international platform of 68 governments aimed at making their governments more open, accountable, and responsive to citizens. However Myanmar is not yet eligible to participate in the OGP. Prospective members are evaluated on objective data using a point system and must earn a minimum score of 75 across four categories: fiscal transparency, asset disclosure by public officials, access to information, and citizen engagement. In addition, prospective members must make a specific commitment to the OGP principles and develop an effective consultation process with civil society to develop a national action plan.⁷⁷

OGP is about changing the culture of government to one where it is open by default and where citizen participation is a routine part of policy development. If citizens can engage in public debate, provide input, and make contributions this will lead to more responsive, innovative and effective governance. OGP is particularly about promoting accountability, requiring government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments. If the government of Myanmar carries through with its commitments to the OGP, the initiative has the power to transform the relationship between the government and its citizens through the use of ICT.

Although the GoM Steering Committee and Working Committee have been announced, both committees lack a website or readily available public information on their plans and activities, and also lack diverse stakeholder representation, including civil society participants. Myanmar CSOs have raised concerns that there may be more pressing priorities than OGP including constitutional reform, justice and a genuine peace process, rule of law, and urgent legal and judicial reform⁷⁸.

E-Governance Master Plan

With support from the ADB,⁷⁹ Myanmar is currently developing an E-Governance Master Plan for 2015. MCIT is serving as an implementation agency and facilitating consultations with the private sector level and ministries. The ADB has retained InfoSys, a management consulting firm, to develop the plan and provide technical assistance. In addition to the E-Governance Masterplan, the World Bank has also prioritized “enabling e-government foundations” through its Telecommunications Sector Reform Project.⁸⁰

The draft E-Governance Master Plan is focused on process reform supported by common infrastructure and a shared software applications among nine participating ministries.⁸¹ Software is intended to focus on areas that will improve operational efficiency and

⁷⁷ See <http://www.opengovpartnership.org/how-it-works/how-join>

⁷⁸ Burma Partnership, “[Statement from Open Government Partnership Awareness Workshop for Civil Society](#)” (January 2015)

⁷⁹ ADB, “[Project 47158-001: Design of e-Governance Master Plan and Review of Information and Communication Technology Capacity in Academic Institutions](#)” (2013)

⁸⁰ World Bank, [Telecommunications Sector Reform Project](#) (2014)

⁸¹ Ministries include MCIT, Ministry of Construction, Ministry of Power, Ministry of NPED, Ministry of Commerce, Ministry of Transport, Ministry of Home Affairs, Ministry of Rail Transport

communication within the government; email, human resources management and payroll and e-office tools. Under the plan, the MCIT is also tasked with developing a citizen service centre. It is unclear if this task overlaps with the Myanmar National Portal under the World Bank's Telecommunications Sector Reform Project.⁸² Based on the draft E-Governance Masterplan, it is also unclear what services would be offered through the citizen service centre beyond e-payments from citizens to governments. Under the draft Master Plan, each of the nine Ministries participating has been assigned key initiatives.⁸³

It is unclear, both from the Master Plan, and from the ADB and World Bank technical assistance programmes, how protection of the right to privacy will be incorporated into the programme design, functionality and regulations governing e-governance. User trust is essential to the adoption of ICTs and eGovernance. If people and businesses do not believe that their personal data will be safe and secure from unwarranted surveillance or misuse, then they will be less likely to use eGovernment and other services and consequently, the platform will not have the capacity to support accountability, transparency and progress.⁸⁴

ICTs and Law Enforcement

During the 2007 Saffron Revolution, ICTs facilitated the flow of information domestically and internationally even though mobile penetration in Myanmar was less than 1%. Today, national mobile penetration is approaching 50%. As mobile penetration increases more people in Myanmar have access to mobile devices with cameras. This has increased transparency around the conduct of law enforcement. In March 2015, student protesters in Letpadan were beaten by police.⁸⁵ Photos and video were uploaded online and ICT users accessed local and international news reporting on the protests from their mobile devices.

ICTs can support checks and balances on law enforcement. But law enforcement is also expanding operations into the digital realm. Following police crackdown on student protesters in Yangon, activists reported their phones being tapped and social media accounts being hacked by law enforcement agencies.⁸⁶

ICTs and the Forthcoming Elections

Given the tensions surrounding the upcoming elections, and the uncertain state of the country's peace negotiations to end long-running armed conflict, commentators are concerned about the potential for violence in connection with the election. ICT services have played a key role in sparking democratic movements, but have also been implicated in being used to incite violence. Governments have responded by shutting down all or

⁸² The World Bank's Telecommunications Sector Reform project calls for the development of "A mobile friendly Myanmar National Portal (\$ 3.62 million) will be financed to provide citizens, businesses, and visitors (comprising of foreign workers, investors and tourists) with a single window into the information and services offered by the Government. Over time the National Portal will allow its users to find relevant information, provide suggestions and feedback, and transact services in a safe and convenient electronic environment."

⁸³ See Appendix 1 for a Master List of Key Initiatives in the E-Governance Master Plan

⁸⁴ [Civil Society Comments: World Bank Telecoms Sector Reform Burma](#), 2014, p. 3.

parts of networks and imposing other restrictions that can have widespread impacts on users.

Table 11: Case Study on ICTs and the Kenya Election

The disputed 2007 Presidential election in Kenya resulted in an outbreak of post-election violence that left over 1,000 people dead and over 600,000 people displaced. Post-election inquiries into the violence acknowledged the role of SMS messages and online blogs in exploiting tensions between ethnic communities and inciting violence.

In the run up to the 2013 elections, concerns of another outbreak of violence and fears over the potential of SMS to simultaneously send messages that incite violence led the Kenyan mobile operator Safaricom to take action. Recognising the potentially negative role of SMSs sent by politicians during the last elections, Safaricom decided to develop its own code of conduct in vetting bulk SMS content that political parties, politicians and aspirants wished to send in the run up to the 2013 elections. In 2012, Safaricom developed *Guidelines for Political Mobile Advertising on Safaricom's Premium Rate Messaging Service*.⁸⁷ Under these guidelines, anyone intending to send bulk SMS of a political nature would first have to submit an application to Safaricom, which would vet the content to ensure they did not contain instances of hate speech. In addition to this, Safaricom sought and received the support of the government and the Communications Commission of Kenya (CCK) to develop and release *Guidelines for the Prevention of Transmission of Undesirable Bulk Content/Messages Via Electronic Communications Networks*⁸⁸ in October 2012, which then applied to all mobile network operators in the country.

See: IHRB, [Corporate Responses to Hate Speech in the 2013 Kenya Presidential Elections. Case Study: Safaricom](#) (2013)

Cultural Impacts

Localization and Access to Information

The successful realization of positive sector-level impacts ranging from economic growth, e-governance and social inclusion depends on increasing access to information to allow the full range of Myanmar's population to participate in Myanmar's growing "information society". To support that participation, ICTs must be localized for Myanmar users. For ICTs, "localisation" means adapting technology to support a user's local language and culture. This includes hardware, software, and educational material or user manuals. It also refers to meeting a user's local needs,⁸⁹ which can be achieved through supporting content creation in local languages and offering relevant applications. Content that is relevant to a farmer may be different from content relevant to a younger urbanite.⁹⁰

⁸⁷ [Safaricom Guidelines](#)

⁸⁸ Communications Commission of Kenya, [Guidelines for the Prevention of Transmission of Undesirable Bulk Political Content via electronic Communications Networks](#).

⁸⁹ Sarmad Hussain and Ram Mohan, "[Localization in Asia Pacific](#)" (Digital Review of Asia Pacific)

⁹⁰ A regional [study by the Pan Asian Localization Project \(PANL10N\)](#), found that the development and effective distribution of relevant local content,⁹⁰ combined with localized ICTs, built digital literacy faster. Researchers in the study noted, "...After training on localized ICTs, non-users of the computer were not only using the computers for routine tasks but also provided trainings to others".Page 46

Inclusive development in the ICT sector will depend on the accessibility of ICTs, beyond functioning telecommunications networks. Users must be able to interact with technology, produce and consume content, and communicate in their local language across a multitude of devices and software. For all services, providing users with the option of interacting with the software's user interface in their local language will support a user's familiarity with managing profiles, accounts, and devices. For social media, this might include translating community standards and how to use content reporting mechanisms into the local language. Analysis by the International Development Research Centre emphasizes that the components of language localization are interdependent and that localization extends beyond basic communication, impacting "matters of culture that are inherently political, economic and social in nature."⁹¹

For users in Myanmar, interacting with online services is still a new experience. Around various neighbourhoods in Yangon and Mandalay, street vendors offer to set up individual Facebook and Gmail accounts for new Myanmar users, charging from 1,000 to 5,000 MMK. Currently, localization debates in Myanmar centres on which type of font to use. There are currently two options available to users – Zawgyi font (commonly used with "Bagan Keyboard") and Unicode fonts such as Myanmar 3. Unicode is a technical *standard* dictating how text is converted into data and visa versa. Unicode itself is not a font, but fonts can be compliant with the Unicode standard. The primary benefits of Unicode are standardized character ordering allowing for consistent searching in search engines or databases, sorting, and information retrieval. Outside of Myanmar the majority of websites are also encoded using Unicode (popular examples include Facebook and Wikipedia) and large commercial software and hardware providers such as Apple, Microsoft, and Google now support Unicode in their newest products by default.

Zawgyi is the predominantly used Myanmar language font, but uses a different system to Unicode to encode text to data and data to text. Characters in Zawgyi font can be entered in various ways, creating problems for search and retrieval, whereas Unicode is standardized. If a user doesn't have Zawgyi font installed on their Android device, they will not be able to read anything typed in Zawgyi. Regardless of the technical benefits of Unicode, the majority of Myanmar users continue to use Zawgyi font based on familiarity. While official data on Zawgyi's user base is not available, members of Myanmar's ICT community estimate 75-80% of users in Myanmar type in Zawgyi.

Some members of Myanmar's nascent developer community have opted to offer their applications in English only.⁹² Others have taken steps to support broader information accessibility as Myanmar's ICT community migrates to full Unicode support. While Google Translate allows users to input text in Zawgyi, output text is in Unicode. The Myanmar Computer Federation (MCF) now includes a Zawgyi-Unicode two way conversion tool on their website.⁹³ Previous attempts to compel users to switch from Zawgyi to Unicode have been unsuccessful when framed as a mutually exclusive choice between the two. However greater migration to Unicode content will increase content that is searchable and

⁹¹ See Page 102, Chaitali Sinha and Raymond Hyma, "[Connecting ICTs to Development: The IDRC Experience](#)" (2013)

⁹² For an example see, Tim McLaughlin "[The Uber of Myanmar](#)" (March 2015)

⁹³ Myanmar Computer Federation's Zawgyi – [Unicode Conversion Tool](#)

retrievable through search engines and databases, which will have positive education, transparency and governance impacts.

Supporting Ethnic Language Use and Content

ICTs can positively impact people's ability to access and understand information. But in some cases, it can have the opposite effect. The IRDC notes "...ICTs can also be used to crowd out minority languages due to content in a dominant language being more readily available and spread."⁹⁴ With over 100 languages spoken in Myanmar, language localization is essential to ensure all communities have the potential to benefit from new technology. In this sense, Unicode is a powerful resource, providing support for Shan, Mon and Karen languages.⁹⁵ Allowing users to type in their local language enables content creation, which in turn can support users developing familiarity and comfort interacting with ICTs.

Table 12: Language Localization Challenges in the Danu Community

Myanmar's linguistic context is complex and continuing to evolve, evidenced by the Danu people of Shan State who speak a dialect of Burmese. During MCRB's field research in Shan State, Danu villagers noted that there is ongoing debate around alphabet use in the Danu community. Because Danu people do not have their own alphabet, they have adopted Burmese alphabets to teach their children but spellings may vary between Burmese and Danu. Some Danu people are thinking of creating their own alphabet based on old Burmese alphabets dating back to the 16-18 century. In the future, ethnic language support for the Danu language would include keyboards and software to support the newly created alphabet.

While ethnic language fonts are not currently available on the Myanmar Computer Federation homepage, MCF now provides links to Myanmar3 (Unicode font) and Pyidaungsu Font (a font package for iOS devices). By highlighting access to these language resources, and MCF's Zawgyi-Unicode conversion tool online, this should benefit users. As the ICT sector grows, there will be further opportunities to direct users to centralized language resources. In Cambodia for example, the Khmer Software Initiative website contains a collection of software, fonts, and resources that can localize proprietary software (such as Windows or Apple OSX) while also providing a variety of localized open source downloads such as Open Office, and Open Suse, a free linux based operating system.⁹⁶

Social Impacts

Digital Literacy

With SIM cards and entry level Android smartphones costing 1,500 MMK and 50,000 MMK respectively, owning an Internet connected mobile phone is starting to be financially realistic for much of the population. While official data on digital literacy in Myanmar is

⁹⁴ See page 101, IRDC, "[Connecting ICTs to Development: The IRDC Experience](#)" (2013)

⁹⁵ As an example, Shan Unicode resources are located at <http://www.shanunicode.com/>

⁹⁶ See examples in Cambodia via KhmerOS, <http://www.khmeros.info/>

limited, the increase in mobile penetration over the past 15 years suggests many users are interacting with online services for the first time over an Internet connected mobile phone. A 2014 study by OnDevice Research conducted prior to the commercial launches of Telenor and Ooredoo found that 49% of Myanmar's Internet users accessed the web via a mobile device.⁹⁷

In Myanmar many social interactions are moving to digital venues, such as social media. Many users accessing the Internet for the first time perceive Facebook as the Internet. Myanmar currently has approximately 3.28 million Facebook users, a number that will only increase with additional mobile penetration and Internet access.⁹⁸ Though not technically considered "social media", messaging and chat applications such as MySquar, Viber, Line, WeChat, and Facebook Messenger are extremely popular in Myanmar.⁹⁹ These applications allow users to send messages over the Internet which is often cheaper than sending an SMS text message between two phones. While these applications allow for 1:1 communication, they are constantly adding additional features that may move them closer towards social media including gaming, video calling, stickers, and media sharing. Viber now incorporates features such as "public chats" which are conversations anyone can see. Hush, a new mobile application in Myanmar, allows users to post messages anonymously that are publicly visible, similar to an online bulletin board.

Digital interactions provide a space for personal expression and the perception of privacy and authenticity. But there are significant emerging risks accompanying ICT usage, and there is a need for awareness around responsible social media interaction, and broader user education focused on managing data privacy online. Given the lack of familiarity of most of Myanmar's new users, there is a clear need for awareness raising in the country. The ICT Master Plan called for the "Establishment of the National Committee for Information Culture Movement" to promote e-awareness in Myanmar society. However there has been little action from the Government to date on promoting e-awareness.

With elections slated for November 2015, social media will facilitate political discourse. While social media have been shown increase a user's exposure to diverse viewpoints¹⁰⁰ in some cases it has been found to do the opposite. A recent study of the diffusion of information over social media for U.S. voters found that "voters of all groups are disproportionately exposed to like-minded information."¹⁰¹ Many social media platforms are designed to surface information that is "relevant to users" based on their social media contacts, "Liked" or "followed" pages, and reading habits.¹⁰² For example, in a Myanmar context the Facebook followers of controversial monk U Wirathu are most likely Friends or followers of like-minded individuals. This could result in statements classified as dangerous speech (statements which could provoke an emotional response) spreading at a rapid pace. There are various methods available for users to report or filter content on

⁹⁷ OnDevice Research, "[Myanmar: The Final Frontier of the Mobile Internet](#)" (July 2014)

⁹⁸ Amara Digital Agency "Facebook in Myanmar", Crossroads Magazine (February 2015)

⁹⁹ Myanmar Times, "[MySQUAR Aims for Listing in London](#)" (May 2015)

¹⁰⁰ Pablo Barberá "[How Social Media Reduces Mass Political Polarization: Evidence from Germany, Spain, and the U.S.](#)" (October 2014)

¹⁰¹ Yosh Halberstam, Brian Knight, "Homophily, Group Size, and the Diffusion of [Political Information in Social Networks: Evidence from Twitter](#)" (November 2014)

¹⁰² On April 21, 2015 Facebook announced changes to its news feed designed to prioritize content that was relevant to users. See "[News Feed FYI: Balancing Content from Friends and Pages](#)" (April 2015)

social media, but many users in Myanmar are unaware of how these processes work. See also Part 4.2 on Hate Speech.

Table 13: A Myanmar Civil Society Initiatives on Digital Literacy

Panzagar (Flower Speech) is a grassroots campaign¹⁰³ founded by Nay Phone Latt, Executive Director of Myanmar ICT for Development Foundation (MIDO). Panzagar aims to promote responsible use of social media, and raise awareness of the implications resulting from online behavior. Panzagar has partnered with local graphic designers and Facebook to create a set of “digital stickers” users can stick in comments or messages online.

*Use of ICT for Exploitation and Degrading Treatment:
Cyber Bullying, Online Harassment, Non-Consensual Pornography (Revenge Porn)*

While not defined in international law, cyber-bullying refers to bullying that takes place over any electronic technology, including mobile phones, laptops, tablets, and desktop computers as well as online services such as emails, social media, instant messaging, or over a phone call. Cyber-bullying is deliberate and can include threats, insults, or rumours targeted solely at the victim and in others to a larger audience online. Cyber-bullying can occur in numerous forms, and the impacts can be severe.¹⁰⁴ An emerging trend in cyber-bullying is called “doxxing” which refers to the public sharing of an individual’s personal identifying information online.

In 2011, a Myanmar woman studying in Singapore committed suicide after her ex-boyfriend posted public comments on her Facebook page accusing her of sexual promiscuity.¹⁰⁵ More recently, other women have reported threats of blackmail online. Blackmailers have threatened to distribute public profile pictures, along with posting degrading rumors online, and demanded mobile top up cards as payment to prevent the posting of personal information.¹⁰⁶ Women have reported receiving lewd photographs from individuals using fake Facebook accounts, who then demand that the women send them nude photographs in return.

Non-Consensual Pornography (also referred to as “Revenge Porn”) is an emerging risk for Internet users around the world. This form of harassment can occur across ICTs (social media, chat applications, email, etc) and involves the public distribution of photographs or video that was shared privately between two people. When private intimate content is shared publically, it can often go viral, spreading beyond the original platform it was posted to, leaving the victim with limited options for remedy.¹⁰⁷

¹⁰³ For more information on Panzagar, see travellingpanzagar.blogspot.com/ or www.facebook.com/panzagar

¹⁰⁴ *ibid*

¹⁰⁵ “[Ex-boyfriend called her a ‘loose woman’](#)”, Asia One, (April 2011)

¹⁰⁶ See 7 Day News Print Daily, May 20th 2015

¹⁰⁷ An increasing number of governments around the world are adopting legislation that criminalizes revenge porn. To accelerate these efforts, the Cyber Civil Rights Initiative (CCRI) has organized a campaign called End Revenge Porn and published [a guide for legislators](#) to assist with the development of legislation that criminalizes non-consensual pornography.

Major social media platforms have taken steps to address revenge porn. In March 2015 Twitter, Reddit, and Facebook updated their community standards to prohibit the posting of revenge porn.¹⁰⁸ While these moderation mechanisms exist, users in Myanmar may be unaware of how to access them or encounter a language barrier that further complicates the process.

Child Safety Online

Children can be particularly vulnerable to digital dangers when using ICTs. This can include cyber-bullying or harassment online, accessing inappropriate content, or sexual exploitation. Children that are targeted online can experience various degrees of trauma that can affect their performance in school, social relationships, and mental health.

Limited information is available regarding the risk of child sexual abuse images in Myanmar, but high levels of poverty combined with improved Internet access poses new risks. There is little evidence that this has been a priority for child protection agencies or NGOs in Myanmar to date, given low Internet penetration levels, but this is an area where awareness raising, appropriate standards and stronger penalties will be required. Under Section 66 of Myanmar's Child Law, the production or resale of child sexual abuse images can result in maximum fine of 10,000 MMK and a two-year prison sentence.¹⁰⁹

Education & the State of ICT Education in Myanmar

From the KG (kindergarten) level through the 10th standard, Myanmar's public education system is heavily geared towards rote learning and memorization. Students are conditioned to memorize exam questions and answers to pass exams at each level of instruction, and critical thinking and analysis are not widely encouraged or taught. Ethics content is available to a certain degree, including through religious teaching. Since many of societal issues arising from ICT use are complex and involve a variety of ethical questions, upgrading education to teach more critical thinking and the ability to debate, reason, or solve complex problems will be essential if appropriate rights-based solutions are to be found.

Accessing ICT education in the public education system can be challenging for prospective students. There are 25 Computer Universities in Myanmar. To enter the Technical University system in Myanmar, students must achieve a certain level of 10th Grade matriculation exam marks out of a total of 600. According to 2013-2014 University entrance results, the most competitive subject is Medicine with male students requiring 490 and female students 508 marks¹¹⁰. The Yangon University of Computer Studies also requires high marks (473) as does Mandalay University of Computer Studies (450). These two Universities offer Masters and PhD courses and are better equipped than the Computer Universities in other parts of the country which require 365 marks. By

¹⁰⁸ For example, [Twitter's community standards](#) now prohibits the sharing of private intimate photos or video. See also the "Sexual Violence and Exploitation" section of Facebook's [Community Standards](#).

¹⁰⁹ [Section 4, section 84 \(a\) of the Child Law](#)

¹¹⁰ Dental School is equally competitive and also discriminates between male and female student who require 467 and 501 marks respectively.

comparison, Yangon Institute of Economics requires 383 marks, but other disciplines are generally lower e.g. Chemistry, Physics, History, Burmese

If students do gain access to a Computer University, they can experience further challenges. During a focus group discussion in Mandalay, local stakeholders noted that while there are four Computer Universities in Mandalay Region (two in Mandalay, one in Pyin Oo Lwin, one in Meiktila), the local university system only has enough faculty to adequately staff two. Some professors are forced to split their time between multiple universities, leaving students without support on assignments or projects. Limited human resources, combined with long commutes to universities located outside of the city and a lack of boarding accommodation results in students spending limited time on campus outside of class.

Curriculum in the public Technical University is disconnected from the needs of employers in the sector for several reasons. Stakeholders in Yangon and Mandalay have noted that in technical terms, many aspects of the curriculum are “10 years behind.” A well-funded Myanmar start-up based in Yangon noted difficulties hiring recent graduates with any experience developing code in newer programming languages such as Ruby on Rails or hiring a qualified iOS developer who had practical experience applying their knowledge outside of the classroom.

In some cases, updated technical training is available through private ICT education offering accredited international courses. But high costs deter the majority of potential students. Private education can cost up to \$3,000 USD per year compared to \$150 per year at public universities. To understand the needs of the ICT labour market, collaboration between relevant government ministries and private sector ICT companies will be required. This involves assessing desired qualifications and expanding opportunities for students to practically apply their knowledge in real-world settings such as business case competitions, or software development events such as “hackathons”.

ICTs are supporting the emergence of free educational resources in Myanmar. These resources improve the availability of educational materials and also allow students to pursue coursework outside of the department they are enrolled in (for example, a medical student could still self-study software programming).

Table 14: E-Education Initiatives in Myanmar Utilizing ICT

- [E-Tekkatho](#): The E-Tekkatho project provides access to a free digital library of research and learning resources for students, academics, and librarians in Myanmar. Subjects included range from education, sciences, mathematics, information literacy, and English. E-Tekkatho has set local versions of the library accessible via Wi-Fi hotspots at 12 partner institutions.
- [Khan Academy Burmese Translation Project](#): A volunteer run project working to translate Khan Academy¹¹¹ subject modules and subtitles

¹¹¹ [Khan Academy](#) is a nonprofit, open education organization that produces micro-lecturers made available through annotated YouTube videos.

Health benefits through access to online information

Organizations in Myanmar are beginning to utilize ICTs, particularly mobile technology, to provide health services. Mobile health (mHealth) applications can be used for remote data collection or monitoring of patients, facilitating information exchange between health care providers, tracking diseases and epidemics.¹¹² The potential of mobile includes improved access to information for patients and providers, as well as reduced costs.¹¹³

Ooredoo Myanmar, through a partnership with Population Services International Myanmar and Koe Koe Tech, has launched the “May May” (Mummy) Android app for pregnant women. The application allows users to receive weekly health notifications and locate doctors nearby. The app also includes an optional social component, through Facebook connectivity. Telenor Myanmar has also partnered with Marie Stopes International Myanmar to launch future mHealth services.¹¹⁴ In September 2013, core members of the Ministry of Health’s national team were trained on DHIS2¹¹⁵, a powerful free software program for aggregating and analysing health information.¹¹⁶

Myanmar currently lacks legislated standards around data collection, data privacy, and data protection. As mHealth programs expand, data collection and privacy will be a major concern, particularly with at risk communities where social stigma exists. Examples of these communities may include men who have sex with men (MSM), female sex workers, or other sensitive patient populations such as those with HIV/AIDs. The disclosure of these patients’ health information or a data breach could result in harassment, violence, or discrimination. This could further exacerbate challenges surrounding health outreach to these populations.

While mHealth programs are powerful tools for disseminating health information and connecting patients with healthcare professionals, mHealth applications must be adapted for use by ethnic minorities so they can access health information in their local language. Health care providers have typically relied on local health staff to translate local health information.¹¹⁷ By supporting international technical standards (such as Unicode), health care providers and partner organizations can accelerate technical development and content creation.

Disaster risk reduction

In 2008 – when less than 1% of Myanmar had access to a mobile phone - Cyclone Nargis devastated Myanmar, claiming nearly 140,000 lives and displacing 2.4 million people.

¹¹² See Page 9: United Nations Foundation, Vodafone Foundation “[mHealth for Development: The Opportunity of Mobile Technology for Healthcare in the Developing World](#)” (2011)

¹¹³ See <http://www.gsma.com/connectedliving/wp-content/uploads/2012/03/gsmamckinseymhealthreport.pdf> and https://www.bcgperspectives.com/content/articles/healthcare_payers_providers_global_health_socioeconomic_impact_of_mobile_health/

¹¹⁴ See: <http://www.telenor.com/media/articles/2014/telenor-and-marie-stopes-announce-joint-mhealth-initiative-in-myanmar/>

¹¹⁵ Department of Health Planning, Ministry of Health, “[eHealth in Myanmar](#)” (December 2013)

¹¹⁶ For an overview of DHIS2, please visit <https://www.dhis2.org/overview>

¹¹⁷ Page 59, “[The Republic of the Union of Myanmar : Health Systems Review](#)” (Asia Pacific Observatory on Health Systems and Policies)

There was no early warning system in place in 2008 and the Government of Myanmar was harshly criticized for its response to the disaster. The 2011-2015 ICT Masterplan called for the use of ICTs for pre-emptive disaster response, including the establishment of a national disaster prevention network¹¹⁸. It is unclear what progress has been made against the recommendations called for in the 2011-2015 Master Plan.

As Myanmar's telecommunications infrastructure continues to improve, more people will have reliable mobile phone service, presenting a major opportunity to leverage ICTs for disaster reduction and relief. National early warning systems can be designed to function over SMS messaging, voice calls, and mass messaging of weather alerts or evacuation notices through cellular broadcasting. Cellular broadcasting is used for mass-messaging alerts to users in a network area. Improved Geographic Information Systems (GIS) can also be combined with remote sensing technology to improve disaster relief planning. Remote sensing (monitoring and data gathering) improves the ability to forecast disasters and plan evacuation routes.¹¹⁹

Technology companies are also offering services to assist in disaster relief. Both Facebook and Google offer services that can be used to locate people impacted by a natural disaster. Facebook's tool, "Safety Check", uses location data to identify a user in a natural disaster area. Users can then verify they are safe through the Facebook app, or identify others in the impact area they have verified are safe. Google's tool, "People Finder" focuses on crowdsourcing information on missing people, which is then shared with responders in the area. While not having developed a specific tool, Viber recently offered free Viber Out (calling from Viber to any phone number in the world) calling in and out of Nepal following the devastating earthquake in Kathmandu. However, any such services need to work with emergency specialists to ensure that privacy protections are built into systems – for example there can be unintended consequences for child safety if information about unaccompanied children is posted online and accessible to all, including traffickers.

Environmental Impacts

Disposal of electronic waste/recycling

Throughout Myanmar, it is common practice to burn trash. The incidence of public or private sector rubbish collection and recycling varies across Myanmar, with some neighbourhoods being serviced by informal recycling services collecting bottles, scrap metal and paper. Yangon City Development Committee has announced the privatisation of trash collection services in 2015¹²⁰.

Underdeveloped waste management systems in Myanmar – especially outside of urban areas – are unequipped to deal with electronic waste. Electronic waste (e-waste) can be defined as "all types of electrical and electronic equipment (EEE) and its parts that have

¹¹⁸ See Page 122, MCIT, KOICA, ETRI, The Followup Project of the Myanmar ICT Master Plan," (2011)

¹¹⁹ Committee on ICT, "[Information and Communications Technology-Enabled Disaster Risk Reduction in Asia and the Pacific](#)" UNESCAP (November 2008)

¹²⁰ [Trash Talk](#), Myanmar Times, 15 December 2014

been discarded by the owner as waste without the intention of re-use”.¹²¹ There are some markets, such as Yangon’s 28th Street, trading in electronic waste which is used to refurbish devices or sold for raw materials. In some cases, supplying these markets can be dangerous for so called “garbage hunters” or “pickers” who are involved in the salvage process. In the informal sector, the extraction of valuable materials or components from discarded ICTs is done without proper training or protection, exposing individuals to serious health risks. Mobile phones, tablets, laptops, desktop computers, and other consumer electronics contain a variety of toxic substances ranging from heavy metals (lead, mercury, arsenic, nickel, cadmium) and plastics such as PVC that emit dioxin when burned.¹²² Human exposure to these substances can result in damage to the brain, kidneys, and liver, severe allergic reactions, and cancer.

Handset use is increasing. The MCIT hopes to achieve 80% mobile penetration by 2016. With a population of 51.4 million, this would imply over 40 million mobile phone users in Myanmar. This increase in handsets and other ICT equipment will require the development of formal waste management processes for e-waste, including enhanced regulations and training for individuals participating in the informal sector. Estimates by the United Nations’ STEP Initiative note that Myanmar generated 29 metric kilotonnes of e-waste in 2014, which excludes any waste that has been exported to Myanmar from other countries.¹²³

E-waste can also involve foreign countries shipping their own electronic waste abroad. This trend has been documented in developed countries, where e-waste is often exported to developing countries under the guise of “recycling” due to weaker environmental regulation, cheap labor, and lack of export controls over sending e-waste abroad.¹²⁴ Exported waste can contaminate land and groundwater. Official current data on e-waste exported to Myanmar is not readily available. A 2007 report by the United Nations Environment Programme noted that 90% of the then 20-50 million tonnes generated every year is sent to Bangladesh, China, India, Myanmar, and Pakistan.¹²⁵

Environmental Impact from Towers

Mobile network operators require consistent power to operate their networks, as base transceiver stations (BTS) located at tower sites must be powered on 24 hours a day, 365 days per year. Each tower’s power consumption can vary depending on the number of network operators with BTS located at the site. In India, Bharti Enterprises (owner of Bharti Airtel) notes that “an average mobile tower consumes 96 kilowatts of power daily” and that in areas where electricity is unreliable “diesel consumption can average 24 litres per day”.¹²⁶ For reference, the World Bank notes that Myanmar’s per capita power consumption is 160 kilowatts per year.¹²⁷

¹²¹ See STEP Initiative, “[What is E-Waste?](#)”

¹²² See Page 9, Basel Action Network, “[Exporting Harm : The High Tech Trashing of Asia](#)” (2002)

¹²³ See Overview of E-Waste Information for Myanmar at www.step-initiative.org/Overview_Myanmar.html

¹²⁴ Page 8, *ibid*, also see “[Toxic e-waste dumped in poor nations, says United Nations](#)”, The Guardian (2013)

¹²⁵ See Page 225, United Nations Environment Programme, “[Geo 4: Global Environment Outlook](#)” (2007)

¹²⁶ In India, Bharti Enterprises notes that “an average mobile tower consumes 96 Kilowatts of power daily” See “[How Mobile Towers are Reducing Carbon Footprint](#)” for additional information.

¹²⁷ World Bank, “Project Information Document (Concept Stage): National Electrification Project” (December 2014)

Reliable energy access continues to be a major problem across Myanmar. The World Bank estimates that 70% of Myanmar's population lacks access to on-grid electricity,¹²⁸ while residents of Myanmar's larger cities where grid power is available continue to experience intermittent power outages due to high demand for electricity.¹²⁹ To address the issue of unreliable power, the majority of mobile towers in Myanmar are currently by a diesel generator, or by a combination of diesel generator and hybrid electric battery. While both foreign operators allude to sustainable energy usage on their respective websites, specific data regarding current renewable energy usage from Telenor and Ooredoo is not publically available.¹³⁰ MPT does not provide information online regarding energy policy, but media reports indicate that in 2014 MPT contracted Vihaan Networks Limited to install 31 solar powered base stations at tower locations located along the Yangon-Mandalay highway.¹³¹

Outside of renewable energy usage, there are additional opportunities to utilize mobile tower power for community-based microgrids. A Yangon based Renewable Energy Expert notes that excess power produced by the diesel generator (potentially 2-3 kilowatts per day) could be utilized for community power while the diesel generator is running, providing community members with the opportunity to power lights or charge mobile devices through connected microgrids. This model has been adapted in India, where a microgrid connected to 40 towers has provided electricity to 30,000 households.¹³²

The GSM Association (GSMA) estimates power requirements for Myanmar's mobile networks will exceed 455 GWh by 2017, compared with 200 GWh in 2015.¹³³ Additionally, the GSMA estimates that the annual diesel requirement will reach 116 million litres by 2017, resulting in 310,676 tonnes of annual CO₂ emissions.¹³⁴ In addition to CO₂ emissions, diesel generators cause localised particulate and noise emissions, noted as a significant issue by community members during MCRB's field research.

In addition to concerns about air and noise pollution, community members also noted concerns about the health risks from mobile towers. In March 2015, the Posts and Telecommunications Department (PTD) held a public forum sharing results from field-testing radiation levels of mobile towers across Myanmar. Findings showed that EMF radiation levels of Myanmar mobile networks were far lower than limits regarded as harmful by the World Health Organization. PTD also presented a Burmese language information leaflet for community members to be distributed during the tower construction

¹²⁸ See page 2, *ibid*

¹²⁹ The Irrawaddy "[Rangoon Power Supplier Blames Rise in Blackouts on High Demand](#)" (May 2015)

¹³⁰ On Ooredoo Myanmar's website, Ooredoo notes "[As a socially responsible company we are committed to mitigating the environmental impact of our business activities. Using innovative technologies in rural areas we deploy alternative energies to power our tower sites, using solar energy as an alternative to fuel consumption.](#)" Telenor Myanmar notes it will complete an environmental impact assessment in compliance with Myanmar's Environmental Act, and that "[Telenor is committed to minimising CO2 emissions in Myanmar, such as through the use of solar power, and the ambition will thus be to minimise energy consumption.](#)"

¹³¹ Vihaan Networks Limited, "[Seamless GSM Connectivity for Yangon – Mandalay New Highway](#)" (February 2014)

¹³² The Economist "[Could your mobile phone bring you light, too?](#)" (May 2015)

¹³³ GSMA, "[Seizing the Opportunity: Green Telecoms in Myanmar](#)" (2014)

¹³⁴ *ibid*

process.¹³⁵ While it is not clear who is ultimately responsible for distributing the leaflet, some operators have delegated this responsibility to their community engagement teams. Plans around translating the brochure to ethnic languages are currently unclear.

Geographic Information Systems (GIS)

Geographic Information Systems (GIS) refers to specific applications of ICT for geographic and spatial analysis. In GIS, data for a specific area can be layered allowing a user to analyse the spatial relationships. GIS has numerous applications (environmental, human geography, health, urban planning), but depends on the availability of reliable data. This is a particular challenge for Myanmar.

The Myanmar Information Management Unit (MIMU) is a focal point for GIS activities in Myanmar, and is working to support the development of a National Spatial Data Infrastructure (NSDI). MIMU maintains various data sets on Myanmar (aggregated from INGOs and civil society groups), including data at the township and village level. Additionally, MIMU provides training resources in Myanmar language on open-source GIS software such as QGIS, which can be downloaded for free. Planning is underway for a Myanmar specific One Map project, which would seek to integrate numerous layers of data into one map of Myanmar.

Access to such data can provide powerful tools to help civil society organisations understand impacts that have happened and to project forthcoming changes. For example, EcoDev is currently combining satellite images from NASA's LandSat satellite with GIS to map changes in Myanmar's forests over the past decade. This information can be used to hold the government and private sector to account.

Table 15: Licenses Issued as of May 2015

No	Issued	Expires	Company Name	License Type
1	5-2-14	4-2-29	Ooredoo Myanmar Limited	<i>Nationwide Telecommunications Licence</i>
2	5-2-14	4-2-29	Telenor Myanmar Limited	<i>Nationwide Telecommunications Licence</i>
3	30-1-15	29-1-30	Shwe Than Lwin Media Co Ltd	<i>Network Facilities Service (Individual Licence)</i>
4	30-1-15	29-1-30	Eager Communications Group Co Ltd	<i>Network Facilities Service (Class) License, Application Service Licence</i>
5	30-1-15	29-1-30	Global Technology Co Ltd	<i>Network Facilities Service (Class) Licence</i>
6	3-2-15	2-2-30	Myanmar Fiber Optic Communications Network Co Ltd	<i>Network Facilities Service (Class) Licence</i>
7	3-2-15	2-2-30	Pan Asia Majestic Eagle Co Ltd	<i>Network Facilities Service (Class) Licence</i>
8	3-2-15	2-2-30	Digicel Myanmar Tower	<i>Network Facilities Service (Class) Licence</i>

¹³⁵ Posts and Telecommunications Department, "Media Release: Myanmar Government: No Evident of Health Risk from Myanmar Mobile Network" (March 2015)

Company				
9	3-2-215	2-2-30	Irrawaddy Green Towers Ltd	<i>Network Facilities Service (Class) Licence</i>
10	3-2-15	2-2-30	Apollo Towers Myanmar Ltd	<i>Network Facilities Service (Class) Licence</i>
11	25-2-15	24-2-30	KDDI Summit Global Myanmar Co Ltd	<i>Network Facilities Service (Class) Licence</i>
12	27-2-15	26-2-30	Elite Telecom Public Co Ltd	<i>Network Facilities Service (Individual) Licence</i>
13	27-2-15	26-2-30	Yatanarpon Teleport Public Co Ltd	<i>Network Facilities Service (Individual) Licence</i>
14	16-3-15	15-3-30	Fortune International Limited	<i>Network Facilities Service (Class) Licence</i>
15	23-3-15	22-3-30	Frontiir Company Limited	<i>Network Facilities Service (Individual) Licence, Application Service Licence</i>
16	23-3-15	22-3-30	Myanmar Economic Corporation	<i>Network Facilities Service (Individual) Licence</i>
17	24-3-15	23-3-30	Myanmar Posts and Telecommunications	<i>Nationwide Telecommunications Licence</i>
18	25-3-15	24-3-30	Digital Communication Co Ltd	<i>Network Facilities Service (Class) Licence</i>
19	26-3-15	25-3-30	Myanma Railways	<i>Network Facilities Service (Class) Licence</i>
20	3-4-15	2-4-30	Myanmar World Distribution Trading Co Ltd	<i>Network Service Licence</i>
21	23-4-15	22-4-30	Myanmar Technology Gateway Co Ltd	<i>Application Service Licence</i>
22	23-4-15	22-4-30	Myanmar Network Co Ltd	<i>Network Facilities Service (Individual) Licence</i>
23	27-4-15	26-4-30	Myanmar Padauk Engineering & Construction Co Ltd	<i>Network Facilities Service (Class) Licence</i>
24	30-4-15	29-4-30	VOIP Myanmar Group Co Ltd	<i>Application Service Licence</i>
25	30-4-15	29-4-30	Myanmar Telecommunication & Technology Services Co Ltd	<i>Application Service Licence</i>
26	30-4-15	29-4-30	Horizon Telecom International Co Ltd	<i>Network Facilities Service (Class) Licence</i>

Source: Ministry of Communication and Information Technology (MCIT), "[Licence Issued List](#)" May 2015

Table 16: Principle Companies Operating in the ICT Value Chain

Fiber optic cable	Eager Communications Group Ltd Myanmar Fibre Optic Cable Network Company Ltd. (MFOCN)
Tower companies	Apollo Towers Myanmar Tower Company (MTC)

	Irrawaddy Green Towers Eco-Friendly Towers (EFT) Myanmar Infrastructure Group (MIG) Pan Asia Majestic Eagle Ltd.
Power generation	MCRB requests attendees feedback.
Network equipment providers	Nokia Siemens Networks (NSN) Ericsson Huawei ZTE Wipro
Mobile network operators	Myanmar Posts and Telecommunications and KDDI Summit Global Myanmar Company Limited (MPT/KSM) Telenor Myanmar Ltd. Ooredoo Myanmar Ltd.
Internet service providers	Myanmar Posts and Telecommunications Yatanarpon Teleport Red Link Sky Net Telenor Myanmar Ltd. Ooredoo Myanmar Ltd. Elite Fortune Frontiir
Over the Tops	Facebook Google Viber MySquar Bee Chat WeChat Line

Part 4.1

Freedom of Expression

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Freedom of Expression Issues, and Linked Initiatives in Myanmar

A. National Context

Concerns about Freedom of Expression, Opinion and Information and the ICT Sector

Under international human rights law and standards, everyone has the right to freedom of expression, and the right to seek, receive and impart information. The ICT sector can play an important role in enabling or impeding the right to freedom of expression and access to information. The expansion of the ICT sector has allowed individuals to communicate instantly and at a low cost, and has had a dramatic impact on journalism and the way in which we share and access information and ideas.

The exponential growth of ICT has meant the opportunities to express oneself have likewise grown exponentially, as have the challenges to freedom of expression. ICT companies may be implicated in Government requests to companies to illegitimately restrict content, broadcasts or communications, or to divulge information on users in a way that restricts the freedom of expression or opinion by censorship or other restrictions. There is growing concern from civil society and some companies about this, accompanied by efforts to push back on government requests for censorship. This can have positive implications for protecting the right to freedom of expression but also potential negative business consequences by risking formal or informal sanctions¹³⁶. Companies in parts of the ICT value chain, through the choices they make to allow, block or take down content and their Terms of Service policies, will also play a direct role in facilitating or denying the right to free expression as it exercised by seeking or receiving information over ICT infrastructure and services.¹³⁷

The opening of the ICT market in Myanmar and loosening of restrictions since the 2011 reforms has meant that people have enjoyed opportunities to express themselves, share information and communicate in ways that were previously denied. The choices that companies and the Government make as the ICT sector expands will have significant impacts in future on the right to freedom of expression. Recognising that Myanmar is starting from one of the lowest penetration rates for mobile or internet in the world, the Government has put in place ambitious requirements for the telecommunications

¹³⁶ See for example the Global Network Initiative and the Telcoms Sector Dialogue, and the UN Global Compact [Human Rights and Business Dilemma Forum on Freedom of Expression, Speech and Opinion](#).

¹³⁷ See for example, EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014).

operators to expand coverage. In addition, the World Bank is financing pilot projects to implement localised ICT infrastructure in locations not covered by the commercial operators. Nonetheless, access to information through accessible ICT services will not be a reality for a significant percentage of remote communities in the country for a long time to come.¹³⁸

Freedom of Expression and Opinion in Myanmar

Since the reform process began in Myanmar during 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions, in law and practice, on the media; and in the right to peaceful assembly and the ability to stage peaceful protests.¹³⁹ In August 2012 the government lifted pre-publication censorship, under which the government had previously required print media to be submitted for approval and censorship before publication. The authorities have also permitted the publication of independent daily newspapers and allowed exiled Myanmar media organizations to return to the country. Independent Myanmar media report regularly on criticism of the Government by civil society, protest demonstrations, and the authorities' crackdown on such demonstrations.

However, during 2014 journalists faced increased harassment and intimidation, and one journalist was shot dead when he reportedly tried to escape from military custody.¹⁴⁰ Reporting on corruption or the military remains problematic, as shown by the arrests of Unity journalists in July 2014, some of whom were sentenced to years of hard labour for an article on an alleged military weapons factory.¹⁴¹ While the vast majority of those imprisoned solely for peaceful expression of their views have been released, including journalists, scores remain behind bars and others are at risk of arrest and imprisonment under a number of laws criminalizing freedom of expression.¹⁴² Indeed, in February 2015 the UN High Commissioner for Human Rights noted that 10 journalists were imprisoned during 2014 "under outdated defamation, trespassing and national security laws".¹⁴³

The right to freedom of expression includes the right to seek and receive information. There is currently no law on freedom of information in Myanmar, although civil society is

¹³⁸ The government initially set a goal of 80 percent penetration rate by 2016, but adjusted this goal to 50 percent in a May press conference. See Jeremy Wagstaff, "[Mobile revolution in Myanmar is on the cards, but too slow for many](#)," Reuters, January 20, 2013; Justin Heifetz, "['Beauty contest' for Myanmar's telecoms bid](#)," *Mizzima*, May 14, 2013, The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Tenth Anniversary Joint Declaration: [Ten Key Challenges To Freedom Of Expression In The Next Decade \(2010\)](#), challenge 10 setting out concerns about differences in access to the internet.

¹³⁹ In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar President's Office, "[Order No. 3/2013](#)" (28 January 2013) and "[Order No 2/88](#)".

¹⁴⁰ [Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar](#), UN Information Centre, Yangon, 16 January 2015. The Committee to Protect Journalists (CPJ) has [designated](#) Burma as the 9th most censored country in the world.

¹⁴¹ See for example, The Irrawaddy, "[Burma Resorting to Police State Tactics' in Unity Trial: US Official](#)" (17 July 2014).

¹⁴² "[Stop Using Repressive Law against Peaceful Protesters](#)", Amnesty International, 15 October 2014,

¹⁴³ "[Myanmar 'needs urgently to get back on track'](#) – Zeid", UN Office of the High Commissioner for Human Rights, 25 February 2015

advocating for such legislation.¹⁴⁴ The government is making preparations to join the Open Government Partnership, an international organization which seeks strong commitments from participating governments to promote transparency, fight corruption, harness new technologies and increase participation of civil society to make government more open and accountable.¹⁴⁵ In order to join, the government must meet certain criteria; however, it reportedly scored very low in a 2014 assessment.¹⁴⁶ Moreover a December 2014 Asia Foundation survey found very limited public knowledge about government institutions and functions, and a low level of social trust.¹⁴⁷

The government imposed restrictions on the media in the context of the November 2010 elections, which were widely believed to be neither free nor fair, although such restrictions were eased for the 2012 bye-elections. Freedom of expression is thus especially important in the run-up to the General Elections expected to be held in November 2015. Journalists and civil society will seek to inform the public about elections procedures, campaigning by political parties, and election results. Myanmar media is receiving training on election reporting and civil society working on electoral issues, and political parties have had several meetings with the Union Elections Commission on codes of conduct, voter registration and other election-related issues.¹⁴⁸ Mobile communications have been used in other elections to foment violence. For example, the disputed 2007 Presidential election in Kenya resulted in an outbreak of post-election violence that left over 1,000 people dead and over 600,000 people displaced. Enquiries into the violence acknowledged the role of SMS messages and blogs in exploiting tensions between ethnic communities and inciting violence.¹⁴⁹

Telecommunications and ICT policy and law in Myanmar is still in a nascent state and as a result, the government has not yet addressed other areas that will have impacts on the freedom of expression, opinion and information such as intellectual property, defamation, net neutrality, competition¹⁵⁰ and online anonymity.¹⁵¹ This means that these issues will be managed by individual companies in the ICT sector, according to their own policies. The wide range of actors in the ICT value chain in Myanmar, an increasing number of which are local Myanmar start-ups are likely to have little awareness of relevant discussions, standards and concerns around human rights issues and the ICT sector and their potential impact on the freedom of expression.

¹⁴⁴ [“Rights Group Pushes for Freedom of Information Law”](#), Eleven Media, 26 January 2015,

¹⁴⁵ [“Myanmar aims to join the Open Government Partnership”](#), Mizzima, 12 November 2014;; see also [Open Government Partnership](#)

¹⁴⁶ [“CSOs to give input on Open Government Partnership Bid”](#), Myanmar Times, 22 October 2014,

¹⁴⁷ [“Asia Foundation Releases Results of Nationwide Myanmar Public Opinion Survey”](#), Asia Foundation, 12 December 2014,

¹⁴⁸ New Light of Myanmar, “Elections and responsibility of the media”, 7 March 2015; and Myanmar Times, [“UEC to meet civil society parties”](#), 13 February 2015

¹⁴⁹ Institute of Human Rights and Business, [Corporate Responses to Hate Speech in the 2013 Kenyan Presidential Elections: Case Study: Safaricom](#) (2013). The case study focuses on the efforts of Safaricom, Kenya's largest mobile network operator, which devised its own code of conduct to prevent spreading hate-filled messages through its bulk SMS service.

¹⁵⁰ http://www.vdb-loi.com/wp-content/uploads/2015/03/VDB-Loi_Client-Briefing-Note_Myanmar-Competition-Law-Pitbull-or-Paper-Tiger_8Mar2015.pdf

¹⁵¹ For a longer explanation of many of these issues, see for example: Special Rapporteur on Freedom of Expression, InterAmerican Commission on Human Rights, [Freedom of Expression and Internet](#). (2013).

Access to Information in Myanmar

There are a number of different dimensions to “access to information” — the right to seek and receive information, the availability of services in local languages and the actual availability of service (in terms of intentional shutdowns or restrictions of telecommunications services and the blocking, filtering or takedown of content).

Right to Information/Freedom of Information

The Myanmar Framework for Economic and Social Reforms Policy Priorities for 2012-15 (FESR) contains a clear commitment to both the right to information and the freedom on information, highlighting the need to “move as quickly as possible to define, legalize and enforce the right to information and to improve citizens’ access to information” and to “developing an institutional environment for free flow and access to information that empowers civil society”. The FESR also states that the “GOM intends that citizens are able to participate in the political process and to be well informed about policy decisions, which in turn will improve accountability. GOM has also emphasized cooperation with civil society, as a strong and active civil society is a critical counterpart to a more capable, responsive and accountable state as well as a stronger, more competitive and responsible private sector”.¹⁵² Despite these commitments to “move as quickly as possible”, there is currently no legislation guaranteeing right to information in Myanmar.

The ADB’s Draft E-Government Master Plan emphasizes the need for “inclusive, integrated, and citizen-centric governance”.¹⁵³ Legislation guaranteeing a right to information would enhance this objective. Technology can also support citizen engagement and accelerate data collection through crowd sourcing - where services such as Next Drop in India and Fix My Street in the United Kingdom.¹⁵⁴

Table 17: Article 19’s Nine International Best Practices Principles on the Right to Information Legislation¹⁵⁵

- **Maximum Disclosure:** Freedom of Information Legislation should be guided by the principle of maximum disclosure
- **Obligation to Publish:** Public bodies should be under an obligation to publish key information
- **Promotion of Open Government:** Public bodies must actively promote open government
- **Limited Scope of Obligations:** Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests
- **Processes to Facilitate Access:** Requests for Information should be processed rapidly and fairly and an independent review of any refusals should be available
- **Costs:** Individuals should not be deterred from making requests for information by excessive costs
- **Open Meetings:** Meetings of public bodies should be open to the public

¹⁵² FESR, para. 114.

¹⁵³ ADB/InfoSys, “Draft E-Governance Masterplan” Page 35

¹⁵⁴ , <https://www.fixmystreet.com/>

¹⁵⁵ Article 19, “*The Public’s Right to Know*.” Article 19, an international NGO focused on Article 19 of the UDHR on freedom of expression, has also published “[A Model Freedom of Information Law](#)”

- **Disclosure Takes Precedence:** Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed
- **Protection for Whistle-blowers:** Individuals who release information on wrongdoing – whistleblowers – must be protected

Preserving Myanmar languages online

Given the wide range of languages in Myanmar, there is concern that with the concentration of services in English and the predominant language Burmese, other languages will be increasingly marginalized in the online environment. Stakeholders from minority language groups may already be disadvantaged in relation to the physical accessibility of ICT services in their area, given that many of the ethnic minority groups live in the more remote areas of the country, further from the commercial and political capitals.

Denial of Access to Information – Restrictions, Blocking and Removing Content

In Myanmar, regulations restricting internet usage can be traced back to January 2000 when the government attempted to restrict the creation of webpages, sharing of internet accounts, and posting of political content.¹⁵⁶ Research by the Open Network Initiative (ONI) indicates that the partial nationalization of internet service provider Bagan Cybertech in 2004 was followed by further content censorship online, including the blocking of websites featuring content related to political opposition or human rights (including independent media websites), and the websites of email service providers.¹⁵⁷ Services in Myanmar have also been briefly blocked in attempts to protect state telecommunications revenue, including the blocking of Google Talk and Gmail in 2006 and Skype in 2011.¹⁵⁸

In 2012, ONI conducted a test of blocked URL's on the ISP Yatanarpon Teleport. The results showed a drastic reduction in the amount of content filtered or blocked compared to previous testing in 2005. The categories of content blocked were pornography, content relating to alcohol and drugs, gambling sites, sex education, online dating sites and gay and lesbian content. Internet censorship circumvention tools were also blocked. A much smaller amounts of content in the "Political" category were blocked. Almost all of the websites of opposition political parties, critical political content, and independent news sites previously found to be blocked were found to be accessible during 2012 testing.¹⁵⁹

More recently, as the ICT sector has developed and more international services are available, these services are beginning to track and report on government requests. The social networking site Facebook noted in its Government Requests Report that, in the period July-December 2014, the company "restricted access to 5 pieces of content reported by the President's Office based on sections 295(A), 298, 504, and 505 of the

¹⁵⁶ <http://news.bbc.co.uk/2/hi/asia-pacific/611836.stm>

¹⁵⁷ <https://opennet.net/studies/burma#57>

¹⁵⁸ http://www2.irrawaddy.org/article.php?art_id=5924, <https://www.dvb.no/news/internet-calls-banned-as-junta-loses-out/14801>

¹⁵⁹ <https://opennet.net/blog/2012/10/update-information-controls-burma>

Myanmar Penal Code, which covers "Acts or words which intentionally cause outrage or wound religious feelings" and "Statements or insults which intentionally provokes a breach of the peace or causes public mischief."¹⁶⁰ (See Part 4.2 on Hate Speech).

Network Shutdowns in Myanmar

Access to information also includes the availability of telecommunications services. Clause 77 of the Telecommunications Law grants MCIT the ability to "temporarily suspend a telecommunication service, stop or prohibit any type of communication or use of telecommunication services" when doing so would be "for the benefit of the people".¹⁶¹ The lack of a clear legal framework puts mobile network operators, and Internet Service Providers (ISPs) at substantial risk of being ordered to shutdown networks or services without clear legal justification, impacting their responsibility to respect human rights such as freedom of expression.¹⁶² The Government of Myanmar has an opportunity for leadership in this area by committing to a "no shutdown" policy except in the most urgent of circumstances, for example such as a natural disaster of the scale of Cyclone Nargis that hit the country in 2008 where control of the network may be necessary to organise rescue operations.

Network shutdown is also a continued threat and regularly used method by governments worldwide to stifle free expression by cutting off the means of delivering a message. This is achieved by ordering mobile operators and ISPs to shutdown mobile and Internet communications, either whole networks or services such as SMS and social media. In 2013 and 2014 alone, Freedom House reported network disconnections, that were likely government-ordered, in Ethiopia, Iraq, Kazakhstan, Pakistan, Syria, Sudan, Uzbekistan, Yemen and Zimbabwe.¹⁶³ In January 2015, the government of the Democratic Republic of Congo ordered a near country-wide mobile network shutdown following protests over the President's unconstitutional decision to remain in power for a third term.¹⁶⁴ In May 2015 in Burundi, following similar protests over the President's plan to seek another term in office, the government blocked access to Facebook, Twitter, Viber and Whatsapp. As more and more people become connected and rely on mobile and Internet services in their day-to-day lives, government-ordered network and service disruption become increasingly disruptive and dangerous.

In May 2015, Special Rapporteurs on Freedom of Expression from the UN, the Organisation for Security and Co-operation in Europe (OSCE), the Organisation of American States (OAS) and the African Commission on Human and People's Rights, issued a Joint Declaration on Freedom of Expression and Responses to Conflict Situations. This declaration states that "using communication 'kill switches' (i.e. shutting down entire parts of communications systems)... are measures that can never be justified under human rights law."¹⁶⁵

¹⁶⁰ <https://govtrequests.facebook.com/country/Myanmar/2014-H2/>

¹⁶¹ Telecommunications Law, Clause 77

¹⁶² See: <http://www.ihrb.org/commentary/network-shutdowns-the-drc-ict-companies.html>

¹⁶³ Freedom House, *Freedom on the Net* (2014)

¹⁶⁴ <http://www.ihrb.org/commentary/network-shutdowns-the-drc-ict-companies.html>

¹⁶⁵ <http://www.article19.org/resources.php/resource/37951/en/joint-declaration-on-freedom-of-expression-and-responses-to-conflict-situation>

Table 18: Key Impacts of Government-Ordered Shutdowns or Service Disruptions

Key impacts on human rights, the economy and national and personal security during network and service disruption are:

- Restrictions on freedom of expression and access to information that may not be legal, necessary or proportionate.
- Injured people are unable to call emergency services, and emergency services are unable to communicate and locate people.
- People are unable to assure friends and relatives they are safe, causing panic.
- People are unable to call for help to be rescued from areas where protests are happening.
- Authorities are unable to disseminate important information to move people to safety, or to calm a concerned population.
- Human rights groups are unable to monitor situations effectively.
- Small businesses are unable to operate and livelihoods are affected. For example, businesses are unable to access data held in the cloud.
- Mobile banking transactions, relied on by millions of people, cannot take place.
- Transmission of health information on mobile phones also cannot take place.
- Students cannot access educational material.
- Doctors/ health workers are unable to access research or communicate in real time with each other.
- Other popular services carried out via mobile communications such as voting and birth registration are disrupted.
- Other services dependent on radio network are disrupted e.g. cashpoints (ATM), public transport information.
- In national security emergencies, functioning communications are essential for an effective lawful interception system to help law enforcement locate and track people planning terrorist activity, subject to the process of law, court authorisation and sufficient oversight.
- Crimes cannot be reported to police via mobile phone.
- Hostages are unable to communicate with police.

Table 19: Key Points for legislation on Network Shutdown to demonstrate a shutdown is necessary and proportionate

- A shutdown must only be invoked if there is a real and imminent threat to national security.
- A shutdown request must be approved or authorised by the highest level of the government.
- There must be a clear request process, with limited people allowed to make the request to operators, and a designated person in the operator to receive the request.
- The shutdown request to the network operators must be in writing.
- The request must specify the duration and geographical reach of the shutdown, and demonstrating direct material necessity.
- Shutdowns should be limited in duration and geographical area.

- Where possible, the public must be informed of the shutdown, the duration, geography and services affected.
- Each shutdown must be logged/recorded, the public informed after the fact, and a list published annually.
- The public must have access to emergency services.
- The legislation must be subject to review, including a review of each shutdown.¹⁶⁶

Blocking of services during protests also impacts freedom of association, and often precedes further human rights violations. Myanmar experienced a major Internet disconnection during the Saffron Revolution. In August 2007, protests grew throughout the country in a response to deteriorating economic conditions and political discontent. ICTs facilitated the flow of information from citizen journalists to media outlets around the world.¹⁶⁷ In an attempt to block the flow of information, particularly regarding police brutality and the killing of protesters, outside of Myanmar, the government responded by shutting down Internet and mobile phone service. At the time Internet services provided by both MPT and Bagan Cybertech went down from September 29 to October 4, 2007. This was followed by a partial shutdown from October 4 - 12th during which access was restricted to late night hours between 22:00 and 04:00.¹⁶⁸

More recently, Myanmar's Internet access went down for 1 hour and 19 minutes on 5 August 2013. Given the outage's proximity to the anniversary of the 1988 uprising, there was initial speculation that the outage was intentional. However the outage was officially attributed to a damaged fibre optic cable near the SEA-ME-WE 3 submarine cable landing station in Pyapon.¹⁶⁹

Anonymity Online

The issue of anonymity when communicating on the Internet is a contentious area that has provoked a split in expert opinion. One view holds that people should be responsible for what they express, speak, or post on the Internet, and anonymous libel has to be discouraged. Anonymity is abused online in order to bully or 'troll' others, target and exploit children, and permit state officials to assume identities to participating on social networking websites to spy on minority groups such as gay rights activists.

The other view holds that in many countries those who express themselves openly face severe consequences if they are found out, and they have legitimate reasons to conceal their identity. Journalists, human rights defenders, trade union leaders, opposition politicians, dissidents, whistleblowers, and other activists fall in this category. Using pseudonym to protect identity is a practice that pre-dates the Internet. Journalists have long used assumed names when exposing injustice or speaking out against authoritarian regimes, a practice deemed necessary in order to protect freedom of expression. Human

¹⁶⁶ Forthcoming, IHRB, Case Study on Network Shutdowns in Pakistan (expected June 2015).

¹⁶⁷ For further analysis see:

http://cyber.law.harvard.edu/publications/2008/Role_of_the_Internet_in_Burmas_Saffron_Revolution

¹⁶⁸ <https://opennet.net/research/bulletins/013>

¹⁶⁹ <http://www.irrawaddy.org/investment/burmas-internet-delays-continue-ahead-of-88-uprising-anniversary.html>

rights law does not require people to reveal their identities, and drawing from that, it is not necessary for Internet users to communicate only using their real name. Requiring people to register and provide their personal information to authorities can have significant consequences in certain societies and it can create a 'chilling effect' on freedom of expression.

The MCIT had issued draft regulations on the registration of SIM cards, which could have had the same effect through requiring SIM card owners to register personal information. No final regulations have been issued. (See Part 4.4 on Privacy).

International Human Rights Law on Freedom of Expression

The Universal Declaration on Human Rights (UDHR) (Art. 19) and the International Covenant on Civil and Political Rights (ICCPR) (Art. 19) are the main international instruments that states commit to regarding the protection of freedom of expression. Freedom of speech and expression carries with it special duties and responsibilities and is not absolute.¹⁷⁰

Legitimate Restrictions on the Right to Freedom of Expression, Opinion and Information

Article 19(3) of the ICCPR provides that freedom of expression may be subject to certain restrictions which are: "a) For respect of the rights or reputation of others; or b) For the protection of national security, or of public order (*ordre public*) or of public health or morals." Any restrictions must pass a three-part, cumulative test:

- i. be provided for in national law which is clear and accessible to everyone (principle of legal certainty, predictability and transparency);
- ii. have a legitimate aim or purpose, i.e. one of the purposes set out in Article 19.3 (principle of legitimacy); and
- iii. be necessary and proportionate to the legitimate aim pursued, meaning that the restrictions must be the least restrictive means required and justifiable (principles of necessity and proportionality).

The Myanmar Legal Framework and its Current Application

2008 Constitution

The right of citizens "to express and publish freely their convictions and opinions" (Article 354 (a)) is guaranteed by the 2008 Constitution, but with significant restrictions. Article 354 guarantees the rights to freedom of expression, peaceful assembly, and association; however exercising such rights must not contravene "community peace and tranquillity". These are very broadly and vaguely worded exceptions that would (and have) been used to justifying infringements to the guaranteed right that go well beyond the high bar imposed under international human rights law to justify restrictions on the freedom of expression.¹⁷¹ Moreover, the right to freedom of expression is only guaranteed for Myanmar citizens.

¹⁷⁰ See UN Human Rights Committee, [General Comment 34](#): Article 19: Freedoms of opinion and expression.

¹⁷¹ Legal Background paper commissioned for IHRB.

Laws Enacted Before 2011 and Still In Force

Many laws which greatly restrict freedom of expression and peaceful assembly have not been repealed and the authorities continue to use them to arrest and imprison people for their peaceful activities. These include, but are not limited to, the 1908 Unlawful Associations Law; the 1950 Emergency Provisions Act; the 1923 Official Secrets Act, and various articles of the Penal Code, especially Article 505(b).¹⁷²

Before the reform process began, the vaguely worded provisions of the 1950 Emergency Provisions Act, particularly Article 5, were the provisions most frequently used to sentence people to long terms of imprisonment solely for the peaceful expression of their views. Article 5e provides for a maximum sentence of seven years for spreading “false news”, which is not sufficiently defined by the law, as required under international human rights standards to provide sufficient certainty. Article 5j provides for the same sentence for disrupting “the morality or behaviour” or “the security or the reconstruction of the stability of the union”, also not sufficiently defined. International human rights standards require that all criminal laws are precise, so that people understand what conduct is prohibited, and can govern their conduct accordingly. Use of vague laws is open to abuse through criminalizing conduct which is not understood as criminal before the event. Although the 1950 Emergency Provisions is currently used less frequently, it remains in force.

The 1908 Unlawful Associations Act has also often been used in the past to imprison peaceful critics of the government. Article 15 (2) (b) defines an organization to be unlawful “which has been declared unlawful by the President...”, based solely on the head of state’s opinion rather than on reason or evidence. Under Article 17 (1), not only can a member of an illegal organization be imprisoned, but anyone in any way associated with an unlawful organization is also at risk of imprisonment. Article 17 (2) provides for imprisonment of leaders of illegal organizations. Article 15 (2) (a) defines illegal organizations as those involved in violence, often ethnic minority armed opposition groups. While states need to protect its citizens from violence,¹⁷³ there is concern that this provision has been used against ethnic minority civilians not involved in violence. Although the Unlawful Associations Law is now less frequently used, ethnic minority civilians in armed conflict areas have recently been sentenced under its provisions.¹⁷⁴

The 1923 Official Secrets Act has been used to sentence peaceful critics of the government, sometimes along with other laws criminalizing the rights to freedom of expression and association. Article 3 provides for three to 14 years’ imprisonment “(1) If any person for any purpose prejudicial to the safety or interests of the State” obtains or communicates information which might be useful to an enemy. However “the interests of the state” is too broad and allows for the imprisonment of people with information which is not in fact a threat to the security of the State. Other provisions of the law (Section 5) provide for two years’ imprisonment for anyone who receives, possesses or passes on official information deemed to be secret.¹⁷⁵ In July 2014 five journalists from the weekly

¹⁷² For a discussion of these and other laws, see Amnesty International, “[Justice on Trial](#)” (July 2003).

¹⁷³ [Myanmar: Justice on Trial](#), pp 28 – 33, Amnesty International, July 2003,

¹⁷⁴ See for example “[‘I thought they would kill me’](#)”, [Ending Wartime Torture in Northern Myanmar](#)”, pp 40-41 and 42-43, Fortify Rights, June 2014,.

¹⁷⁵ “[Myanmar: Justice on Trial](#)”, pp 28 – 33, Amnesty International, July 2003,

journal Unity were sentenced to 10 years, later reduced to seven years, under the provisions of the Official Secrets Act, for a story on an alleged suspected military chemical weapons plant on seized land.¹⁷⁶

Chapter XXI of the 1861 Penal Code, which derives from the British colonial era, provides for punishments of up to two years' imprisonment and/or a fine for defamation. Chapter VII(B), 130(B) provides for punishments for libel against foreign powers.¹⁷⁷ In December 2013 a journalist from Eleven Media was sentenced to three months' imprisonment on charges of trespass, abusive language, and defamation for reporting on a corruption case involving a local lawyer in Loikaw, Kayah State.¹⁷⁸ And in March 2015 two journalists from the Myanmar Post were sentenced to two month's imprisonment each on charges of defamation against a military MP in the Mon State Parliament.¹⁷⁹

Article 505b of the Penal Code is currently one of the most commonly used provisions to arrest and sentence people, often along with other laws, for peacefully expressing their views. In October 2014 two activists from the community-based Movement for Democracy Current Force were sentenced to two years' imprisonment under Article 505b in reference to a letter written about the need for an election of an interim government. Section 505(b) provides for imprisonment for anyone making, publishing or circulating information which may cause public fear or alarm, and which may incite people to commit offences "against the State or against the public tranquillity".¹⁸⁰

As noted in Part 4.1– the Electronic Transactions Law (2004) (the ETL) creates a range of offences for online content that are much broader than in the criminal code.¹⁸¹ In addition, the law does not provide safeguards for the right to freedom of expression. Under Article 33 of the ETL, it is a criminal offence to do any act or to receive, send or distribute any information detrimental to a wide range of broadly defined interests: the security of the state, the prevalence of law and order or community peace and tranquillity, national solidarity, the national economy or national culture that go far beyond permitted restrictions to the freedom of expression under international law. These same provisions are replicated in the Computer Sciences Development Law.

Laws Enacted Since the 2011 Reform Process

The Media Law and the Printing and Publishing Law, both of which apply to print and internet publications, were passed in March 2014. The vague provisions of the 2014 Printing and Publishing Law and broad powers of a government Registrar to grant or revoke publishing licenses, led to fears of press self-censorship.¹⁸² However the 2014 law still represents a step forward compared to the repealed 1962 Printers and Publishers Law, which provided for wide censorship powers and imprisonment for operating without registration. The 2014 Law's Article 8 on content restrictions is broadly worded; for example, although the restriction on "public order" is a recognized legitimate objective

¹⁷⁶ [Human Rights Watch World Report 2015](#), Burma entry,.

¹⁷⁷ [Penal Code 1861](#).

¹⁷⁸ ["Burma: Repression Marks Press Freedom Day"](#), Human Rights Watch, 3 May 2014,

¹⁷⁹ ["Journalists Handed 2-Month Prison Sentences on Defamation Charge"](#), The Irrawaddy, 18 March 2015, I

¹⁸⁰ [Amnesty International "Activist organization targeted again"](#), Urgent Action, 6 November 2014,

¹⁸¹ Article 19, [Background Paper on Freedom of Expression in Myanmar](#), 2014, p. 47

¹⁸² The Irrawaddy, ["Burma Clampdown Gathers Pace as Legislation Passed"](#) (17 March 2014).

under international human rights law to justify restrictions on freedom of expression, the law should be much more specific as to what types of statements are being prohibited.¹⁸³ Articles 3 and 4 of the 2014 Media Law guarantee respectively “freedom from censorship” and freedom to criticize the government, but both must comply with the constitution (Article 3(a)), which itself has significant restrictions on freedom of expression. The law grants a media council, which is not independent from the Government, unrestricted control to regulate broadcast, print and internet-based media, including on ethics.¹⁸⁴

B. Field Research Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Freedom of Expression
Human Rights Implicated: Freedom of expression and opinion
Field Assessment Findings <ul style="list-style-type: none"> ▪ Most interviewees felt monks were in positions of particular prominence and power regarding their influence on public opinion and the messages they convey. They felt monks’ sermons were generally abided by without question by their followers. ▪ Many interviewees wanted to see educational campaigns and programmes introduced by the Government, on TV/media, and in Myanmar schools on the impacts of dangerous speech and the need for respect and tolerance. ▪ Many interviewees did not report online speech and content they found offensive to site administrators because they did not know this was possible and because internet connection was too slow. ▪ BlueCoat network equipment¹⁸⁵ (used for filtering) was observed in one ISP’s data centre. While this equipment was noted as legacy hardware pre-2011, it was unclear who had access to the equipment in the data centre. Any formal process around managing requests to block or filter content was unavailable, as was a mechanism to communicate with customers regarding impacts of such requests on them.

Freedom of Opinion
Human Rights Implicated: Freedom of expression and opinion
Field Assessment Findings <ul style="list-style-type: none"> ▪ Some clear tensions were observed by researchers between traditional Myanmar culture and the introduction of more modern or global cultural

¹⁸³ “[Myanmar: Printing and Publishing Law, Legal Analysis](#)”, November 2014, Article 19,

¹⁸⁴ “[Myanmar: News Media Law, Legal Analysis](#)” Article 19, July 2014, and unofficial [translation of Media Law](#).

¹⁸⁵ <https://citizenlab.org/2011/11/behind-blue-coat-an-update-from-burma/>

trends via ICTs.

- As in many other parts of the world, **parents expressed concern about children** becoming “addicted” to computer games either offline or online. In some cases this has led to children dropping out of school due lack of interest in education.
- **Many interviewees felt that women were more vulnerable to impacts** on their “dignities” from others’ behaviours online and needed to be protected or limited from such exposure.
- Researchers also received **many reports of believing all information published online was true** and not yet understanding how social media and other platforms worked.

Freedom of Information

Human Rights Implicated: Right to information

Field Assessment Findings

- Given the extremely low (though rapidly rising) internet penetration rate, access to information has been a key challenge in Myanmar for decades. **Many interviewees wanted the Myanmar Government and media to use ICTs to communicate to Myanmar people much more widely, particularly in rural regions**, and felt the introduction of the internet and mobile technology would dramatically improve their ability to access information.
- As noted in Part 4.8 on Groups at Risk, researchers heard **repeated appeals for ICTs to be used to improve educational curricula and facilities within schools and universities**, which are currently outdated and inaccessible to many in Myanmar, particularly rural populations.

See also the Field Research Findings in Part 4.4 on Hate Speech.

Myanmar Good Practice Examples:

- One of the international licensees is committed to developing 200 community information centres. The aim of these is to foster user adoption of mobile services and digital literacy across Myanmar, to connect to the outside world for rural communities that traditionally have not had access to connectivity or the masses of information available online and boost user adoption of mobile connectivity and Internet in rural areas and improve digital literacy through nationwide initiatives for schoolchildren¹⁸⁶

C. Key Human Rights Implications for the ICT Sector

- **Understanding conflicts between national and international law:** Myanmar’s laws on freedom of expression are not aligned with international law standards on freedom of expression. In addition, some clauses in the Telecommunications Law may allow

¹⁸⁶ <https://www.telenor.com.mm/pressReleasedetail/Telenor-opens-doors-of-Community-Information-Centre/3>

censorship and surveillance.¹⁸⁷ While legal reforms are on-going in Myanmar, to date, the reforms have not addressed some of the long-running concerns on restrictions on the right to freedom of expression. The World Bank has committed to carrying out a due diligence review of Myanmar's telecommunications laws as part of its Telecommunications Sector Reform project, but to date, none of the reviews have been made public.¹⁸⁸ Recent government practice has indicated that the government at various levels, from local to national, continues to apply the laws and at times draconian practices against journalists, protestors, human rights defenders exercising their right to freedom of expression. These actions risk implicating companies in contributing to these violations when companies are requested to comply with government requests to take down content, block access, or turn over information.

- **Publicly committing to respecting freedom of expression:** Given these concerns, and the gaps in other areas of law relevant to the sector, companies operating in the sector will need to develop their own policies and procedures to ensure that they are meeting their responsibility to respect human rights. In line with the UN Guiding Principles on Business and Human Rights, companies should at least make their policy commitment to respecting human rights publicly available.¹⁸⁹ For some parts of the ICT value chain, the policy could provide more specific commitments on issues such as government requests for data, censorship requests, illegal surveillance, or network shutdowns, including procedures for how to narrow requests that may be disproportionate or challenge requests not supported by law.¹⁹⁰ Further internal procedures setting out how the company will deal with government requests would be an appropriate precautionary measure to put in place in Myanmar.¹⁹¹
- **Taking positions on key concerns:** Speaking up in public as an individual company to respond to concerns about censorship or imprisonment in violation of the freedom of expression may be particularly sensitive in Myanmar where the practice of repression has a long history and is to a more limited extent continuing. But companies might seek opportunities through other means, such as industry associations, embassies, in collaboration with civil society, to express their concerns and convey the impact that the lack of rule of law has on willingness to invest in the country and the risks posed to companies.¹⁹²
- **Collaborating and learning from other ICT companies:** Companies operating in the sector can look to multistakeholder initiatives such as the Global Network Initiative (GNI) and other sources of guidance¹⁹³ for principles and guidance on dealing with

¹⁸⁷ See; Freedom House, [Freedom on the Net 2014 Report, Myanmar](#): Clause 68 punishes “communication, reception, sending, distribution or sharing of incorrect information with dishonest intention” with imprisonment for up to a year, an unspecified fine, or both. Given Myanmar’s history of violating user rights, these broadly worded legal provisions are a matter of concern for internet freedom.

¹⁸⁸ M. Igoe, Is Myanmar ready for a telecommunications revolution? (6 May 2014).

¹⁸⁹ Numerous companies operating in the ICT sector have already developed policy commitments on human rights and made those publicly available. See for example the ICT companies among this list: <http://business-humanrights.org/en/company-policy-statements-on-human-rights>

¹⁹⁰ See: Human Rights Watch, [Reforming Telecommunications in Burma: Human Rights and Responsible Investment in Mobile and Internet](#), (2013).

¹⁹¹ See: European Commission, [ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#) (2013), pp. 44-46, 59-60.

¹⁹² This is done in other markets for example, the Global Network Initiative has been particularly active in [commenting](#) on the need for reform by a range of governments to bring their laws and practices into line with international human rights standards.

¹⁹³ The [GNI Principles on freedom of expression](#) state that: “Participating companies will respect and protect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions

challenges of being asked to comply with requests that violate human rights. They can also look to the example set by the two international telecommunications operators in Myanmar that have publicly committed to pushing back on government requests for wiretapping. These commitments set important precedents for other companies and important signals to the government on how requests that may violate the right to freedom of expression will be dealt with.

- **Building business partners' capacities:** Many of the companies operating in the ICT value chain in Myanmar will be small companies, and many small local companies may have had little exposure to discussions or concerns around freedom of expression and other human rights issues and their role and responsibilities. There is a clear need for further awareness raising and training that could be taken on by business partners, donors, and civil society. Given this, ICT companies may find it quite appropriate to put in place contractual requirements and follow up to ensure that their business partners are aligned with their human rights approach.
- **Preventing and mitigating impacts around the 2015 national elections:** Given the tensions surrounding the upcoming elections and the uncertain state of the country's peace negotiations to end long-running armed conflict, commentators are concerned about the potential for violence in connection with the election. ICT services have played a key role in the organisation of democratic movements,¹⁹⁴ but have also been implicated in being used to spread violence. Governments have responded by shutting down all or parts of networks and imposing other restrictions that can have widespread impacts on users. (See Part 4.3 on Lawful Interception and Surveillance). Mobile operators and social media outlets should consider experiences from other countries,¹⁹⁵ consult relevant experts and other stakeholders, and devise appropriate responses to a range of scenarios to ensure that they are prepared to deal with unfolding scenarios in a manner that best protects users.
- **Preserving Myanmar languages online:** Companies may want to think creatively or collaboratively with other stakeholders (such as civil society or donors) about opportunities to facilitate access and use of minority languages.
- **Understanding what is being posted on company services:** The wide range of languages in Myanmar has implications for those companies hosting content to be able to understand and decide upon whether content is consistent with the right to freedom of expression and in line with the company's terms of service. See also Part 4.2 on Hate Speech.
- **Anonymity policies:** Companies should think through the implications of including 'real names' policies, and whether these are effective in the context of Myanmar (see Part 4.2 on Hate Speech). Companies should err on the side of allowing the use of pseudonyms particularly to individuals or groups who have a well-founded fear of

on freedom of expression, including restrictions on the information available to users and the opportunities for users to create and communicate ideas and information, regardless of frontiers or media of communication. Participating companies will respect and protect the freedom of expression rights of their users when confronted with government demands, laws and regulations to suppress freedom of expression, remove content or otherwise limit access to information and ideas in a manner inconsistent with internationally recognized laws and standards." See also, European Commission, [ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#) (2013).

¹⁹⁴ See, [Ferugson \(USA 2014\)](#), ["Walk to Work" \(Uganda 2011\)](#), [The Arab Spring \(Tunisia, Egypt, Libya 2011\)](#)

¹⁹⁵ Institute of Human Rights and Business, [Corporate Responses to Hate Speech in the 2013 Kenyan Presidential Elections: Case Study: Safaricom](#) (2013). The case study focuses on the efforts of Safaricom, Kenya's largest mobile network operator, which devised its own code of conduct to prevent spreading hate-filled messages through its bulk SMS service during the Kenya elections.

possible prosecution. At the same time, companies may be required by law in some instances to reveal the identity of the user to the state (such as during an investigation into terrorism charges). In such a case, where appropriate, companies should inform the user that his or her identity has been compromised.

- **Transparency around ICT Operations and their Terms:** While the process to license the telecommunications operators was more transparent than any other previous bidding process in Myanmar and more transparent than the licensing process in other sectors like Oil & Gas, the Government did not make the terms of the licenses public. Few governments do provide transparency around the terms of telecommunications operating licenses, but the pressure for contract transparency and information on tariffs, fees and proceeds around public service contracts will continue to grow. The International Finance Corporation (World Bank Group) “encourages” the disclosure of information around telecommunications projects it finances.¹⁹⁶
- **Transparency reporting around government requests:** Transparency enables governments and companies to demonstrate whether they are upholding key human rights principles and for other stakeholders to hold governments and companies accountable to such principles.¹⁹⁷ A key development in company transparency in the ICT Sector has been the annual or bi-annual release by some companies of information relating to the government requests companies receive for content takedown, or requests for user data.¹⁹⁸ Publishing information on government requests and how the company responded increases awareness among users of the scale and scope of government requests, and increases transparency about corporate responses. The first transparency report was published by Google in 2010. To date, there is not a standardised method of publishing the information, and therefore each company transparency report differs slightly, making comparison difficult, but as more companies publish reports, there has been an effort to move beyond publishing mere numbers and add context on the laws governing censorship and surveillance, including areas where companies are prevented by law from disclosing information. Providing this additional context highlights the responsibilities of the government and areas where disclosure and transparency can be improved.
- **US State Department Requirements for US Companies:** The US State Department requires all companies investing US\$500,000 or more in Myanmar to submit an annual report on its activities there, covering key areas including land, labour, environmental and other human rights. In August 2014 TPG Holdings submitted such a report. TPG Holdings, through its jointly owned company Apollo Towers, is engaged in the construction and operation of telecommunications towers in Myanmar.¹⁹⁹

¹⁹⁶ IFC Policy on Environmental and Social Sustainability (2012), para 53: “When IFC invests in projects involving the final delivery of essential services, such as the retail distribution of water, electricity, piped gas, and telecommunications, to the general public under monopoly conditions, IFC encourages the public disclosure of information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the form and extent of any ongoing government support. If IFC is financing the privatization of such distribution services, IFC also encourages the public disclosure of concession fees or privatization proceeds. Such disclosures may be made by the responsible government entity (such as the relevant regulatory authority) or by the client.”

¹⁹⁷ Freedom Online Coalition, Working Group 3: Privacy and Transparency. [Draft Report Executive Summary](#) (May 2015)

¹⁹⁸ See, [Access Transparency Reporting Index](#), a record of transparency reports published by internet companies and telecommunications companies.

¹⁹⁹ http://photos.state.gov/libraries/burma/895/pdf/TPG_Holdings_Public_Report_%20on_Responsible_Investment_in_Myanmar.pdf

- See also Part 4.3 on Surveillance and Lawful Interception.

D. Relevant International Standards and Guidance on Freedom of Expression Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- Universal Declaration of Human Rights (Article 19)
- International Covenant on Civil and Political Rights (Article 19)
- Freedom Online Coalition, [Tallinn Agenda for Freedom Online](#) (2014)

Relevant Guidance:

[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#), A/HRC/17/27 27th May 2011
UN Human Rights Council, [The Promotion, Protection and Enjoyment of Human Rights on the Internet](#), A/HRC/20/L.13 29th June 2012

Myanmar Initiatives on Freedom of Expression Linked to the ICT Sector:

- [to be completed]

Part 4.2

Hate Speech

In this section:

- A. National Context
- B. Hate Speech Under International Human Rights Law
- C. Field Research Findings
- D. Key Human Rights Implications for the ICT Sector
- E. Relevant International Standards and Guidance on Hate Speech Issues, and Linked Initiatives in Myanmar

A. National Context

The question of how to address certain forms of speech considered harmful has been the source of long-running global discussions. In particular, the rapid development of ICT platforms, such as the Internet and social media, has enabled wider and instantaneous dissemination of a wide range of content focused on national/xenophobic, religious and racist hatred that incites discrimination, hostility and violence or is even propaganda for war. While international human rights law and many national constitutions around the world provide for a presumption of freedom of expression, there are some legitimate, permitted restrictions of freedom of expression under international human rights law and standards (See Part 4.1 on Freedom of Expression). Some countries prioritise freedom of speech over most countervailing interests, even when the speech is filled with hatred. Under international human rights law and in many countries, hate-filled speech forfeits some or all of its free-speech protection in favour of protection for the dignity or equality of those who are attacked. Hate speech is not protected and should be prohibited and is frequently punishable under national criminal law.

In Myanmar, freedom of expression is a sensitive and complex issue. Long-running inter-communal tensions appear to be amplified by new found expression on the internet, which is finding a growing audience online. This issue has become particularly evident in attacks against Muslims, women and LGBT people on popular social media websites.²⁰⁰ The increasing anti-Muslim rhetoric has been particularly prevalent since the outbreak of inter-communal violence between Muslims and Buddhists in Rakhine State during 2012.²⁰¹ While there are not many user-generated platforms currently operating in Myanmar, there are currently over three million users of social media, with the market likely to dramatically expand.

²⁰⁰ Inter-communal violence between Buddhists and the Muslim Rohingya minority broke out in Rakhine State during 2012, killing 250 people and displacing almost 140,000 people, most of them Muslims. <http://www.aljazeera.com/indepth/features/2014/06/facebook-myanmar-rohingya-amplifying-hate-speech-2014612112834290144.html>

The well-known activist Nay Phone Latt, himself imprisoned under the previous government and now leader of the free speech organisation Myanmar ICT Development Organization (MIDO)²⁰² and the anti-“hate speech” campaign Panzagar,²⁰³ has expressed concern that “hate speech” (see below) is damaging new-found freedom of expression in Myanmar. He is concerned that the government will try to tackle it by creating new laws which may result in further restrictions on freedom of expression. In an April 2014 interview with Myanmar magazine *Irrawaddy* Nay Phone Latt said:

“I don’t want to ask the government to control hate speech because if they control the hate speech, they will want to control all [opinions]. So it can harm freedom of expression. I prefer to monitor hate speech and report about that than limiting it through law.”²⁰⁴

The position highlights the difficulties faced in finding the right balance between on the one hand, protecting those who are subject to hate filled speech while not encouraging governments to use the excuse to limit other types of speech that go beyond what would be considered harmful under international human rights law, extending restrictions to other types of speech a government might find offensive, such as criticism. The risk in opening the door to such restrictions may be particularly high in countries like Myanmar with a history of suppression of free speech and where civil society is justifiably concerned about giving up new and hard fought freedoms of expression.

What is said online has the potential to spill over into real world violence. In July 2014, riots broke out in Mandalay following unconfirmed reports circulated online that a Buddhist woman was raped by Muslims.²⁰⁵ Such reports proved to be false, but one Muslim and one Buddhist were killed during the violence. While President Thein Sein has publicly condemned the violence, and committed to take action against those who allegedly perpetrated it,²⁰⁶ the authorities have not done enough to prevent and quash inter-communal violence and violence against Muslims. After the 2012 violence in Rakhine State international human rights groups reported that the security forces stood by and did not adequately protect Muslims against Buddhist violence, nor did they sufficiently condemn such actions.²⁰⁷ While some parts of Myanmar civil society are taking action to promote interfaith harmony,²⁰⁸ they have received anonymous threats via SMS on their mobile phones.

The Government of Myanmar has yet to signal what action, if any, it will take to tackle hate speech. As an important first step, what is needed is a clear and unequivocal signal from the Government and the political opposition condemning incitement to violence and

²⁰² <http://myanmarido.org/en>

²⁰³ <https://www.facebook.com/supportflowerspeech>

²⁰⁴ San Yamin Aung, The Irrawaddy *Hate Speech Pours Poison Into The Heart* (9th April 2014)

²⁰⁵ Thomas Fuller, New York Times, *Mandalay’s Chinese Muslims Chilled By Riots* (12th July 2014)

²⁰⁶ The Republic of the Union of Myanmar, President Office, *President U Thein Sein Appreciates Communal Unity in Mandalay*, (7 July 2014)

²⁰⁷ See for example, Human Rights Watch, *All You Can Do Is Pray* (April 2013) p 10 and 15; and p 83 for government response to the violence.

²⁰⁸ Samantha Michaels, The Irrawaddy, *In Burma, Mixed Reactions to Suu Kyi’s BBC Statements* (25 October 2013)

other forms of hate speech and the violence itself. Both sides have been equivocal at best in statements about the violence. Using public addresses, the official press and other avenues to signal the unacceptability of speech which incites violence, hostility, or discrimination by anyone in the country but in particular by powerful or influential figures can already be an important step in limiting such speech with the tools available. And rather than making sweeping restrictions on content or seeking to block whole services that carry such messages, as a first step, instead the Government should pro-actively use the power of ICT services to counter rumours with fact and promote messages of non-violence. These signalling actions have not yet been taken and should be a pre-cursor to be tested in the country before any further, more permanent steps to restrict freedom of expression are considered.

The Government should also proactively be considering actions to reduce hate speech around the elections, a time when it can already anticipate that tensions and the possibility of hate speech will be on the rise. There have also been combined efforts in other countries by governments, business and civil society to reduce the spread of inciteful speech during elections that might provide important lessons learned.²⁰⁹

B. Hate Speech under International Human Rights Law

Defining “Hate Speech”

“Hate speech” [*a-moun sagar*] has become a popular phrase in Myanmar (and globally), but it is not a term recognized in international human rights law. *The International Covenant on Civil and Political Rights* (ICCPR)²¹⁰ sets certain restrictions on the right to freedom of expression but does not use the term “hate speech” (see the discussion below on Articles 19 and 20 of the ICCPR). “Hate speech” has become a vague term that often encompasses both expression that can be restricted under international law, and legitimate, even if offensive, expression that cannot. It is not always easy to distinguish where freedom of expression ends and legitimate restriction on expression begins. What is considered hate speech in one country may not be considered hate speech in another; it may be region or culture-specific, rooted in a country’s history. Hate speech often reflects deep-rooted societal tensions and attitudes, but the lack of an internationally agreed definition of “hate speech” has made it difficult to clarify how such acts should be dealt with in the real world, including in the digital realm. The term “hate speech” is not defined in Myanmar’s legal framework.

209 The disputed 2007 Presidential election in Kenya resulted in an outbreak of post-election violence that left over 1,000 people dead and over 600,000 people displaced. Inquiries into the violence acknowledged the role of SMS messages and blogs in exploiting tensions between ethnic communities and inciting violence. In the run up to the 2013 elections, concerns of another outbreak of violence and fears over the potential of SMS to simultaneously send messages that incite violence led the major telecommunications operator and others to agree on protocols on sending political bulk SMS during the elections. See, IHRB, [Corporate Responses to Hate Speech in the 2013 Kenyan Presidential Elections: Case Study: Safaricom](#) (2013)

²¹⁰ ICCPR, Article 19. Myanmar has not signed the ICCPR but has been consistently urged to do so and will be asked to explain its position on the Covenant at its forthcoming review in the UN Human Rights Council under the Universal Periodic Review procedure [tentatively scheduled for 20 July 2015](#). The ICCPR provisions are based on similar provisions of the Universal Declaration of Human Rights.

Permitted Restrictions on “Hate Speech” in International Human Rights Law

Freedom of expression does not only protect popular or uncontested sentiments. It also protects views that are unpopular, or may shock, offend, or disturb. This is the nature of freedom of expression: someone may express an opinion others disagree with, but they nonetheless have a right to say it, except in certain narrowly defined circumstances. When it comes to determining what speech should be restricted in order to protect the rights of others, international human rights law provides a very high threshold that must be met before the expression can be legitimately restricted²¹¹ or even prohibited in order to protect a wide space for all kinds of expression.

The former UN Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Frank La Rue, summarises this in a 2012 report:

*“The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize, even harshly and unreasonably, ideas, opinions, belief systems and institutions, including religious ones, as long as this does not advocate hatred that incites hostility, discrimination or violence against an individual or a group of individuals.”*²¹²

As such, expression that is “any propaganda for war” or “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence...”²¹³ should proactively be prohibited by law according to Article 20 of the ICCPR. Incitement is also recognised as a crime in other international human rights treaties. The UN *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) criminalises a “direct and public incitement to commit genocide.”²¹⁴ And the *International Convention on Elimination of All Forms of Racial Discrimination* (1966) requires states to criminalise the dissemination of ideas based on racial superiority and assisting or financing racist activities.²¹⁵ One unfortunate omission, however, is gender, which is not specifically considered in these instruments, nor is advocacy of hatred that incites violence towards women provided for in the *International Convention on the Elimination of All Forms of Discrimination against Women* (1976).

There is an absence of legal prohibition of incitement to hatred in many domestic legal frameworks around the world, as is the case in Myanmar. There are widespread concerns that governments justify use of the prohibition on incitement to prohibit much wider types

²¹¹ Harmful speech can also be restricted under articles 18 and 19 of the ICCPR on the grounds respect for the rights of others, public order, or even sometimes national security if the restrictions meet the tests set out under Article 19 (see Part 4.1 on Freedom of Expression for an explanation of the tests).

²¹² UN General Assembly, [Promotion and Protection of the Right to Freedom of Opinion and Expression. Note by the Secretary General](#), 10th August 2011, A/66/90, Para 30.

²¹³ ICCPR, Article 20. Hatred, by itself, would not be subject to restriction. It is only when advocacy of national, racial or religious hatred constitutes incitement to discrimination, hostility or violence that it must be restricted under international law.

²¹⁴ [UN Convention on the Prevention and Punishment of the Crime of Genocide \(1948\)](#), Article III(c).

²¹⁵ [Article 4\(a\)](#): “Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.”

of expression than just incitement, using often vaguely defined national laws that opens the door for arbitrary application of these laws.²¹⁶

National Legal Framework

The 2008 Myanmar Constitution does not prohibit incitement to hatred. It does have constitutional protections against discrimination: Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on the grounds of race, birth, religion, official position, status, culture, sex and wealth. However, the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited. Moreover, Article 349 applies only to Myanmar citizens.

Several laws in Myanmar provide for broad and vague restrictions of the right to freedom of expression and peaceful assembly (see Part 4.1 on Freedom of Expression) – that could be used to block such incitement but which are problematic because they can also be used to restrict far wider types of expression as well. In addition, sections 295(A), 298, 504, and 505 of the Myanmar Penal Code, covers "[a]cts or words which intentionally cause outrage or wound religious feelings" and "[s]tatements or insults which intentionally provokes a breach of the peace or causes public mischief." While these provisions have some overlap with Article 20, they cover a much wider set of issues than incitement to hatred and therefore are not sufficiently targeted to meet the legal tests set out in international human rights law to be considered legitimate restrictions of freedom of expression.²¹⁷ Phrases like "causing public mischief" can be used to justify suppression of politically problematic speech; just the type of speech that is protected under international human rights law to ensure open and vibrant democratic debate. The right to freedom of expression is intended to protect speech that may create "outrage" among some, to ensure governments do not become the sole arbiter of opinion and expression.

C. Field Research Findings

Methodology

Aim

In February-March 2015 IHRB/MCRB undertook qualitative research on social media in Myanmar by conducting a short monitoring survey. While it is by no means a comprehensive study, the aim was to provide a snapshot of the current atmosphere on social media in Myanmar to gain some contextual understanding of this relatively new

²¹⁶ [Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence \(2012\)](#), para 15. See also, [Concept Paper on OHCHR's Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred \(2011\)](#)

²¹⁷ Article 19(3) of the ICCPR provides any restrictions must pass a three-part, cumulative test: be provided for in national law which is clear and accessible to everyone (principle of legal certainty, predictability and transparency); have a legitimate aim or purpose i.e. one of the purposes set out in Article 19.3 (principle of legitimacy); and must be necessary and proportionate to the legitimate aim pursued, meaning that the restrictions must be the least restrictive means required and justifiable (principles of necessity and proportionality).

issue of hate speech and provide useful observations and recommendations as part of this broader ICT Report.

The “Dangerous Speech” Framework

Academics have noted particular characteristics of speech that rise dramatically before an outbreak of mass violence and there have been efforts to test the direct correlation between such speech and subsequent acts, whatever the means of communication.²¹⁸ While such examples of speech may not necessarily fall under the restrictions set out in the ICCPR, the development of the Internet and the use of social media provide a platform that can amplify this kind of speech. Attempts are underway to predict the likelihood of certain speech catalysing violence in certain situations. This short study drew on the authoritative work of Professor Susan Benesch of the Dangerous Speech Project²¹⁹.

The Dangerous Speech Framework aims to find patterns in speech common before an outbreak of violence by identifying speech which targets members of a particular group, and which may have the potential to catalyse an outbreak of violence by encouraging people to condone or take part in violent acts. The framework’s guidelines are based on five variables²²⁰, used to assess the potential impact of a particular speech.

The most dangerous speech would be one for which all five variables are present:

- A powerful speaker with a high degree of influence over the audience;
- The audience has grievances and fear that the speaker can cultivate;
- A speech act that is clearly understood as a call to violence;
- A social or historical context that is propitious for violence, for any of a variety of reasons, including longstanding competition between groups for resources, lack of effort to solve grievances, or previous episodes of violence;
- A means of dissemination that is influential in itself, for example because it is the sole or primary source of news for the relevant audience.

Questionnaires

MCRB and IHRB developed a questionnaire based on these variables, drawing on an existing questionnaire developed by Professor Susan Benesch and the Kenyan organisation Ushahidi, which ran the Umati²²¹ project, monitoring dangerous speech before and during the Presidential elections in Kenya in 2013.

²¹⁸ See David Yanagizawa *Propaganda and Conflict: Theory and Evidence from the Rwandan Genocide* (2012). The statistical study shows that killings were 65-77% higher in villages that received the Radio Television Libre de Milles Collines (RTLM) signal. Two RTLM executives were convicted of incitement to genocide in 2007. See also Koigi Wa Wamwere, *Negative Ethnicity: From Bias To Genocide* (2003), Seven Stories Press, New York. Pp103-105, which describes anonymous leaflets circulated in Nazi Germany propagating hatred against Jews. More recently, leaflets were circulated provoking ethnic hatred during the break up of Yugoslavia, during the violent end to apartheid in South Africa instigating violence between the Xhosas and Zulus and have also been circulated in Kenya warning certain communities to leave their homes or be killed.

²¹⁹ <http://www.dangerousspeech.org/>

²²⁰ <http://www.dangerousspeech.org/guidelines>

²²¹ <http://www.ihub.co.ke/umati>

A mother-tongue Burmese-speaking researcher helped develop the questionnaire²²² for the Myanmar context and conducted research on social media websites in Myanmar. The researcher was asked specifically to search for examples of what they believed to be “hate speech” and apply the questions outlined in the questionnaire to them. The researcher collected 42 examples of “hate speech” over a two month period (February and March 2015), which were then analysed.

Reporting the Results

Studying hate speech presents a particular dilemma, because re-publishing examples may perpetuate the sentiments in the message, therefore the presentations of results below summarises the findings, so we have taken the decision not to re-publish statements and photographs here.

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted (and the stakeholders interviewed, in the case of other field research findings across Part 4 of this SWIA). The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations (or organisations interviewed, as in other parts of this SWIA).

Key Observations
Human Rights Implicated: Right to freedom of expression, opinion and information; Right to privacy
<ul style="list-style-type: none"> ▪ All examples on Burmese social media were written in Burmese, with one exception. ▪ 88% of examples contained language directed primarily at the Muslim community. ▪ 12% of these examples fitted the criteria of the most dangerous forms of speech: <ul style="list-style-type: none"> • A powerful or influential speaker who capitalised on a fear of the audience, including calls to action such as violence against a community where there have been previous episodes of inter-communal violence. • These examples were shared widely on social media, potentially reaching millions of users. • However, while this could be considered an influential means of dissemination, social media is not the sole or primary source of news in Myanmar. ▪ All of the samples suggested the audience faced danger from Muslims, either a threat that Muslims are becoming too dominant in society, or that they are spoiling the integrity of Myanmar, for example by marrying Buddhist women. ▪ 38% of samples included a call to action, either to discriminate (e.g. by avoiding Muslim-owned shops and businesses), hostility (e.g. that Muslims should be denied citizenship or ethnic minorities should be driven out of the country) and actual calls to kill Muslims. ▪ The researcher considered 30% of the samples to have used aliases (fake names) in their profile and were therefore anonymous or not identifiable. For

²²² Questionnaire to be published on MCRB webpage at time of SWIA release

example, several user names were recognisable as names of characters in Burmese novels, or translated into English as phrases like “a beautiful evening”. Some user names had more intimidating translations, for example “the person who guards ethnicity” or phrases intended to be insulting to Muslims.

- **Around 10% of samples compared Muslims to certain animals.** The Dangerous Speech Framework includes, as part of the variable on “speech”, referring to people as other than human (e.g. vermin, pests, insects or other animals) as an attempt to de-humanize the victim and one indicator of violence.
- **17% of samples used language or symbols specific to Myanmar**, such as images of someone or something being stepped on, considered an insult in Burmese Buddhist society, or using the style of Buddhist teaching or proverb in a derogatory way to Muslims.
- **The posts that were shared most widely** were quotes by well-known Burmese figures, links to news articles or alleged accounts of killings of Buddhists by Muslims (all unconfirmed), or calls to boycott Muslim-owned shops and businesses.
- **The posts that received the most reaction/response were those made by a politician or religious leader.** These involved one politician alleging a Muslim had set a school on fire, which was shared 1,300 times. The same politician advocated the burning of a mosque if it was built in a particular area, and received over 1,000 positive responses. A religious leader’s post encouraging people not to give housing to Muslims received 1,300 positive responses and was shared 830 times.
- **When influential figures, such as a politician or religious leader, made statements against Muslims, supporting comments by normal users were the most violent** of the samples, including calls to kill Muslims.
- In the recorded examples, explicit calls to kill Muslims were posted as comments in response to a religious leader’s post containing allegations that a Muslim man had raped a Buddhist woman.
- Another call to kill Muslims was a comment on a widely shared news article, believed to be fake, that a Burmese soldier had been killed by a Muslim.
- Most of the examples of posts by normal users had few followers or reactions and were not shared widely. However, **the most popular post of all the examples in the study was a normal user sharing the alleged restrictions the country of Japan places on Muslims entering and living in the country, which is untrue.** This was shared over 18,000 times.
- **Even if the user was not a well-known figure, content relating to current events in Myanmar got the most reaction**, such as the Presidential revocation of “white cards”²²³, a temporary identification card, from displaced and stateless Muslims applying for citizenship, or advising women to be wary of Muslims during Thingyan (the Buddhist Water Festival in April).

Conclusion of Field Research Observations

The observation provoking the most serious concern from this short monitoring study is the impact of people in positions of influence, such as politicians or religious leaders,

²²³ <http://www.rfa.org/english/news/myanmar/authorities-step-up-collection-of-white-cards-04062015152750.html>

making statements which may incite violence, hatred, or discrimination. These public statements appear to encourage other users to repeat the sentiments, and even go further, such as issuing calls to kill people. This is particularly worrying as Myanmar approaches elections, because they have the potential to incite violence.

D. Key Human Rights Implications for the ICT Sector

- **A typology of potential impacts:** The decisions taken by ICT companies on how to tackle hate speech have the potential to impact the right to freedom of expression by:
 - providing access to or platforms for user-generated hate speech content;
 - making their own internal decisions to remove content
 - responding to government requests to block access to certain websites or remove particular content that may be hate speech or may be other types of permitted speech that the government has chosen to label as hate speech.
- **Understanding the legal framework:** As outlined above and in Part 4.1 on Freedom of Expression, the legal framework that could be applied to online communications contains vague and undefined terms. While these vague terms could be used to block access to national, racial or religious hatred in line with Article 20 of the ICCPR, those same provisions are so broadly worded that they could result in legitimate content being removed or blocked as well. When the Government or other groups' (such as religious or ethnic groups) request that companies restrict freedom of expression that does not fall within the permitted restrictions under Article 19 or the prohibitions under Article 20, an ICT company will find it challenging to meet its responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights.²²⁴ It may be put in a position of potential contribution to government or non-state actors abuses of individuals' human rights. Likewise, because the government does not have precise laws prohibiting hate speech, ICT companies may permit the transmission or hosting of expressions that would be considered incitement to national, racial or religious hatred.
- **Understanding the context:** It is important that ICT companies understand the context in which they are working and have processes in place to deal with Government and others' attempts to restrict freedom of expression. They need to be able to assess whether the requests are legitimate and do not amount to censorship and to understand what may be hate speech and therefore appropriately prohibited or deleted on platforms or services. Moreover, many services that can be accessed in Myanmar are provided by international companies which are not based in the country, and they may not even have offices or staff on the ground. They may therefore not have experience of the country or be aware of cultural and political sensitivities or have the appropriate language capabilities to screen content posted on their site. Additional measures will need to be taken to ensure a realistic and systematic understanding of the local context, such as obtaining independent expert advice. (See Part 4.1 on Freedom of Expression).

²²⁴ See: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. See also, European Commission, "ICT Sector Guide to Implementing the UN Guiding Principles on Business and Human Rights" (2013): <http://www.ihrb.org/publications/reports/human-rights-guides.html>

Operators/Telcos/Internet Service Providers (ISPs)

- **Government requests:** Companies that provide internet access may be asked by the government to block access to whole websites due to the perceived spread of hate speech.²²⁵ This reportedly happened in Myanmar during the riots in Mandalay in 2014. A high ranking police officer said in an interview that the government had ordered the blocking of a popular social media website to stop the spread of “unverified news”, which coincided with a curfew imposed on Mandalay residents.²²⁶ The reason for blocking the website was to prevent the spread of further rumours fuelling violence. However, as noted above, because Myanmar laws are often vague and not aligned with international human rights law, such requests may also cover legitimate expression that should not be blocked or taken down.
- **Company responses:** In the example of the Government request above, the order to block this particular website would have been made to the operator or ISP (Internet Service Provider) providing internet access. Blocking whole websites may prevent certain people from spreading rumours, but it also prevents everyone else from seeking, receiving and imparting information and prevents authorities using it to disseminate factual information, counter rumours and appeal for calm. This may set a worrying precedent for blocking websites in the future that the government simply does not like.
- **Developing clear processes for blocking websites:** It is important that processes are put in place that make clear under what circumstances websites can be blocked, and how a request is made to an ISP. It is currently unclear how requests for blocking websites are made to ISPs in Myanmar, either by law enforcement agencies directly or a request made through the regulator. It is also unclear under what circumstances requests to block whole websites can be made as there is little legislation covering this area and therefore ISPs appear to be voluntarily blocking websites. In other countries, the most common reason for blocking websites is related to child exploitation, terrorism or copyright infringement. Requests to block from the Government of Myanmar should be made in writing; be accompanied by a court order/judicial authorisation that sets out the legal justification for the request and be time-bound. ISPs must check that requests are made in accordance with the law, and have the opportunity to clarify or request further information if needed.

“Over the Top” Services

- **Requests from government and users:** It is unlikely that an over the top company, such as social media sites, search engines, and blogging platforms, will be notified of or involved in a decision by the government to cut off access to their whole service, as in the case of ISPs. They are more likely to receive requests from governments or users to remove particular pieces of offending content. Companies usually take the decision to remove content based on their own terms and conditions, which often set

²²⁵ Facebook's Government Requests Report noted that in the period July-December 2014, the company “restricted access to 5 pieces of content reported by the President's Office based on sections 295(A), 298, 504, and 505 of the Myanmar Penal Code, which covers “*Acts or words which intentionally cause outrage or wound religious feelings*” and “*Statements or insults which intentionally provokes a breach of the peace or causes public mischief*.” <https://govtrequests.facebook.com/country/Myanmar/2014-H2/>

²²⁶ <http://advocacy.globalvoicesonline.org/2014/07/11/blocking-facebook-a-hot-new-trend-in-southeast-asia/>
original article in Burmese <http://burma.irrawaddy.org/interview/2014/07/04/61420.html>

out what can and cannot be said on their platforms. When such requests are not in line with international standards, freedom of expression may be adversely impacted if the company's terms and conditions are not aligned with international human rights law and/or it does not properly assess the takedown request from the government or users according to human rights standards. An example is removing content that merely expresses ideas and opinions the government or others object to but that does not fall into a category of speech that can legitimately be restricted. However, content that falls into the category of incitement can and should be blocked.

- **Accessibility of terms and conditions:** As most over the top companies set their own policies about content that can and cannot be posted, it is important that these terms and conditions are aligned with international human rights standards. Users then need to be aware what content is permissible on certain online services. "Hate speech" is a relatively new concept in Myanmar and what users consider to be hate speech may differ from person to person. For example, during field research on the ground in Myanmar, some people considered swear words or general insults to be hate speech. It will be important that a company's terms and conditions are translated into Burmese. There is a wide range of languages in Myanmar (none of which yet are covered by major social media platforms), with a risk of hosting hate speech in any of those languages. This is an area where companies will need to build up their expertise to be able to screen and manage content in all the languages on their sites, firstly by employing different language speakers.
- **Reporting mechanisms:** One of the ways in which the spread and impact of hate speech can be reduced is through a well-functioning mechanism of reporting such expression to the company hosting it, followed by a swift process of removing it from the site. This depends on (as noted above), terms and conditions that are aligned with international human rights standards (given that the government currently does not have clear laws or guidance on this issue) and a transparent and accessible process for users to report content they consider hate speech. One company has developed a "market specific" reporting mechanism unique to the Myanmar context, with an option to report specific kinds of content. One option is to report content that is, "*hateful towards a race, religion, gender, sexual orientation or ability. Examples: racism, insulting religious groups, anti-gay posts.*" Another is to report content which is, "*a rumour or false information. Examples: false news stories, rumour based on the conflict of religious groups.*"
- **Other options to respond to hate speech:** Currently, efforts are underway by civil society to educate users and combat hate speech in society. Telcos and over the top companies seem to be aware of the issue of hate speech in Myanmar, and are supporting local groups to spread messages of non-violence, such as online "stickers", similar to emoticons, which can be downloaded and inserted onto user profiles, or included in online chat functions.²²⁷

²²⁷ <http://globalvoicesonline.org/2015/02/22/can-panzagar-flower-speech-facebook-stickers-end-hate-speech-in-myanmar/>

E. Relevant International Standards and Guidance on Hate Speech Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- UN OHCHR, "[Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression](#)" A/67/357 (7th September 2012).
- OHCHR "[Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence](#)" (2012).

Relevant Guidance:

- ARTICLE 19, "[Towards an interpretation of Article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred \(Work in Progress\)](#)". A study prepared for the regional expert meeting on article 20, Organized by the Office of the High Commissioner for Human Rights, Vienna, February 8-9, 2010.
- [The Dangerous Speech Project](#)
- United States Institute of Peace, [Wielding Technology to Combat Dangerous Speech in Myanmar - PeaceTech Exchange Myanmar](#)
- [NipeUkweli](#) – This is an initiative based in Kenya to counter negative online content by correcting false statements and spreading positive messages.

Myanmar Initiatives on Hate Speech Issues Linked to the ICT Sector:

- [Panzagar](#). An educational anti-hate speech online campaign to counter hate speech and promote responsible speech online by distributing pamphlets, posters, online stickers and school exercise books.

Part 4.3

SURVEILLANCE & LAWFUL INTERCEPTION

In this section:

- A. National Context
- B. Field Assessment Findings
- C. Key Human Rights Implications for the ICT sector
- D. Linked Initiatives in Myanmar and Relevant International Standards

A. National Context

Short Explanation of Lawful Interception and Surveillance

Governments have legitimate reasons to monitor the communications of certain individuals or organisations - for example, people who are legitimately suspected of planning to commit or having committed a serious crime, such as a terrorist act. Monitoring or Interception is permitted in most countries under legal statute in order to assist with criminal investigations, prosecute serious crime, or prevent national security emergencies. This is known as “lawful interception”.

Lawful Interception is the process by which a telecommunications operator collects intercepted communications of private individuals or organisations and then provides law enforcement officials with the collected communication or data. The term generally refers to interception of communications in real-time (such as a phone call) or stored communications (such as emails). However, law enforcement often request access to stored “communications data”, which is generated through use of communications, such as telephone numbers and the location a call was made. Communications data is sometimes referred to as “metadata”, but will be described as communications data in this Report. Intercepting communications is an intrusive process into someone’s privacy, therefore any such intrusion should be governed by a strict legal framework to prevent arbitrary violations of privacy.

Legal Requirements

The Annex to the Recommendations in Part 6 provides more detailed recommendations on the kinds of considerations the Myanmar (or other) Government should take into consideration in establishing its procedures for lawful interception at each step of the process: the authorisation process, oversight and remedy procedures for lawful interception and surveillance to ensure that the procedures and practice are in line with international law.

Technical Requirements

Telecommunication systems or networks in most countries must include, by law, the technical capability to intercept communications. For example, providing the technical means for interception is a legal requirement for European companies under a 1995 EU Resolution on Law Enforcement Operational Needs with respect to Public Telecommunication Networks and Services²²⁸, which allows lawful interception to assist law enforcement in investigating and preventing crime.

In order for communications to be intercepted, the telecommunications system needs to be configured in a specific technical way according to a set of standards. The European Telecommunications Standards Institute (ETSI)²²⁹ (one of many industry-led technical standardising bodies worldwide) has taken the lead in producing globally applicable standards for ICTs, including lawful intercept requirements. ETSI defines lawful interception as:

“ A security process in which a service provider or network operator collects and provides law enforcement officials with intercepted communications of private individuals or organisations.”²³⁰

It is not yet clear or certain which technical standards Myanmar will be using to implement the technical requirements of lawful interception.

The Kind of Information Lawful Interception Collects

Lawful interception generally refers to the interception of or access to a person's communications in real time – in other words, the content as the communication takes place. In addition to this, authorities may require access to stored communications data. This is often known as the “who, where, when and how” of a communication- for example telephone numbers, location of the call, the time and duration of the call, and information on the method used to call (e.g mobile or internet call). With the many different ways to communicate electronically currently in existence, there is a much greater array of data and interactions that can be collected and therefore demanded by law enforcement authorities. With communications now going over the Internet, data can include voicemails, location information, and text messages recorded and read, as well as monitoring online activity including emails sent or received, and websites visited.

Intercepted data can be separated into two types (See the Annex to the Recommendations in Part 6 for a more detailed overview):

- *Content* refers to what was said during a phone call or what can be read in the content of an email or other type of digital message. Interception of content, depending on the country, usually requires that law enforcement authorities seek a judicial warrant from a court or an executive warrant signed by a senior government official – an important

²²⁸ Council of Europe (1995) *Council Resolution on law enforcement operational needs with respect to public telecommunication networks and services* <http://cryptome.org/eu-intercept.htm>

²²⁹ www.etsi.org

²³⁰ <http://www.etsi.org/index.php/technologies-clusters/technologies/security/lawful-interception>

procedural safeguard to protecting the rights of those under scrutiny. (See the Annex to the Recommendations in Part 6 for more information).

- *Communications Data (sometimes referred to as metadata)* is basically everything but the content and includes telephone numbers of both the caller and the recipient, the time and duration of call, unique identifying numbers (each subscriber is allocated one, as is each mobile device), email addresses, web domains visited and location data. This information is important as it builds up a detailed picture of a person's life and movements, so that often intercepting the content of a call or email is not necessary. In contrast to content, there are often weaker legal protections around interception of stored communications data.

Mass Surveillance

In contrast to lawful interception, mass surveillance is understood to refer to the bulk access and/or collection of many users' communications without prior suspicion of criminal activity by the individual targets. Therefore mass surveillance involves no individual target, no prior suspicion, is not time bound and due to the technology employed, potentially limitless. In contrast to technology provided for lawful interception, much of the technology that allows mass surveillance is unregulated. As such the adoption of mass surveillance technology impinges on the very essence of that right to privacy.²³¹

Products that Facilitate Surveillance

- **“Dual use” technology:** “Dual use” is a legal term applied to products, services or technology that can be used for both military and civilian purposes. In the ICT sector, it can apply to technology that can be used for commercial functions, but may also contribute to infringements on human rights. For example, a technique called “Deep Packet Inspection” (DPI) was developed to analyse network traffic to make sure the network runs smoothly. However, it is also capable of reading emails and governments wishing to conduct unlawful surveillance can abuse this. Many states known to censor the Internet also use DPI.²³² In January 2012, the European Union banned DPI exports to Syria because of the monitoring and interception capabilities, as it was thought they were being used against dissidents.²³³
- **Unregulated technology:** There is growing concern that an increasing number of companies may be selling technology that goes beyond regulated, targeted and controllable interception of individuals under prior suspicion. It is currently considered by many experts to be ‘single use’, because it is difficult to justify a legitimate use for technology that is capable of intruding so much into a person's correspondence and home. There is evidence that some governments are using the technology to track and detain political dissidents as part of a wider pattern of intimidation.²³⁴ Examples

²³¹ See: [UN General Assembly A/69/397](#) 23rd September 2014

²³² Ben Wagner, Ludwig-Maximilians-Universität München and Universiteit Leiden, [Deep Packet Inspection and Internet Censorship: International Convergence on an 'Integrated Technology of Control'](#) Global Voices Advocacy 2009

²³³ Council Regulation (EU) No. 36/2012 of 18 January [2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation \(EU\) No 442/2011](#), Annex V

²³⁴ Citizen Lab, [From Bahrain With Love: Finfisher's Spy Kit Exposed](#) (2012)
Electronic Frontier Foundation (EFF), [Kidane Vs Ethiopia](#)

include malware²³⁵ that infects a target's computer and switches on webcams and microphones on devices, and zero-days²³⁶, which exploits vulnerabilities in a computer application to enable hacking of communications, therefore reducing digital security for many others using the same application. Companies selling these technologies often try to portray these products as having the same status as statutorily mandated (and regulated) "lawful intercept" functionality – often simply because they are sold to a government purchaser. However experience has shown that some governments are using these technologies quite specifically because they are not regulated and to avoid following lawful interception procedures.²³⁷ With these tools, surveillance is not limited to those within a country's borders, which puts exiles or the diaspora overseas at risk of intrusive surveillance.²³⁸ Companies who sell this type of technology are increasingly being targeted by law suits and other legal actions.²³⁹

Concerns about Surveillance and the ICT Sector

Under international human rights law²⁴⁰, individuals are protected from any unlawful and arbitrary interference with their privacy, family, home, or correspondence. The act of surveillance, whether physical (such as a house search) or of a person's communications (such as monitoring phone calls and emails) is an inherently intrusive act and risks violating a person's privacy. In addition, surveillance of person's communications can limit the exchange of information and ideas resulting in a "chilling effect" on freedom of expression, as people are less likely to express themselves freely if they know they are being observed or monitored.

Intercepting communications is under particular scrutiny by international organisations, civil society groups and governments due to the impact of surveillance on privacy and other human rights such as the right to receive and impart information.²⁴¹ The same technology that can help law enforcement prosecute criminals may also be misused by authorities, such as when specific groups (opposition parties, human rights defenders, ethnic, religious or sexual minorities) are placed under surveillance for the purpose of intimidating, persecuting and silencing them. There is evidence in some countries that the technology is being used to track and detain political dissidents as part of a wider pattern of intimidation, often with negative consequences or harm to the individuals.²⁴²

²³⁵ Software that is created and used to gain access to private computer systems, disrupt computer operations and/or gather sensitive information. Malware includes, for example, computer viruses, "Trojan horse" software and "worms".

²³⁶ An attack on vulnerability in a computer application or operating system that developers have not yet addressed.

²³⁷ Citizen Lab., [Shedding Light on the Surveillance Industry: The Importance of Evidence-based, Impartial Research](#) (December 20th 2013)

²³⁸ For example, there is evidence that the government of Ethiopia is using surveillance technology to target the diaspora overseas who may be critical of the government. Ethiopians living in the UK, US, Norway and Switzerland have been targeted with malware, resulting in an illegal wire-tapping case in the US. See [Kidane v Ethiopia](#) and Reporters Without Borders [Enemies of the Internet](#) (2014)

²³⁹ For examples of lawsuits and other official complaints, see [OECD Watch](#) and the [Business and Human Rights Resource Centre](#)

²⁴⁰ Article 17 of the ICCPR

²⁴¹ See for example the [Global Conference on Cyberspace 2015](#), the [Global Commission on Internet Governance](#), the work of the [United Nations](#) and international civil society organisations such as [Privacy International](#), [the Electronic Frontier Foundation](#), [Citizen Lab](#), [Access](#) and many local civil society organisations around the world.

²⁴² See for example: Freedom House, [Freedom on the Net](#) (2013) details a particular example from Sudan: "The activist Mohamed Ahmed switched off his phone for a few days in early July 2012 to avoid arrest while in hiding from the NISS [National Intelligence and Security Service]. When he turned his phone back on as he

Being able to locate a mobile phone also means being able to locate the person carrying the mobile phone, which is potentially a powerful tool for surveillance. It is important to have access to such information in emergency responses, such as abduction or identifying survivors in a natural disaster area. Mobile phone technology has unfortunately become increasingly dangerous for activists in some countries. It is therefore critical that any intrusion into a person's privacy through the interception of communications is subject to legal process and includes protection for human rights.

In countries with the relevant legal framework on lawful interception is absent or deficient, when there is a case of a misuse, companies within the ICT value chain that have had a role in that process (network providers, vendors, operators, over the top service providers) are often accused of contributing to the abuse of human rights, such as invasions of privacy or in some cases even more severe abuses such as torture, through its operations. Some companies may actively assist the government in carrying out arbitrary surveillance by allowing secret access to their servers (often called a "back door"). If the government responsible for the misuse is perceived to be repressive, this may increase scrutiny by human rights groups.

History of Surveillance in Myanmar

The former military government in Myanmar established an intrusive surveillance regime for many years, both online and offline, in order to suppress criticism and dissent and restrict access to information for the Burmese people. The fear and threat of surveillance was part of Burmese life, especially for members of opposition political parties, student activists, and ethnic minorities in armed conflict areas.

Physical Surveillance

Under the former military government, intelligence agencies proliferated, some of which were originally established under British colonial rule. Multiple organisations were charged with keeping people under surveillance. Intelligence activities expanded rapidly following the 1988 coup d'état which re-established military rule after its suppression of the nationwide pro-democracy movement. The hierarchy and structure of the intelligence agencies changed throughout the 1980s, 1990s and 2000's as the military government imprisoned or purged various members of the intelligence community. Before the reform process began in 2011, Myanmar's intelligence agencies played a consistent role in gathering information on real or impugned critics, in suppressing dissent, and in arresting and interrogating suspects.

The *Village Act* and *The Town Act* required everyone to report the identity of overnight guests to local officials, who could refuse "permission" for houseguests. The law was enforced by periodic household inspections by authorities, often accompanied by Special Branch agents, and mostly at night. It has been reported that these inspections were used as an opportunity to monitor, harass or arrest political activists and inspections increased during the pro-democracy uprisings in 1988, 1998 and 2007.²⁴³

In addition to intelligence agencies, a wide network of informants attached to various official groups operated throughout the country. A 2007 Human Rights Watch report

was walking home to see his family, NISS officials roaming his neighbourhood managed to track his location based on the nearest telecommunications tower and arrested him later that night." (p14)

²⁴³ Fortify Rights, [Midnight Intrusions: Ending Guest Registration and Household Inspections in Myanmar](#) (2015), p12

stated that this group of informants systematically began to track down activists and organisers of the 2007 protest movement, often known as “the Saffron Revolution”.²⁴⁴

Telecommunications surveillance

As early as 1990, reports surfaced that telephone calls and faxes were being monitored. A computer centre was reportedly set up which carried out more “politically focused” intelligence gathering, including monitoring communications of opposition groups both within and outside Myanmar.²⁴⁵ This timing coincided with Burmese exiles who had fled the country in the wake of the 1988 crackdown on the pro-democracy movement, who set up exile media groups, newsletters and websites to report on the situation inside Myanmar, which could have been the intended target and reason for this increase in surveillance.

It has also been suggested that wiretapping of phone conversations was common, in particular to identify leaders of activist movements. Once leaders had been identified, this would be followed up with a night-time “inspection”.²⁴⁶

Online surveillance

Despite Myanmar’s low internet penetration, the internet and its users were reportedly under near constant surveillance as the first internet connections were established around the year 2000. For citizens wanting an email account, the only choice was to pay for an email account supplied by Myanmar Post and Telecommunications (MPT), a state run telecommunications company. Users assumed these accounts were closely monitored. However, it is difficult to establish exactly what technology enabling online surveillance was purchased and utilised by the government.²⁴⁷

Although the internet penetration in the 2000’s was less than 1%, activists were quick to make use of the limited service they had. Despite pervasive surveillance, the 2007 Saffron Revolution came to global attention thanks largely to activists anonymously uploading images and video to websites such as YouTube, which were then picked up by international news agencies, as journalists were prevented from entering the country. Some managed to email images to friends outside Myanmar to upload onto sites such as the Democratic Voices of Burma (DVB), or smuggle content out of the country on USB sticks. This was the first time in the country’s history that ICTs played a significant role in disseminating information about protests and the security forces’ violent suppression of

²⁴⁴ A 2007 Human Rights Watch report found the local ward Peace and Development Councils, the Union Solidarity and Development Association (a movement supporting the military government, disbanded in 2010) and Swan Arr Shin (a local paramilitary group) all contributed informants who conducted surveillance activities and gathered intelligence. Human Rights Watch, [Crackdown. Repression of the 2007 Popular Protests in Burma](#), (2007), p83

²⁴⁵ Brian McCartan, Asia Times [Myanmar on the Cyber-Offensive](#) (October 1st 2008)

²⁴⁶ Fortify Rights, [Midnight Intrusions: Ending Guest Registration and Household Inspections in Myanmar](#) (2015) p31

²⁴⁷ See for example: Joe Havelly, BBC News Online, [When States Go To Cyber-War](#) (February 16th 2000). The BBC reported that the government had acquired surveillance capabilities by borrowing equipment from other countries: “Using monitoring equipment loaned by the government of Singapore, analysts say the junta has been able to track online critics of the regime. A 2005 Open Net Initiative report on internet filtering in Myanmar also mentions online surveillance, reporting that the state “maintains the capability to conduct surveillance of communication methods such as email...” Open Net Initiative [Internet Filtering in Burma in 2005: A Country Study](#) (2005), p4. A 2007 Berkman report stated that the military government was buying surveillance technology from an un-named U.S company. Chowdhury, M. Berkman Centre for Internet and Society at Harvard University, USA (2008) [The Role of the Internet in Burma’s Saffron Revolution](#). p13

such protests. In addition, the 2009 documentary *Burma VJ*²⁴⁸ featured some of the video footage and images, and revealed that many of the activists involved had either been arrested and punished, or fled Yangon.

Surveillance of Cybercafes

Public internet access inside Myanmar was previously only possible from a few internet cafes in Yangon and Mandalay, the two largest cities. The first cybercafé opened in Yangon in 2002²⁴⁹. From around 2006, cybercafés required a license to operate from the Myanmar Information Communications Technology Development Corporation (MICTDC). They were licensed as Public Access Centres (PACs) managed by Myanmar Info-Tech, a state-owned company. Regulations²⁵⁰ stated that users had to register at the cybercafé before accessing the Internet and café owners had to take screenshots of user activity every five minutes, delivering CDs containing these images to MICTDC at regular intervals.

In 2008, the Open Net Initiative reported: *“Anonymous internet use is impossible; cybercafé licences require that patrons register their name, identification number, and address to gain access. Opportunities for anonymous communications are further hampered by the state’s ban on free email sites such as Hotmail and Yahoo! mail.”*²⁵¹

Surveillance since the 2011 Reform Process

Little is known about intelligence gathering practices in Myanmar since 2011.²⁵² It is believed that at least two intelligence agencies are still operational- the Military Affairs Security (MAS) and the Special Branch of the Myanmar Police Force.²⁵³

In 2011, *Irrawaddy* reported that a new intelligence unit had begun to operate, staffed by military and police officers. It was reported that the new unit would not operate as a separate entity, as intelligence agencies had previously done, and had to reports to “both military and civilian authorities, as well as administrative officials”. According to the report, the role of the unnamed intelligence unit was to *“investigate the movements of political parties, ethnic armed forces and cease-fire groups, violent domestic actions such as bomb explosions and any matter that affects the state’s security and stability, including non-disintegration of the military, and take necessary measures.”*²⁵⁴

It is unclear which elements of the surveillance apparatus are still operational, but it appears that authorities are still conducting a combination of physical and electronic surveillance by replacing old laws with something very similar, and utilising new technology. For example, in 2011, Reporters Without Borders reported that new updated regulations had been sent to cybercafé owners, *“including a requirement to keep the*

²⁴⁸ [Burma VJ: Reporting From A Closed Country](#) (2008). Among other awards, the film was nominated for the Academy Award for Best Documentary Feature in 2010.

²⁴⁹ Reporters Without Borders, [Internet Under Surveillance 2004- Burma](#) (2004)

²⁵⁰ *Public Access Center Regulations by Myanmar Info-Tech* (2006). See an [unofficial English translation](#) by the Open Net Initiative (ONI), which includes a link to the original version in Burmese.

²⁵¹ Ibid p11

²⁵² Andrew Selth, [Burma’s Security Forces: Performing, Reforming or Transforming?](#) (2013), p16. Griffith Asia Institute, Griffith University, Australia

²⁵³ The Hindu, Associated Press report: [In Myanmar, Internal Spy Network Lives On](#) (July 30th 2013)

²⁵⁴ The Irrawaddy, [Burma Forms New Intelligence Unit](#) (May 3rd 2011)

*personal data of all their clients along with a record of all the websites they visit, and make it available to the authorities.*²⁵⁵

In 2012, *The Village Act* and *The Town Act* was replaced by *The Ward or Village Tract Administration Law*, which upholds the process of overnight guest registration and inspection. Although inspections have reportedly declined, and more people are ignoring the law as there are no longer the same fears of reprisal, there have been recent crackdowns on student protesters, forcing many to go into hiding.²⁵⁶ Student's houses have reportedly been "inspected" in the middle of the night, had their mobile phones seized and their Facebook accounts hacked.²⁵⁷

Reports suggest that surveillance of community leaders, opposition political party members and journalists continue. Some reported being physically followed or enquired after, and some fear their phone conversations are monitored.²⁵⁸ In 2013 it was reported that the website of the Myanmar news group Eleven Media, was under surveillance. One of its journalists was physically followed by intelligence agents while reporting on the war in Kachin State.²⁵⁹ Journalists from Eleven Media and others working on Myanmar reported they had received notification from Google, which runs the Gmail email service, that their accounts may have been hacked by "state-sponsored attackers".²⁶⁰ It is unclear if the purpose of these attacks were to gain access to journalist's emails and identify sources, or to stem the flow of information to and from Myanmar. It was also reported that government agents visited cybercafes to "install some software", widely believed to be 'keylogging' software, which records and stores keystrokes for later analysis. Some café owners have put up signs warning customers not to use the Internet for "political reasons".

It is also unclear what kind of relationship Myanmar's existing intelligence agencies have with foreign counterparts, and what kind of intelligence exchange agreements exist. In the past, intelligence on other countries positions and policies would be provided to the Myanmar authorities by diplomatic missions and foreign ministry officials. This is not unusual, however it is thought that officials also provided reports on the activities of Burmese expatriates.²⁶¹

Legal Framework in Myanmar

There are few protections currently in Myanmar's legal framework to prevent the kind of pervasive surveillance previously conducted by intelligence agencies and about which there is justifiable concern. Although Article 357 of the 2008 Constitution does provide for privacy²⁶², there are no privacy protections in national legislation. The existing legal framework referring to surveillance is vague.

²⁵⁵ Reporters Without Borders, [Surveillance of Media and Internet Stepped Up Under New Civilian President](#) (2011)

²⁵⁶ Wa Lone and Guy Dinmore, The Myanmar Times [Student Activists Go Into Hiding After Crackdown](#) (20th March 2015)

²⁵⁷ Ibid

²⁵⁸ Andrew Selth, [Burma's Security Forces: Performing, Reforming or Transforming?](#) (2013), p17. Griffith Asia Institute, Griffith University, Australia.

²⁵⁹ Bertil Lintner, [The Military's Still In Charge](#), Foreign Policy (July 9th 2013)

²⁶⁰ Thomas Fuller, [E-Mails of Reporters in Myanmar Are Hacked](#) New York Times (February 10th 2013)

²⁶¹ Andrew Selth, [Burma's Security Forces: Performing, Reforming or Transforming?](#) (2013), p18. Griffith Asia Institute, Griffith University, Australia.

²⁶² 357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.

Clause 75 of the 2013 Telecommunications Law²⁶³ grants unspecified government agents the authority ‘to direct the organization concerned as necessary to intercept, irrespective of the means of communication, any information that affects the national security or rule of law.’ Although the clause adds this should be undertaken without impacting the fundamental rights of citizens, there are no further details on the process or privacy protections. One of the current telecommunications operators, Telenor, has stated publicly that they will not respond to any interception requests from law enforcement officials until the legal framework is in place.²⁶⁴

Myanmar currently has no more specific legal framework or regulations governing lawful interception, leaving an important gap in the regulatory framework but the MCIT has confirmed its interest in developing a law in accordance with international standards. It has committed to a public consultation of draft lawful interception regulations. The European Union has agreed to provide technical support to the Government to develop its regulations in line with human rights. The programme of work will come within the Council of Europe programme on cybersecurity, particularly focused on the Council of Europe Convention on Cybercrime.²⁶⁵ There should be regulations in place governing the use of surveillance to ensure any infringement of privacy rights are legal, necessary and proportionate and the act of surveillance is not abused to cover people who are not suspected of carrying out a crime but whom the government may disagree with. Most states have a specific legal framework in place to govern instances where interception of communications is permitted in real time (lawful interception).

The Government has already committed to requiring judicial authorisation of any request for lawful interception, which is an important first step. Given the weak state of the Myanmar judiciary, it is clear that any judicial authorities involved in such authorisation processes will require thorough training, both in the technicalities of lawful interception, but also in the importance of the legal safeguards that an independent review represents. See Part 4.9 on Stakeholder Engagement and Access to Remedy for a short overview of the judiciary.

The idea of a judicial authority challenging and even denying the executive branch authorization to carry out surveillance for what the government claims is a national security issue or emergency, especially in light of the on-going conflict, will be a foreign concept to the Myanmar judicial system. Given that there is little open scrutiny of the decisions made by judicial authorities on lawful interception in countries with highly developed judicial systems, the challenges in making a gatekeeping system that respects rights and the need for proportional, targeted approach to security in Myanmar is evident. The companies involved in executing lawful interception requests may be one of the few credible counterpoints in the system. (See Section C on the HR Implications for the ICT Sector.) This Report also includes key issues that the Government of Myanmar should take into account in developing its lawful interception law and procedures. See the Annex to the Recommendations in Part 6.

B. Field Research Findings

²⁶³ See unofficial English translation of the [Telecommunications Law](#) (2013)

²⁶⁴ [Telenor Myanmar sustainability presentation](#) (August 19th 2014). See p8 of the transcript.

²⁶⁵ [Council of Europe Convention on Cybercrime](#) (CETS 185) (2001)

As lawful interception is by its nature carried out covertly, the field research was not able to cover this potential activity.

C. Key Human Rights Implications for the ICT sector

The following section focuses on the use of ICT for surveillance, rather than the physical surveillance as outlined in previous sections. (See also Part 4.4 on Privacy)

General

- **Understanding Myanmar's History:** ICT companies that operate within those parts of the ICT value chain that may be subject to surveillance or subject to surveillance requests from the Government should understand the history of the extensive level of surveillance in the country, its often severe consequences, and the therefore justifiable sensitivity of the population and civil society organisations to the possibility of continued surveillance, and the current lack of appropriate legal safeguards on surveillance.
- **Understanding the Wider Discussion on Surveillance:** Just as foreign companies coming into Myanmar need to understand the historical context around surveillance and its connotations for the population and its customers, local companies also need to understand the wider context of the active, on-going debate around surveillance and its implications for human rights.

Tower Construction

- **Interception and misuse of base stations:** It is possible for other actors to intercept signals sent from cell towers by setting up technology that essentially pretends to be a base station and collects the information²⁶⁶. There is some evidence this happened when unknown actors used location tracking to locate activists and political opposition. For example, during the 2014 Euromaidan protests in Ukraine, protestors in the vicinity of one march in the Ukrainian capital Kiev were sent unsigned text messages reading: *"Dear subscriber, you are registered as a participant in a mass disturbance"*. Local mobile operators denied sending the message to their subscribers on behalf of the government, and one insisted that the messages were sent from a "pirate base station."²⁶⁷ There are different types of hardware that can act as a base station and enable these interceptions of mobile signals. The devices do not necessarily have to be in the vicinity of the cell tower or real base station to work, but tower construction companies should be aware that their infrastructure may be targeted by actors wishing to illegally intercept mobile phone signals for the purposes of surveillance, impacting both freedom of expression and privacy. Therefore, when tower construction companies carry out their regular checks and maintenance, they should be especially vigilant for any signs that cell tower or base station equipment has been tampered with.

²⁶⁶ One such example is an International Mobile Subscriber Identity (IMSI) catcher which works by masquerading as a base station, in order to track a mobile phone's location in real time. IMSI catchers are subject to export control in the US and EU.

²⁶⁷ Heather Murphy, [Ominous Text Message Sent To Protesters in Kiev Sends Chill Around The Internet](#), New York Times (January 22nd 2014)

Infrastructure

- **Due diligence processes:** As the key legal framework around lawful interception is not yet finalized in Myanmar, any lawful intercept solutions provided as part of the network infrastructure of operators should not be operational until national legal framework and regulations are in place and it is clear which set of technical standards Myanmar will adopt (ETSI standards or another). Without legal safeguards in place, companies requested to take action by the government to action lawful interception may be contributing to human rights violations of the right to privacy and potentially further severe impacts, depending on the action taken by the government once it has secured the information. Vendors should be prepared for such requests and consider through their due diligence processes the human rights risks associated with these transactions, pre-sale, during the sale in putting appropriate conditions or procedures in place in sale documents or contracts and in its post-sale due diligence.²⁶⁸
- **Training operator's personnel:** In addition to carrying out the appropriate due diligence, vendors should ensure that equal attention is given to training of operator personnel as part of the sale of technology products, including lawful interception systems. Given the isolation of Myanmar's market until recently, particularly local staff may not be informed or even consider the wider implications of their actions unless they are provided with specific training on the implications of their actions.
- **Sending clear messages about business relationships:** With the opening of the Myanmar ICT market and the projected explosion of growth, there has been a corresponding rush of new companies to the market. Unlike other bigger footprint sectors, smaller ICT companies have far fewer downside risks in entering and exiting markets quickly. Some of the companies selling unregulated surveillance technology market themselves by asserting that their technology can be added to a particular vendor's network as lawful intercept "solutions" when in fact they provide capabilities that go well beyond what is lawful. Network vendors should publicly distance themselves from these companies, ensuring that their company's logo and name are removed from any marketing literature by such enterprises and by providing a clear message to the Government that they do not condone such products.

Telecommunications Operators

- **Lawful interception requests without appropriate safeguards:** Operators are the party in the ICT value chain that receives any request from the government for interception of the content of phone calls and emails, or access to other information such as user/subscriber information and records. As noted above, the 2013 Telecommunications Law includes a sweeping provision on surveillance but subsequent regulations for assistance with real time surveillance are not in place. Even when such regulations are in place and even assuming that they are aligned with international law, given the history and current state of development of Myanmar's judiciary, the operators may be one of the few credible actors in the

²⁶⁸ See for example guidance on dealing with government requests: European Commission, [ICT Sector Guide on Implementing the Corporate Responsibility to Respect Human Rights](#), (2013), pp.32-33. IHRB, [Human Rights Challenges for Telecommunications Vendors: Addressing the Possible Misuse of Telecommunications Systems. Case Study: Ericsson](#) (2014)

process capable of challenging overly broad or inappropriate requests. As such operators are at risk of contributing to infringements on user privacy or impacts on other human rights. Operators should develop robust systems for responding to government requests to avoid over complying with illegal requests.²⁶⁹ Such a company system could include for example, ensuring that there is a process in place to review each request submitted; a designated contact person in the company; a list of government departments authorised to request information; a requirement that the request to the company must be made in writing (or at least followed up in writing if such a request is made during the course of an emergency); challenging requests that do not comply with the law or human rights standards, developing criteria for escalation of requests and where feasible, notifying affected customers or users. See the Annex to the Recommendations in Part 6 on Lawful Interception and the role of service providers.

“Over the Top” Companies (National and International)

- **Requests for user information without appropriate safeguards:** While certain information about a user may be publicly accessible, for example by looking at a public profile on social media, companies store much additional personal information about their users, such as names, addresses, contact numbers and private online conversations. Depending on the service, companies will also have a lot of information about a person’s movements, how they spend their time and money and the opinions they hold, which could potentially be used in gathering intelligence. Over the top companies may also be requested to turn over user information by the Government as part of its surveillance activities. Like telecommunications operators, over the top companies which store data on servers inside Myanmar need place robust systems for screening and responding to such requests to ensure that it is not contributing to potential human rights violations.²⁷⁰ Company terms of service should be clear and understandable to local users, setting out what information the company collects and stores and under what legal justification that information can be accessed by the government.

Software

There are many different kinds of software, but the focus of this chapter is the tools that can aid surveillance; that is, the software that can be added to a telecommunications network in order to increase surveillance capabilities.

- **Inappropriateness of selling surveillance software to Myanmar.** Surveillance software is not a new issue for Myanmar. As far back as 2000 it was reported that Burmese exiles were being targeted with malware. However, this kind of technology has advanced rapidly in recent years. While the goal of the military government in the 2000’s may have been to stop information exchange or communication by freezing computers or taking websites offline, viruses, malware and spyware contained in

²⁶⁹ See for example guidance on dealing with government requests: European Commission, [ICT Sector Guide on Implementing the Corporate Responsibility to Respect Human Rights](#), (2013), pp. 44-45 and the [Telecommunications Industry Dialogue](#).

²⁷⁰ See for example guidance on dealing with government requests: European Commission, [ICT Sector Guide on Implementing the Corporate Responsibility to Respect Human Rights](#), (2013), pp. 44-45 and the [Global Network Initiative Principles and Implementation Guidance](#) on dealing with government requests.

infected emails are now capable of doing much more intrusive surveillance. Companies selling surveillance equipment, whether “off the shelf” or bespoke services are under particular scrutiny due to the clear implications for human rights.²⁷¹ Sellers of such technologies often justify their use by saying they are intended to support law enforcement or protect the public welfare (e.g. through protecting against terrorist activity), but they often can also be used to facilitate human rights violations by the purchasers. There are currently debates in Europe about tightening export controls to restrict the kinds of surveillance technology that can be exported, particularly to governments with a poor human rights record.²⁷² Due to the lack of legal framework around surveillance, interception and privacy protections, Myanmar should be a no-go area for companies selling surveillance technology.²⁷³

D. Relevant International Standards on Surveillance and Lawful Interception, and Linked Initiatives

Relevant International Standards:

- [International Principles on the Application of Human Rights to Communications Surveillance \(Necessary and Proportionate Principles\) 2014](#)

Relevant Guidance:

- [Universal Implementation Guide for the International Principles on the Application of Human Rights to Communications Surveillance](#) (2015)
- Electronic Frontier Foundation (EFF) Human Rights and Technology Sales: How Corporations Can Avoid Assisting Repressive Regimes (2012)

Myanmar Initiatives on Surveillance Issues Linked to the ICT Sector:

- [to be added if any]

²⁷¹ See commentary by the Chair of the OECD Working Party on Responsible Business Conduct, *Responsible Business Conduct in Cyberspace* (April 30th 2015) <http://www.ihrb.org/commentary/responsible-business-conduct-in-cyberspace.html>

²⁷² For example, the Stockholm International Peace Research Institute (SIPRI) is working on a data collection program in support of the European Commission’s ongoing impact assessment for the review of the EU dual-use regulation [LINK to come]

²⁷³ For more guidance, see Tech UK, [Assessing CyberSecurity Export Risks](#) (2014)

Part 4.4

Privacy

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Privacy Issues, and Linked Initiatives in Myanmar

A. National Context

Short Explanation of Data Privacy and Data Protection

There are three dimensions to the right to privacy that are implicated by the collection, storage, use and access to digital information by ICT companies: i) data privacy or data protection (the term used may differ from country to country²⁷⁴) of data held by businesses which is addressed in this chapter; ii) the protection of such data against attacks or threats of attack for criminal or other harmful purposes (see Part 4.5 on Cybersecurity); and iii) surveillance and lawful interception. Accessing or intercepting information that ICT companies collect and store by a country's law enforcement or intelligence agencies to support law enforcement or national security investigations triggers privacy concerns but there are different laws and protections on information accessed for these purposes so this dimension is addressed in Part 4.3 on Surveillance and Lawful Interception.

In today's digital economy the amount and type of personal identifying information generated and stored electronically is unprecedented, ranging from email addresses, to bank account numbers, to national ID numbers. Whenever users interact with technology, "communications data" (as it is commonly referred to in Europe), or "metadata" (as it is commonly referred to in the U.S) is created and is typically stored by the service provider.²⁷⁵ (See Part 4.3 on Surveillance and Lawful Interception for a further explanation of communications data and metadata).²⁷⁶ This type of data is created by a wide range of interactions with ICT services including email, web browsing, social media, search engines, VoIP (e.g, Skype) and mobile phones. Globally, ICT companies use this information in various ways: to target free applications or services supported by

²⁷⁴ See: Baker Hostetler, 2015 International Compendium on Data Privacy Laws <http://www.bakerlaw.com/files/Uploads/Documents/Data%20Breach%20documents/International-Compendium-of-Data-Privacy-Laws.pdf> and Norton Rose Fulbright 2014 Global Data Privacy Directory <http://www.nortonrosefulbright.com/files/global-data-privacy-directory-52687.pdf>. Also see Francoise Gilbert blog (Oct 1st 2014) *Privacy vs. Data Protection: What Is The Difference?* <http://www.francoisgilbert.com/2014/10/privacy-v-data-protection-what-is-the-difference/>

²⁷⁵ The National Information Standards Organization (NISO) defines metadata as *"structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use, or manage an information resource."* Under [standing Metadata \(2004\)](#) p16

²⁷⁶ The former UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, expressed particular concern over the increasing amount of metadata generated by ICT usage and its implication for user privacy. A.HRC.23.40_EN.pdf

advertisements (frequently offering advertisers a platform for highly targeted advertisements) or using geographic location data to identify where a user is physically located and providing location based services such as taxis, restaurant recommendations, or directions.

As a country's ICT sector grows, more and more personal data is collected and stored by governments and companies providing goods and services online. This more extensive and innovative use of personal data brings greater economic and social benefits, but also increases privacy risks.²⁷⁷ Who has access to that information and how the information is accessed and shared determines whether or not privacy is protected and respected. In many countries, national data protection laws require companies to secure and protect such information from access by unauthorised third parties. National laws on data protection, often overseen by data protection agencies, should set out the requirements for companies on the kind of information they can collect, how they should protect it and the parties that can have access to the information. As discussed below, Myanmar currently lacks a data protection law.

Concerns about Privacy and Data Protection and the ICT Sector

The increasing availability of internet services accessed via a personal computer (PC), laptop, mobile phone or other devices, has brought many benefits and is seen as crucial to continued innovation and development. But it has given rise to numerous privacy concerns about the data that is collected, stored and shared when using such services. The collection and use or misuse of sensitive data - such as around racial origin, political opinions or religious or other beliefs, personal data concerning health or sexual life, genetic data, biometric information, trade-union membership, and data relating to criminal convictions – all have the potential to be used for discriminatory purposes. Unauthorised intrusions to access or destroy data for criminal purposes is an issue rising rapidly up the list of key concerns for many businesses. Equally, businesses sharing personal data held by them with third parties without user knowledge and consent has generated commercial attention on the issues. New models of business based on the use and sale of the data by the company gathering the data, where it is used for purposes not explicitly revealed to those who provide the data, and used without their permission, raise concerns about the respect for users' privacy.²⁷⁸

While Big Data may carry important benefits, it also carries serious risks. Data mining of large data sets also has the potential to be discriminatory. It may discriminate against specific groups and activities (such as in profiling) and it may be used to draw conclusions about large groups of people who may be excluded from data collection, further perpetuating exclusion.²⁷⁹ In addition to more generalised areas of data protection, there are other areas of online protection that have generated real concern, particularly around

²⁷⁷ OECD, [The OECD Privacy Framework](#), (2013)

²⁷⁸ The [Global Commission on Internet Governance](#) was established in January 2014, to articulate and advance a strategic vision for the future of Internet governance. With work commencing in May 2014, the two-year project will conduct and support independent research on Internet-related dimensions of global public policy, culminating in an official commission report.

²⁷⁹ See Privacy International, [Data Protection](#). See also, The [EU Data Protection Reform and Big Data, Factsheet](#), April 2015.

the protection of children who are active online and in preventing the use of ICT services for disseminating child sexual abuse images.

There is a rising call for standards and accountability mechanisms to increase confidence in the use of the internet. "Data due process," access to remedy, greater transparency – by governments and business -- are all being advocated as important steps in maintaining an open and accessible internet.

Table 20: Toward a Social Compact for Digital Privacy and Security²⁸⁰

Below are excerpts of the core elements that the [Global Commission on Internet Governance](#) advocates in building a new social compact for digital privacy and security:

- *“Fundamental human rights, including privacy and personal data protection, must be protected online. Threats to these core human rights should be addressed by governments and other stakeholders acting both within their own jurisdiction and in cooperation.*
- *Businesses or other organizations that transmit and store data using the Internet must assume greater responsibility to safeguard that data from illegal intrusion, damage or destruction. Users of paid or so-called “free services” provided on the Internet should know about, and have some choice over, the full range of commercial use on how their data will be deployed, without being excluded from the use of software or services customary for participation in the information age. Such businesses should also demonstrate accountability and provide redress in the case of a security breach.*
- *There is a need to reverse the erosion of trust in the Internet brought about by the non-transparent market in collecting, centralizing, integrating and analyzing enormous quantities of private information about individuals and enterprises — a kind of private surveillance in the service of “big data,” often under the guise of offering a free service.”*

In addition, because they may hold a lot of personal information, companies may be subject to requests to hand over information about a user to a government without the proper legal authorisation and in a manner that is not in line with human rights. (See Part 4.3 on Surveillance and Lawful Interception.

Myanmar Context

In Myanmar, businesses and government are transitioning from storing information in filing cabinets to electronic databases. Data can now be stored on remotely located servers, and accessed over the Internet, otherwise known as “the Cloud”.²⁸¹ It means that users have access to an almost unlimited amount of storage of their data, which can be

²⁸⁰ From the [Global Commission on Internet Governance \(2015\)](#).

²⁸¹ In the simplest terms, cloud computing means accessing files and applications over the internet, rather than on personal hard drives or servers, via third party services.

accessed from any computer. Cloud storage is most commonly used for email (such as Gmail) and storing data (such as Dropbox).

The improved efficiency and ease of access provided by digitally storing information is obvious. But so are the potential human and commercial risks and need for accompanying legal frameworks. Myanmar companies who operated in isolation for so long may be finding that data protection requirements are a necessity if they are involved in the cross-border exchange of commerce and data. ASEAN has already put in place frameworks on data protection, as have other regional bodies,²⁸² including the EU, where appropriate data protection is a prerequisite of before any data can be transferred from the EU.²⁸³ Equally, whereas protection of privacy was until recently an unknown concept in Myanmar under a government well known for its strict control of information, awareness is growing among the Myanmar business community around the importance of personal data protection particularly given the lack of mandated privacy standards included in regulation for emerging services such as mobile money.²⁸⁴ As users weigh competing services, companies that fail to provide strong data safeguards may start to find they lose customers, although currently, the public's awareness of the need to protect personal data is quite low.

In May 2013, Human Rights Watch sent a letter to mobile network operators shortlisted in the MCIT telecommunications license process seeking clarification regarding how new telecommunications firms entering Myanmar would seek to mitigate potential human rights impacts given Myanmar's lack of legislation related to privacy, censorship, and interception. Both Telenor and Ooredoo issued responses. Their company positions on data privacy took different approaches. MPT and Yatanarpon Teleport have not issued public statements on data privacy. Myanmar's remaining Internet service providers also do not provide any clarification on data privacy policies on their websites.

Ooredoo highlighted its *"commitment to Myanmar to use Singapore as a benchmark"* and the intent to *"implement policies and procedures that are compliant with the 2012 Singapore Data Protection Act."*²⁸⁵ The Singapore Data Protection Act (PDPA) defines personal data as "data, whether true or not, about an individual who can be identified from that data; or from that data and other information to which the organization has or is likely to have access."²⁸⁶ The PDPA requires private sector companies to notify and provide individuals with an explanation when their personal data is collected and disclosed. With regard to telecommunications, the Singapore Personal Data Protection Commission has issued advisory guidelines for the telecommunications sector. The PDPA lacks references to specific and relevant human rights principles under international law,

²⁸² See in particular, the basic principles on data protection in the [OECD Guidelines Governing The Protection Of Privacy And Transborder Flows Of Personal Data](#)

²⁸³ Under the EU Data Protection Directive, personal data may only be transferred to third countries i.e. countries outside of the European Union, if that country provides an adequate level of data protection. This created an incentive for some countries to increase data protection standards, due to the economic benefits through increased trade with EU countries.

²⁸⁴ See ["Preparing the Financial System for Digital Attacks"](#), Myanmar Times (March 2015)

²⁸⁵ [Ooredoo response to Business and Human Rights Resource Centre's request for a response to HRW's Report: Burma Telecom Winners Should Safeguard Users](#)

²⁸⁶ <https://www.pdpc.gov.sg/personal-data-protection-act>

exempts government agencies and entities working on their behalf, has ambiguous limitations on legitimate purpose for data collection and disclosure under the PDPA, exceptions to individual consent requirements, poor transparency and accountability mechanisms, and broad language that allows for organizations and data to be exempt from PDPA regulations in the future.²⁸⁷

Telenor's response to Human Rights Watch's letter cited Telenor's "well established privacy and data protection regime."²⁸⁸ A section of the Telenor website explains that, "Telenor Group only processes personal data for the purposes the data was originally collected, and only for as long as the purpose exists. The companies in Telenor Group will ensure that:

- *"Persons we process data about are properly informed when their personal data is being collected*
- *All persons we process information about have the right to obtain relevant information on the processing of personal data related to them*
- *Persons we process and store data about are able to exercise user choice and control and have appropriate rights to correct or delete their personal data*
- *Personal data are kept in a form which permits identification of persons for no longer than is necessary for the purposes for which the data were collected*
- *Transfer of personal data does not compromise an adequate level of protection*
- *Risk based, planned and systematic measures are undertaken to ensure satisfactory information security in connection with the processing of personal data*
- *The processing of personal data is properly documented*
- *Appropriate training is given to relevant personnel involved in the processing of personal data."*²⁸⁹

Telenor specifically cited its participation in privacy projects with the GSMA (where it is a full member),²⁹⁰ and the European Telecommunications Network Operator's Association (ETNO) working group on data protection²⁹¹.

The GSMA's Mobile Privacy Principles definition of personal data differs from the definition used in Singapore in the PDPA. While acknowledging that personal information ultimately depends on its local legal definition, the GSMA defines personal data as:²⁹²

- *"Any data that is collected directly from a user (e.g. entered by the user via an application's user interface and which may include name and address, credit card details)*
- *Any data about a user that is gathered indirectly (e.g. mobile phone number, email address, name, gender, birth data, location data, IP address, IMEI, unique phone ID)*

²⁸⁷ Confidential analysis prepared for the Institute of Human Rights and Business.

²⁸⁸ <http://www.hrw.org/node/116797>

²⁸⁹ <http://www.telenor.com/sustainability/privacy-and-data-protection/our-privacy-principles/>

²⁹⁰ <http://www.gsma.com/publicpolicy/mobile-and-privacy>. The GSMA is an industry association representing mobile operators worldwide.

²⁹¹ <https://www.etno.eu/home/working-groups/data-protection-trust-security>

²⁹² <http://www.gsma.com/publicpolicy/wp-content/uploads/2012/03/gsmaprivacyprinciples2012.pdf>

- Any data about a user's behavior (e.g. location data, service and product use data, website visits)
- Any user-generated data held on a user's device (call logs, messages, user-generated images, contact lists or address books, notes, and security credentials)."

The ETNO works closely with the GSMA, and focuses on the review of legal frameworks impacting data protection in Europe. In terms of data protection and privacy, the draft EU General Data Protection Regulation (GDPR) is regarded as providing high standards in the protection of personal data by the international community.²⁹³ As part of that process, the ETNO has supported the notion that there should be no preferential treatment in data protection requirements between the private and public sectors.²⁹⁴ This is a notable difference between the GDPR and the PDPA in Singapore.

Outside of Internet service providers, the integrity of technical processes for protecting user data in Myanmar is unclear, particularly in regards to Myanmar's National Certificate Authority. Certificates have significant impacts on user privacy, as they are used to verify a chain of trust whenever a user submits personal information (such as an account username and password) to an online service. These certificates are used to verify the website's validity and prevent users from submitting data to an unauthorized third party. Myanmar's certificate authority was established under the Electronic Transaction Law (No.5/2004).²⁹⁵ Policies and practices related to Myanmar's existing certificate authority are unclear. Websites for Myanmar's Root Certification Authority, and Yatanarpon Certificate Authority are currently offline. As the Internet now represents a global community, a lack of clear processes and transparency among certificate authorities puts users' private information at risk and promotes distrust. Recently, Google and Mozilla took steps to de-trust all certificates signed by China's National Certificate Authority.²⁹⁶

International Human Rights Law on Privacy

Every person has the right to privacy under international human rights law, including privacy of his/her communications.²⁹⁷ Article 17 of the *International Covenant on Civil and Political Rights* provides:

²⁹³ See http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf The legislation is not without criticism from global technology firms such as Google who have recently complied with users' "right to be forgotten and to erasure" requests under Article 17 of the GDPR. Telenor Myanmar is a wholly owned subsidiary of the Telenor Group per the license requirements stipulated by MCIT. Telenor Group is headquartered in Oslo, Norway. Norway is not a member state of the European Union but has implemented the EU Data Protection Directive 95/46/EC.

²⁹⁴ <https://www.etno.eu/news/etno/2014/253>

²⁹⁵ A [full text of the Electronic Transactions Law](#)

²⁹⁶ In April 2015, both Google and Firefox stopped trusting certificates issued by China Internet Network Information Center (CNNIC). Google noted that CNNIC had signed fake certificates for Google domains, while Firefox noted that CNNIC lacked documented PKI practices. For additional information please see: Emil Protalinski, VentureBeat [Google and Mozilla decide to ban Chinese certificate authority CNNIC from Chrome and Firefox](#) (April 2nd 2015)

²⁹⁷ The right to privacy is also included in a wide range of international and regional human rights instruments, signalling its wide acceptance: Article 14 of the United Nations Convention on Migrant Workers; Article 16 of the UN Convention on the Rights of the Child; Article 10 of the African Charter on the Rights and Welfare of the Child; Article 4 of the African Union Principles on Freedom of Expression (the right of access to information); Article 11 of the American Convention on Human Rights; Article 5 of the American Declaration of the Rights and Duties of Man, Articles 16 and 21 of the Arab Charter on Human Rights; Article 21 of the ASEAN Human Rights Declaration; and Article 8 of the European Convention on Human Rights. See a

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.”

Legitimate Restrictions on the Right to Privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) on privacy is less specific about permissible reasons for restricting the right to privacy as compared to Article 19 on the freedom of expression (See Part 4.1 on the Freedom of Expression). Any restrictions on the right to privacy must not be: i) “**unlawful**” or ii) “**arbitrary**”. A restriction is “unlawful” when the interference is not authorised by States on the basis of national law authorising interference. The national law must be sufficiently accessible, clear and precise and also must not conflict with other provisions of the ICCPR, such as the prohibition on discrimination or the country’s own constitution. The protection against “arbitrary interference” means that the interference should be **reasonable** in the particular circumstances. It must be in **proportion to the aim** and the least intrusive option available to accomplish the aim and be **necessary** in the circumstances for reaching a legitimate aim.²⁹⁸

The Myanmar Legal Framework and its Current Application

The 2008 Constitution

Most countries have provisions to protect privacy as part of their constitution. At a minimum, these provisions usually include the rights of privacy in the home and of communications. The 2008 Constitution of Myanmar provides privacy protection:

“357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.”²⁹⁹

The constitutional provisions provide for a wide scope of protection by using the term “other communications” but the protections are available to citizens only and are not specific about the kinds of protections it will offer. Moreover, the guarantees are “subject to the provisions of this Constitution” (Art. 357), which has numerous restrictions on these constitutional guarantees that are quite broad. There has been little constitutional jurisprudence developed in Myanmar, meaning there is little to rely on that might limit the application of these broadly worded restrictions.

[compilation of privacy references in international and regional human rights instruments](http://gilc.org/privacy/survey/intro.html) and see also <http://gilc.org/privacy/survey/intro.html>

²⁹⁸ The limitation must also be shown to have some chance of achieving that goal while at the same time not being so overly restrictive that the restriction makes the exercise of the right meaningless. The onus is on the authorities seeking to limit the right to show that the limitation is connected to a legitimate aim. Where the limitation does not meet these criteria, the limitation would be unlawful and/or the interference with the right to privacy would be arbitrary Pillay report

²⁹⁹ [Constitution of Myanmar \(2008\)](#)

Current Legal Framework and Gaps

Although the Constitution declares that privacy will be protected under the law, there are no separate privacy laws in Myanmar. In addition, there is no legal framework on data protection or data privacy. As part of its ASEAN membership, Myanmar has agreed to develop best practices on data protection by 2015 but there have been no announcements to date on forthcoming plans.³⁰⁰ Civil society have highlighted that Myanmar has an opportunity to leapfrog its peers in regulating privacy, data protection, Internet governance, freedom of speech/expression (partially due to the lack of legacy regulations) and to ensure that the push to improve access does not compromise these other issues. A civil society coalition suggested a proactive discussion among government and civil society and operators, rather than waiting until the government demands 'private' data (for purposes of national security).³⁰¹

Data protection or data privacy laws³⁰² should safeguard user privacy, by limiting actions by governments and companies in collecting, storing and sharing personal data generated by using ICTs when trading or using goods and services online. Such protections are intended to regulate how, when, and why a user's personal information or data may be used or stored by a third party to ensure that it is gathered for a legitimate purpose and protected from misuse. There should be restrictions or limits in each country's data protection or data privacy legislation as to how this information is collected, stored and shared by companies for commercial reasons, or by governments obtaining this kind of information for services such as voting registration, health records or tax purposes. Legislation that regulates data privacy typically details a consent mechanism to inform and request permission from users, provides a legal definition of what constitutes personal data, mandates an allowable timeframe for the use of any data after consent is given, and includes regulatory mechanism for making grievances about the use of data. However many national frameworks lack "use limitations", instead allowing the collection of data for one legitimate aim, but subsequent use for others.³⁰³

In recent years, many other countries have passed data protection or data privacy legislation for the first time or updating them in response to the impact of ICTs on privacy.³⁰⁴ In Asia, [Malaysia](#), [Singapore](#), and [Taiwan](#) have a "Personal Data Protection Act." The law of [Japan](#) is called "Act on the Protection of Personal Information." [South Korea's](#) law is called the *Protection of Personal Data Act*.³⁰⁵ The equivalent law of the Philippines is called the *Data Privacy Act*.³⁰⁶

³⁰⁰ ZicoLaw, [ASEAN Insights, Personal Data Protection](#), Issue 4.

³⁰¹ http://www.intgovforum.org/cms/wks2014/index.php/proposal/view_public/66

³⁰² Outside Europe, the term "data protection" and "data privacy" is used to commonly mean the same thing.

³⁰³ OHCHR, [The right to privacy in the digital age, /HRC/27/37](#), June 2014, para. 27.

³⁰⁴ In the European Union, the suite of laws protecting personal data are currently being updated. In 2012, the European Commission proposed to unify data protection in the EU under a single law, the General Data Protection Regulation (GDPR), to take into account technological developments such as social networking and cloud computing. A [draft](#) was presented at the European Parliament in March 2014: A final version is expected to be adopted by end 2015. See: 17 January 2015, [EU General Data Protection Regulation State of play and 10 main issues by Jan Philipp Albrecht](#), Greens/EFA and [Commissioner Jourová: Concluding the EU Data Protection Reform is essential](#) (28 January 2015)

³⁰⁵ <http://www.francoisgilbert.com/2014/10/privacy-v-data-protection-what-is-the-difference/>

³⁰⁶ Republic of the Philippines [Act No. 10173 2012 Data Privacy Act](#)

The Government of Myanmar recently held a public consultation in 2014 on the issue of mandatory registration of personal information of SIM card and mobile phone purchasers cards³⁰⁷ which indicates that the Government is beginning to build its more detailed telecommunications regulations, but potentially without considering the data privacy implications. The mandatory registration of SIM cards has shown that there are a range of unintended consequences that have prompted other governments to consider and then reject the idea.³⁰⁸ The MCIT proposed that mandatory SIM registration would enable new and innovative services (e.g., mobile money and mHealth services). However services such as these where such sensitive data is exchanged should be required to register for extra mobile-enabled services; such registration should always be service focused. Mandatory registration could act as a barrier to accessing mobile services because people may not have an address or registration number or may be reluctant to provide personal details due to consumer distrust of the Government.

MCIT has not yet defined its procedures for the lawful interception of user data, the process for any suspension of networks, or procuring user data for law enforcement purposes, though it has committed to doing so. This is a crucial and important procedure that requires further consultation and consideration before any mass collection of customer data through mandatory registration is considered. Without data retention requirements, large amount of data, held for an indefinite amount of time, would be susceptible to unlawful uses, including unauthorized surveillance, leaks, and security breaches resulting in negative, and in some cases, severe impacts on the enjoyment of the right to privacy.

B. Field Research Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Privacy Policies by Myanmar Companies
Human Rights Implicated: Right to privacy
Field Assessment Findings <ul style="list-style-type: none"> ▪ MCRB reviewed the websites of 73 companies as part of the Transparency in Myanmar Enterprises project (TiME) (or “Pwint Thit Sa” in Bamar) to collect a small sample of the use and disclosure of privacy policies and protections by Myanmar companies.³⁰⁹ ▪ Of the 73 company websites reviewed, only 6 explicitly explained in any length how they handled and used customers’, users’, workers’ and others’ data.

³⁰⁷ See: <http://www.myanmar-responsiblebusiness.org/news/code-of-practice-for-mobile-customer-registration.html>

³⁰⁸ Myanmar Centre for Responsible Business, [MCRB calls for further consideration of the impacts of requiring SIM Card registration in Myanmar.](#)

³⁰⁹ MCRB, [Pwint Thit Sa Project \(TiME\).](#)

- **Only 1 company actually adopted a formal privacy policy** outlining in detail its security and data handling measures.
- **4 company's statements were contained within other operational policies**, such as a code of conduct or code of ethics.
- **1 ISP explicitly did not commit to any level of data protection**, instead confirming that it may monitor its service from time to time and disclose any information regarding customers or their use as required under national law, regulations, government requests, or that it saw fit.
- **A majority of companies reviewed presented no accessible information about the ways in which they handle and use data.**
- One company confirmed that it would **"only" guarantee the privacy of the company email system to the extent required by law**, whereas a separate statement within its Communications Policy stated that as a leading institution in Myanmar it would strive to be as open and transparent as possible while protecting privacy and personal information.

Stakeholder Engagement and Grievance Mechanisms

Human Rights Implicated: Right to privacy

Field Assessment Findings

- **Lack of awareness of privacy concerns among users:** Users on social media were observed sharing sensitive personal data including bank statements and checks for donations or even more sensitive information about health status without appropriate protections. Users reported being unaware of how to configure privacy settings in their social media accounts. Users also reported being unaware of how to report on content on social media.
- **Lack of policies or clear communication of policies:** Data retention policies were absent, or in some cases not clearly communicated to the customer/user even when internally present (e.g 5 years for retention of customer data on paper).

Data Protection

Human Rights Implicated: Right to privacy

Field Assessment Findings

- **Physical protection of data:** There was variation in the level of access control in place for businesses with data centers. Some businesses logged visitors to data centers, while others had multiple levels of security in place (biometric such as a fingerprint reader, access card, and close circuit television).
- **Protection of data in case of emergencies:** Data backups or disaster response policies were mostly absent. One bank maintained a data centre for production and a data centre for disaster recovery.
- **Protection of data from unauthorized access within the company:** Role-segregation varied among businesses collecting customer's personal data. One bank segregated employees conducting a "Know Your Customer" check (where basic information was provided, such as a National Registration Card) from employees

conducting financial transactions.

- **Affordability of data protection:** Many businesses used pirated software for internal business functions including email. Small and medium size businesses complained of the cost of buying licensed software.
- **Lack of awareness of privacy concerns among users:** Users on social media were observed sharing sensitive personal data including bank statements and checks for donations or even more sensitive information about health status without appropriate protections. Users reported being unaware of how to configure privacy settings in their social media accounts. Users also reported being unaware of how to report on content on social media.
- **Lack of policies or clear communication of policies:** Data retention policies were absent, or in some cases not clearly communicated to the customer/user even when internally present (e.g 5 years for retention of customer data on paper).

Myanmar Good Practice Examples:

- Companies are beginning to conduct threat and vulnerability assessments across their applications, network, and infrastructure on an ongoing basis to test the security of the data held in their systems. One bank uses two separate companies to perform assessments (one local and one international).

C. Key Human Rights Implications for the ICT Sector

General

- **Understanding contextual risks around Myanmar's history and government action:** Given Myanmar's historical legacy of government surveillance and information control, coupled with ICT policies and laws that are not aligned with international human rights standards, there exist significant risks for violation of ICT user rights to protection of privacy and anonymity, as well as risks for ICT company who may be implicated in such violations. Risks related to the violation of the right to privacy in Myanmar's ICT context can be categorized into at least two separate but closely related areas of concern with respect to government actions: (1) government monitoring and surveillance of user activity and content; and (2) government access to user-identifying information (See Part 4.3 on Surveillance and Lawful Interception). Some observers hope the sheer force of the ICT market and the growth potential it carries will help make the case for a global, open and secure ICT culture. However, the argument for openness is more difficult to make for countries that have not yet seen those benefits accrue³¹⁰.
- **Addressing gaps in the Myanmar legal framework:** As Myanmar currently has no legal requirements for mandatory protection for the data privacy of ICT users in the country, this means that the protection of personal data is left to individual companies or government departments, if at all. Companies operating in sectors such as ICT or the financial sector that are more aware of the importance of data protection may have their own policies and procedures in place or industry-specific standards to refer to in developing systems and policies. For other companies in the ICT sector in Myanmar,

³¹⁰ M.Igoe, Is Myanmar ready for a telecommunications revolution? 16 May 2014

if they do not have policies and procedures in place, they will need to develop the systems to protect personal information and outward facing policies to inform customers about how their data is being handled. Putting in place data protection standards that provide robust protections of the right to privacy is a good way for local companies to show they are ready to meet data protection requirements from business partners, trading partners and users.

- **Developing appropriate policies and procedures to safeguard data privacy:** Given that companies in the ICT value chain often collect and store a large amount of personal information about their users, it is important they have processes and policies in place to ensure they protect user information, that they are clear about how they collect, store and share user information with third parties, and under what circumstances the Government (or others) can have access to information or intercept communications. This information would usually be set out in a company's "privacy policy" that should be publicly available and written in clear, easy-to-understand language, spelling out the implications of when the users' data would be shared, with whom, and why. The International Standards and Guidance in section D below set out what issues to address when developing their policies and systems.³¹¹

Web Based Services

- **Privacy Controls:** Overall digital literacy in Myanmar remains low as many users are interacting with web-based services for the first time. Many international companies have controls in place that allow a user to manage his/her "digital footprint" online in addition to their broader online experience. A large majority of users in Myanmar are not familiar with these features. On social media, privacy management controls allow the ability to selectively share or restrict information, including access to photographs, contact information or profile accessibility (e.g, public and private settings). For email communication such as newsletters or mailing lists, this involves the ability to unsubscribe or customize subscription settings. Raising awareness of these features through appropriate media is essential, as is ensuring these features are available in local languages.
- **Content-Reporting Mechanisms:** Abusive or offensive content can violate a user's privacy. Larger social media platforms now maintain community standards, which outline acceptable use online, while also providing guidance to users on how to address violations to these standards in the case of prohibited content or behaviour. Content reporting mechanisms allow users to report abusive or invasive content to platform moderators. For first time users, understanding how and when to report content is a critical part of ensuring a safe experience online. Similar to privacy controls, raising awareness of these features through appropriate media is essential, as is ensuring that community standards and reporting tools are available in local language.

³¹¹ See for example, European Commission, [ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#) (2013), pp. 21,45-46

D. Relevant International Standards and Guidance on Privacy Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- Asia Pacific Economic Cooperation Group (APEC) 2005 [Privacy Framework](#)
- [EU Data Protection Directive 95/46](#)
- [EU Directive on Privacy and Electronic Communications 02/58](#)
- [OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data](#)
- [UN Office for the High Commissioner for Human Rights, The Right to Privacy in the Digital Age A/HRC/27/37 \(2014\)](#)
- [ISO/IEC 27001:2013 \(End to End Information Security Standard\)](#)

Relevant Guidance:

- [Privacy by Design](#). Developed by the former Information and Privacy Commissioner, Ontario Canada. In October 2010, *Privacy by Design* was recognized as the global privacy standard in a landmark resolution by the International Conference of Data Protection and Privacy Commissioners in Jerusalem
- US Federal Trade Commission [Protecting Personal Information: A Guide For Business](#)

Myanmar Initiatives on Privacy Linked to the ICT Sector:

- The GSMA held a workshop in Naypyitaw in July 2014 titled “[Mobile Communications as an Agent of Inclusion and Change](#)” with the Ministry of Communications and Information Technology (MCIT) and has committed to holding three additional capacity building workshops in 2015 with government policy makers. The workshops will focus mobile regulation for socio-economic development, spectrum management and mobile money for financial inclusion.

Part 4.5

Cybersecurity

In this Section:

- E. National Context
- F. Field Assessment Findings
- G. Key Human Rights Implications for the ICT sector
- H. Linked Initiatives in Myanmar and Relevant International Standards

A. National Context

A Short Explanation of Cybersecurity

A safe and secure Internet is a global Internet governance priority. There are many threats that can undermine the security and stability of cyberspace, impacting governments, business, civil society groups and individual users. Cyber attacks, or cybercrime, can come in many forms, resulting in loss of services or loss of control over services, stolen personal information (such as credit card details), fraud and identity theft and receiving a high volume of spam messages. A range of actors can execute cyber attacks, including: national governments, criminals, business, hacker groups or individual hackers³¹². Attacks can be carried out by spreading computer viruses, denial of service attacks (DDoS)³¹³, phishing³¹⁴, or hacking.

Governments, business, civil society groups and individual users can all be victims of cyber attacks, and there have been some high profile examples in recent years. Estonia suffered a three-week long cyber attack in 2007 which disabled banks, companies, government ministries and newspapers. Experts from the North Atlantic Treaty Organisation (NATO) had to be called in to help the country defend and rebuild its cyber capabilities.³¹⁵ In 2014, Sony Pictures systems were hacked, reportedly by North Korea, resulting in the leaking of employee details, employee emails and yet-to-be-released films.³¹⁶

Encryption³¹⁷ is the technique by which data (when in transit or when at rest on devices) is scrambled to make it unreadable without using specific passwords or keys. It is extremely

³¹² A hacker is someone who seeks and exploits weaknesses in a computer system or computer network. Sometimes this can be for malicious intent (known as 'black hat' hackers) or it can be done for ethical reasons, such as helping make services more secure (known as 'white hat' hackers)

³¹³ A *Distributed Denial of Service (DDoS)* attack is an attempt to make an online service unavailable by overwhelming it with traffic from multiple sources.

³¹⁴ Phishing is the act of sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

³¹⁵ Ian Traynor, The Guardian, [Russia accused of unleashing cyberwar to disable Estonia](#) 17th May 2007

³¹⁶ Vlad Savov, The Verge, [Sony Pictures Hacked: The Full Story](#) December 8th 2014.

³¹⁷ A recent report by the UN Special Rapporteur on Freedom of Expression, David Kaye, defines encryption using the SANS Institute definition from the [History of Encryption \(2001\)](#), [a mathematical] "process of converting messages, information, or data into a form unreadable by anyone except the intended recipient"

important for the Internet economy. With encryption comes security of user data, authentication, confidentiality and consumer trust in services. People undertake an increasing amount of legitimate activities over the Internet that involve personal information, such as banking, buying and selling goods, filing tax returns, and so on. Encryption is important to keep personal data safe from criminals. Without encryption, e-commerce would never have taken off and cannot survive.

Table 21: Definitions of Cybersecurity

Definitions of cybersecurity differ slightly according to international and regional bodies, but the common theme to describe cybersecurity is protecting:

- The availability of services
- The integrity (security) of network infrastructure
- The protection of private information

Cyber security is defined by:

- **the International Telecommunications Union (ITU)** (and recited by ASEAN)³¹⁸ as: "...the collection of tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets.." ³¹⁹
- **the European Union** as: "...the safeguards and actions that can be used to protect the cyber domain, both in the civilian and military fields, from those threats that are associated with or that may harm its interdependent networks and information infrastructure. Cyber-security strives to preserve the availability and integrity of the networks and infrastructure and the confidentiality of the information contained therein." ³²⁰
- **the Freedom Online Coalition** as: "... the preservation – through policy, technology, and education – of the availability*, confidentiality* and integrity* of information and its underlying infrastructure so as to preserve the security of persons both online and offline."

**as defined by ISO 27000 standard.*³²¹

Concerns about Cybersecurity, Human Rights and the ICT Sector

Recent research by Citizen Lab has shown that CSOs around the world face the same threats of attack as governments and business, but have fewer resources to fend off a cyberattack.³²² The attacks on CSOs are intended to undermine communications, by taking websites offline or disrupting other communications.

³¹⁸ [Joint Ministerial Statement on ASEAN Cybersecurity Cooperation](#), 2013

³¹⁹ ITU [Overview of Cybersecurity\(2008\)](#)

³²⁰ JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS [Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace \(2013\)](#) footnote 4

³²¹ <https://www.freedomonlinecoalition.com/how-we-work/working-groups/working-group-1/>

³²² Citizen Lab, [Targeted Threats Against Civil Society](#) (2015)

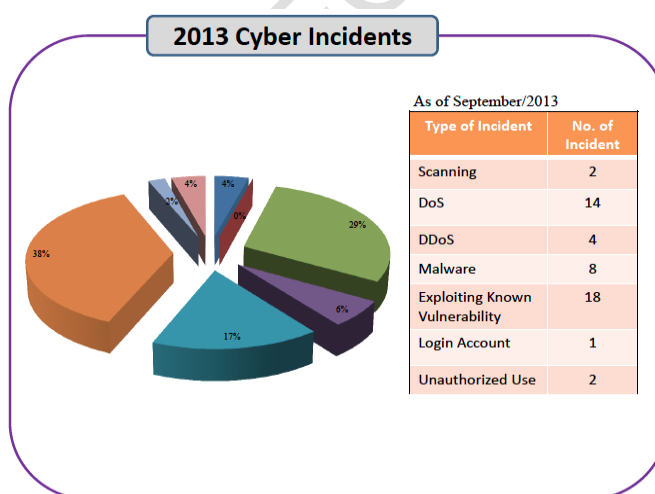
Encryption is not just important for safe transactions, it is also important for human rights defenders³²³ and people at risk, so that they are able to communicate without the fear of their confidential communications being intercepted arbitrarily by intelligence agencies.³²⁴ However some governments are already specifically targeting civil society groups because they use encryption and Internet security techniques. One of the charges against the jailed Zone 9 bloggers in Ethiopia is their use of encrypted communication and participating in trainings on Internet security.³²⁵ Such training is provided by the well-recognised Berlin-based organisation Tactical Technology Collective, which has developed the popular tool, *Security In A Box*, a publicly available resource used by thousands on human rights defenders worldwide.³²⁶

Cybersecurity attacks can jeopardise user privacy. Companies are increasingly attractive targets for cyberattacks, jeopardising the confidentiality, availability and integrity of network systems and personal data.

Myanmar Context

Simple phishing – such as fake lottery emails, and letters from the President of the World Bank - has been seen in Myanmar for over a decade. As technology becomes increasingly personal and prevalent in Myanmar life, services will evolve and risks will increase. Personal data will be stored, transmitted, and accessed by smart-phone applications, or web-applications for services such as online-banking, e-commerce, or e-government.

Figure 4: A breakdown of historical cybersecurity incidents



Source: ASEAN-Japan Symposium on Cyber Security "ICT Usage & Cyber Security Issues in Myanmar" (October 2013)

³²³ New technology is emerging to support field data collection by civil society organizations working in sensitive communities. See <https://martus.org/>

³²⁴ Various tools are available to provide human rights defenders and people at risk with higher levels of encryption. The TOR browser is a web browser that allows users to browse the internet anonymously. The TOR browser can be downloaded at <https://www.torproject.org/projects/torbrowser.html.en>. Additionally, PGP (Pretty Good Privacy) can be used for encrypting email messages. For an overview of how to install PGP on a Windows based computer, please see: <https://ssd.eff.org/en/module/how-use-gpg-windows-pc>. For an overview of how to install PGP on a Mac computer please see: <https://ssd.eff.org/en/module/how-use-gpg-mac-os-x>

³²⁵ See [Charge 1, Specification 1 and 2. English translation](#) and [Tactical Technology Collective's response](#)

³²⁶ See Burmese language version of [Security in a Box](#)

International examples demonstrate that failing to maintain the integrity and security of these services has severe implications. In Myanmar, some have described recent ATM fraud in Myanmar as the first wave of cyber crime as networked services expand.³²⁷ Figure 4 shows a breakdown of cyber incidents reported by the Myanmar Computer Emergency Response Team (MMCERT) (see Figure 4) as of September 2013. A variety of hacker groups have been reported as active in Myanmar. These groups include the Kachin Cyber Army, Bangladeshi Cyber Army and Indonesian Cyber Army.³²⁸ Blink Hacker Group has also been reported to be active.³²⁹ Attacks have typically included website defacement or service takedown via a denial of service attack (DDoS).³³⁰

DDoS Attacks

Myanmar suffered a huge DDoS attack in 2010, just before the election. The main Internet service provider, MPT, was overwhelmed and the attack essentially took the country offline. The attack was discovered by the research organisation Arbour Networks, which reported the attack was larger than the 2007 attack on Estonia, but could not establish its origin. Speculation ranged from placing blame on the Government of Myanmar in order to disrupt the election, to external hackers with unknown motives.³³¹

In 2011, Irrawaddy reported they had been victim to likely DDoS attacks, forcing the website to be temporarily shutdown. Hackers also penetrated Irrawaddy's central server and planted false new stories on the website's front page, claiming a popular Burmese actress had died. It was also suspected hackers had gained access to confidential information stored on the server, such as the identity of sources. The Irrawaddy hired European security specialists to investigate the attacks, the source of which was traced to an IP address in London.³³²

Targeting Burmese Exiles with Malware

Throughout the 2000's, there were repeated reports that Burmese exiles were being targeted by the state with malicious software, or "malware", by concealing computer viruses in emails, sent to targets with titles such as 'Happy Birthday' or 'I need help'. The purpose of these attacks at this stage appears to have been to disrupt computers, rendering them unusable, or crashing exile media websites, rather than for the purpose of monitoring user activity.³³³ However more recently, the purpose of malware attacks seem to have been to gain access to confidential information (See above and Part 4.3 on Surveillance and Lawful Interception).

³²⁷ See The Irrawaddy "[Foreigners Charged over ATM Scams in Rangoon](#)" (November 2014). In November 2014 thieves used cloned ATM cards to steal 25.2 million Myanmar Kyats across Yangon.

³²⁸ Bill O'Toole, The Myanmar Times, [Email Hacking Exposes Cybercrime in Myanmar](#) 20th February 2013

³²⁹ <http://news.softpedia.com/news/1-000-Myanmar-Websites-Hacked-by-Blink-Hacker-Group-318180.shtml>, and <http://www.bhg-myanmar.org/>

³³⁰ A denial of service attack involves flooding a network with information, which overwhelms a website or services server used for hosting. This can involve a single attacker, or a group of compromised computers (bot-net) that flood the network (called a distributed denial of service attack).

³³¹ See Infosecurity, [Massive DDoS Attack Knocks Burma Offline](#), 5th November 2010

³³² Shawn W. Crispin, Committee to Protect Journalists (CPJ) [Burmese Exile News Site Endures Hacking, DDoS Attacks](#), May 2nd 2011

³³³ Rehmonnya.org ['I Need Help' Email Virus Attacks Burmese Exile Groups](#) October 4th 2008

Existing Cyber Security Management and Policy in Myanmar

As the ICT sector grows in Myanmar, and more services are introduced online, such as e-banking, maintaining the availability of services, integrity of systems and protection of information against attacks will become a central issue to the Government of Myanmar's internet governance policy. However, there is currently no legal framework in Myanmar that clearly defines what constitutes personal identifiable information or stipulates any requirements around the collection, management, or transfer of personal data for companies. Hacking is criminalized under article 34 of the Electronic Transactions Law (No 5/2004).³³⁴ A cyber-security/cyber crime law is rumoured to be in development by either the Ministry of Information and Communication Technology or the Ministry of Home Affairs, both with likely support from the Myanmar Computer Federation (MCF). A specific timeline for the law's development is unclear. In 2014 it was reported that Microsoft would assist MCIT to improve Myanmar's cyber security and provide guidance on the development of cyber-security related legislation.³³⁵

In 2011, MCIT published a follow up report to the 2005 ICT Masterplan. This report states the intention to build a CyberSecurity Protection Agency to protect Myanmar's critical information and infrastructure³³⁶, whose role is to enhance Internet security and creating a safe internet environment. The report states the strategic objectives of this agency are to *"Prevent cyber attacks against Myanmar's critical infrastructures; Reduce national vulnerability to cyber attacks; Minimize damage and recovery time from cyber attacks that do occur"*.

In addition, the agency plans to protect citizen's personal information, provide guidance and training for internet and information security, protect critical infrastructure by analysing and evaluating weaknesses in facilities, strengthening security for electronic government services and protection of public information.

The Role of the Myanmar Computer Emergency Response Team (MMCERT)

Cybersecurity is currently managed by a single organization called the Myanmar Computer Emergency Response Team (MMCERT), under the Ministry of Communications and Information Technology. MMCERT exists to disseminate advice and best practices regarding cyber security, provide technical assistance through workshops and seminars, and to cooperate with law enforcement officials on cyber crime or security issues. MMCERT maintains a ticketing system for case management of cyber security issues. Users can submit a case report via email.³³⁷ MMCERT posts updates regarding known software security vulnerabilities on their home page (e.g. Wordpress, Microsoft, Oracle, etc).

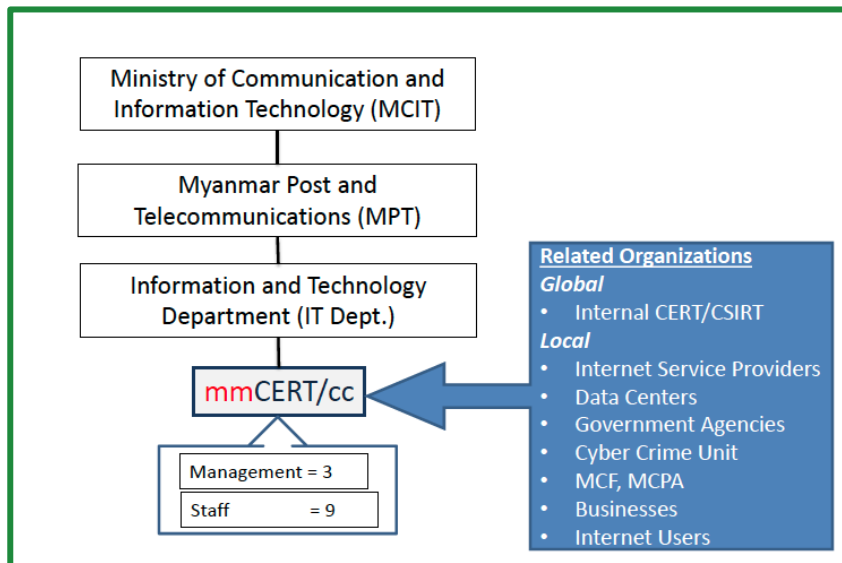
³³⁴ [Electronic Transactions Law](#)

³³⁵ Htun Htun Minn, Myanmar Business Today, [Microsoft Tapped To Assist Myanmar Develop Cyber Security Measures](#) 24th June 2014

³³⁶ MCIT, *The Follow-up Project of the Establishment of ICT Master Plan in Myanmar* (2011) Section 3.6.1.6

³³⁷ http://www.mmcert.org.mm/Incident_Report.php

Figure 5: Relationship between MMCERT and MCIT



Source: [International Telecommunications Union \(ITU\)](#)

MMCERT is an operational member of Asia Pacific Computer Emergency Response Team (APCERT).³³⁸ The purpose of APCERT is to provide coordination among regional computer emergency response teams, develop responses to large-scale security threats and also facilitate research and development among APCERT members. MMCERT is also a member of International Multilateral Partnership Against Cyber Threats (IMPACT).³³⁹ Outside of these affiliations, stakeholders in Myanmar's ICT business community noted that MMCERT lacks the "funding, sponsorship, and support" needed to adequately address cyber-security threats in Myanmar's rapidly evolving ICT sector.

Cybersecurity in the ICT Sector

In Myanmar companies are racing to improve telecommunications services to keep pace with demand. Many private stakeholders view Myanmar's lack of existing infrastructure as an opportunity, pointing to the fact that Myanmar can "leapfrog" legacy technology and implement cutting edge infrastructure. For many Myanmar businesses, a desire to deploy modern technology has overshadowed the importance of cyber-security and data protection policies.

B. Field Assessment Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector

³³⁸ APCERT [defines](#) an operational member as a, "CSIRT [Computer Security Incident Response Team]/[Computer Emergency Response Team] CERT in the Asia Pacific region, which performs the function of CSIRT/CERT on a full time basis as a leading or national CSIRT/CERT within its own economy." See:

³³⁹ IMPACT is a key partner of the United Nation's International Telecommunication Union (ITU). The partnership between IMPACT and the ITU is primarily based on implementing the [ITU's Global Cyber Security Agenda \(GCA\)](#).

continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

See also field research findings in Part 4.4 on Privacy, which are also relevant for cybersecurity.

Cyber Security
Human Rights Implicated: Right to privacy
<ul style="list-style-type: none"> ▪ Low awareness of cybersecurity risk by business: The majority of companies did not have policies in place to test their systems against threats. Only one company interviewed carried out ongoing penetration and vulnerability tests to mitigate risk. ▪ Lack of awareness of cybersecurity risks among users: Users on social media were observed sharing sensitive personal data including bank statements and checks for donations. Users also reported being unaware of how to configure privacy settings in their social media accounts. ▪ Use of pirated applications in mobile shops: Many users also download pirated applications on their mobile phones at phone shops, unaware of the specific application permissions the software required or that an application could contain malware. ▪ Lack of identified Personal Identifiable Information: An independent cybersecurity professional noted that companies in Myanmar have not defined what constitutes Personal Identifiable Information (PII), which is information that can be used to “distinguish or trace” and individuals identity, or who has the ability to access this information internally.³⁴⁰ ▪ Presence of intrusive equipment: BlueCoat network equipment³⁴¹ was observed in one ISP’s data centre. While this equipment was noted as legacy hardware pre-2011, it was unclear who had access to the equipment in the data centre or who was responsible for oversight. Any formal process around managing requests to block or filter content was unavailable, as was a mechanism to communicate with customers regarding service impacts.

C. Key Human Rights Implications for the ICT Sector

- **Contribute to the education of users on protecting themselves online (See the Table below):** Users in Myanmar generally have a very low level of awareness around cybersecurity, including the use of passwords or keeping personal information safe. There is a real need for education of users on cybersecurity, a role that should be taken up by both government and business.

³⁴⁰ <http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf>

³⁴¹ In 2011, security researchers found evidence that technology sold by San Francisco-based company Bluecoat was being used in Syria. This technology allowed Internet filtering, website blocking, and monitoring Internet users. It is believed this technology was used to track and arrest opponents of the regime. As sanctions against the export of US technology to Syria were in place, the State Department launched an investigation. See [here](#) and [here](#) for more information:

- **Employ the maximum security for user communication:** At a minimum, companies that provide online communications and transactions, such as email, social networking and shopping, should use industry standard encryption such as “https” as default, which encrypts traffic between a web browser and the server of the service being accessed, strengthening the privacy of communications and transactions online.³⁴²
- **Be prepared for a cyber-attack by developing a response plan.** As noted above, there are currently no laws on cybersecurity, data protection and little in the way of support from overstretched government resources in terms of supporting smaller or newer businesses in developing their cybersecurity approach. This could be an important area of collective action by the larger multinational ICT companies to support local industry associations or other initiatives to improve protection among local businesses. It should be possible to detect an attack quickly and respond to secure data and minimise damage. If companies do not do all they can to keep services available, maintain the integrity of their systems, and protect the confidentiality of user data they could suffer a loss of trust from users, impose costs and liabilities on users and potentially on themselves.
- **Clearly communicate to customers or users what data is being collected and why:** Field research findings demonstrate that few companies in Myanmar have privacy policies or communicate their policies to users (See Part 4.4 on Privacy).
- **Conduct on-going vulnerability assessments and penetration tests:** It is critical that businesses are aware of potential vulnerabilities in their internal systems. This involves ensuring that all “information assets” (servers, applications, databases, paper files) are protected from unauthorized access. Using licensed software means that companies will have access to the latest available version from the developer and fixes for security vulnerabilities through software updates.
- **Particularly protect against putting vulnerable users at risk:** Civil society groups are often the target of cyberattacks, either to disrupt the spread of information or gain confidential information, such as journalist sources, from email accounts and servers. (See Part 4.8 on Groups at Risk). Companies could open a channel of communication with Myanmar’s civil society groups so they can quickly be notified if such events occur. In the event of a data breach, companies should notify users if there has been a data breach or if they suspect a state-sponsored attack has taken place on their email accounts.³⁴³ This enables users to take action to secure information or warn others. In 2013, a number of journalists covering issues in Myanmar received these warnings.³⁴⁴

³⁴² Mike Shema, Mashable, [Web Security: Why You Should Always Use HTTPS](#) 31st May 2011

³⁴³ Google Online Security Blog, [Security Warnings for Suspected State-Sponsored Attacks](#), 5th June 2012

³⁴⁴ John Ribeiro, ComputerWorld, [Google Warns Reporters Covering Myanmar of ‘State-Sponsored’ Attacks on Gmail Accounts](#), 11th February 2013

D. Relevant International Standards on Cyber Security, and Linked Initiatives in Myanmar

Relevant International Standards:

- Council of Europe, [Convention on Cybercrime \(Budapest Convention\)](#)

Relevant Guidance:

- Council on Cyber Security, “The [Critical Security Controls](#) for Effective Cyber Security Defense, version 5.1”
- Australian Department of Defense, “[Strategies to Mitigate Cyber Intrusion](#)”
- Council of Europe, “[Global Alliance on Cyber Crime – GLACY](#)”

Myanmar Initiatives on Conflict and Security Issues Linked to the ICT Sector:

- ASEAN-Japan Joint Information Security Awareness Raising Initiatives, Annual Meeting (most recent 2014):
 - English Version: http://www.nisc.go.jp/aj-sec/images/country/singapore_doc2013-4.pdf
 - Myanmar-Language: http://www.nisc.go.jp/aj-sec/images/country/myanmar_doc2013.pdf

Part 4.6

Labour

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Labour Issues, and Linked Initiatives in Myanmar

A. National Context

There are numerous challenges involved in respecting the rights of workers in Myanmar. For 50 years, independent trade unions and employer organisations were prohibited; laws covering labour protection were antiquated and/or restrictive; forced labour of civilians by the military and civil authorities was common; and child labour is still an ongoing problem. There have however been many positive developments since the 2011 reform process began. The 2008 Constitution brought in some important changes, including around discrimination and freedom of association, though those new and still existing constitutional provisions contain some significant gaps in protecting workers rights. Article 358 of the Constitution prohibits slavery and human trafficking, but Article 359 provides for “hard labour” as part of a criminal sentence. The rights to peaceful assembly and freedom of association are also provided for but another part of the Constitution subjects the exercise of these rights to a wide qualifier that the exercise of the rights cannot be contrary to laws on *inter alia* “community peace and tranquillity”. Article 31 of the Constitution aims to reduce unemployment. Under Article 349(b), citizens have the enforceable right to equal opportunity in occupation.³⁴⁵

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.³⁴⁶ Low-paid and insecure jobs (often only on a daily basis) characterize the employment situation. The 2014 Census results indicate an unemployment rate of 4% for workers age 10 and over; 3.9% for over 15s; and 4% for ages 15-64. The Census reports a labour force participation rate of 57% for those aged 10 and over; 64.4% of those 15 and over; and 67% of those aged 15 – 64.³⁴⁷ Underemployment in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, and young people in particular.³⁴⁸ To improve the quality of statistical data with regard to labour, the Ministry of Labour, Employment and

³⁴⁵ Legal Analysis of the 2008 Constitution, Appendix 1, commissioned by IHRB.

³⁴⁶ Labour Background Paper commissioned for IHRB, p 2 (on file with IHRB).

³⁴⁷ [The Republic of the Union of Myanmar, the 2014 Myanmar Population and Housing Census, Census Report Volume 2-A, May 2015](#)

³⁴⁸ Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. ILO, “[Underemployment Statistics](#)” (accessed 25 July 2014).

Social Security, with International Labour Organisation (ILO) support, is undertaking a comprehensive national labour force survey,³⁴⁹ with results expected in late 2015.

The same lack of reliable statistics and accurate data hold true for the ICT industry workforce. Another key issue in ICT human resource development is the mismatch between supply and demand rather than lack of supply. The mismatch is a consequence of poor quality ICT education. There are many graduates but few who are qualified to work in the international market. Those graduates that are qualified, often leave Myanmar for better work opportunities abroad.

According to the General Secretary of the Myanmar Computer Federation, Myanmar has an estimated 1,600 software engineers, 1,000 network engineers including those working in the telecom companies and about 1,000 service technicians including handset repair technicians. No statistics on fibre installation or tower construction workers is available. It is also estimated that by 2025, Myanmar will have 25,000 engineers. Currently, there are 26 Computer Universities in Myanmar. There is no existing data that shows the job employment of students after graduation.

The development of the ICT industry has led to a dramatic increase in jobs in the sector. According to a survey conducted by work.com.mm, an online job search company, during the month of April 2015, the highest number of job announcements were in the field of engineering, followed by the software and IT sector.³⁵⁰

As to the international telecom operators, Ooredoo currently has around 1,000 employees of whom 87% are Myanmar nationals (41% male/59% female). Ooredoo has committed to the government to employ 99% Myanmar Nationals within 5 years. Telenor Myanmar currently has 478 employees (64% male/36% female) of whom 80% are Myanmar. There are no statistics on the number of people working as simcard and phone vendors at points of sale, but operators have set targets: Ooredoo promises 240,000 SIM card sale points and 720,000 top-up locations; Telenor aims for 70,000 SIM card sale points and 95,000 top-up locations.

ILO Fundamental Principles and Rights at Work: Freedom of Association and the Right to Collective Bargaining in Myanmar

For the first time in 50 years, the 2008 Constitution and new labour laws provide for independent trade union activity, though some gaps in protecting freedom of association remain. The 2011 *Labour Organisation Law* permits the exercise of freedom of association and the 2012 *Settlement of Labour Dispute Law* provides for disputes resolution institutions and mechanisms. Parliament amended the latter law in October 2014 providing for *inter alia* increased fines for employers who break this law, but rejected the President's proposal which provided for imprisonment of such employers.³⁵¹ As of mid

³⁴⁹ ILO, "[Myanmar sign agreement on National Labour Force Summary](#)", (14 November 2013). The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

³⁵⁰ <http://internetjournal.media/news/2577>

³⁵¹ Unofficial translation of The Republic of the Union of Myanmar, Board of Information, Issue No (5/2014), October 14, 2014, announcing the Draft Bill which amends the Settlement of Labour Dispute Law, on file with IHRB/MCRB.

February 2015, the ILO reported that over 1500 independent trade unions have been registered, mostly at the enterprise level.³⁵² While these are predominantly based within the apparel, manufacturing or farming, at least one of the international telecommunications operators, Telenor, has a global framework agreement with the union representing service sector workers around the world. The agreement provides a platform and framework for dialogue between UNI Global and Telenor on fundamental labor rights that can also cover a dialogue on working conditions in Myanmar.³⁵³

On a national scale, there is an opportunity to build from scratch the sort of “development” model of industrial relations the country needs. However, the current laws relating to freedom of association and collective bargaining mentioned above promote fragmentation of industrial relations by making it difficult for unions to establish themselves beyond the enterprise level. A lack of understanding, or in some cases entrenched attitudes, might see the new rights-based industrial relations framework drift towards a conflict model. This risk has been increased by the perceptions created by several high profile labour disputes and the weaknesses in the law and its implementation, which mean that, in practice, employers can discriminate against workers who seek to exercise their rights in accordance with the new laws, including by dismissing them from their jobs. Early 2015 saw a number of strikes and protests in Yangon by garment factory workers calling for higher wages and better working conditions. Although some disputes were resolved by employer-worker meetings, others were not, leading to protest demonstrations and arrests of workers.³⁵⁴ An ILO official noted in August 2014 that factory owners appear to be dismissing employees because of their union activities and recommended that the Government outlaw this practice.³⁵⁵ The ILO has recommended a number of amendments to the new laws on freedom of association to improve their functioning, including an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.

ILO Fundamental Principles and Rights at Work: Discrimination in Myanmar

Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth. However, the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, leaving significant gaps in protection against discrimination. Labour leaders, religious minorities, women and children, people living with disabilities and LGBT people (as discussed in further detail in Part 4.8 on Groups at Risk) all face discrimination in hiring and in the workplace.

ILO Fundamental Principles and Rights at Work: Forced Labour in Myanmar

A major concern in Myanmar has been the widespread and systematic use of forced labour of civilians by the *tatmadaw* (the Myanmar army) and the civil administration for several decades, despite the fact that the Government had ratified *ILO Forced Labour*

³⁵² [Unions have hit a glass ceiling](#), Mizzima, 10 March 2015

³⁵³ [Telenor renews global agreement with UNI Global Union](#), May 2015

³⁵⁴ [Time for government to step up on labour disputes](#), Myanmar Times, 17 March 2015

³⁵⁵ [Burma's Industrial Relations at a Crossroads](#), DVB, 30 August 2014

Convention (No. 29) as far back as 1955. The ILO first established an office in Myanmar during 2002 after the Government and the ILO reached an “understanding” and the appointment of an ILO Liaison Officer. The Understanding provided that the Liaison Officer would conduct activities aimed at the elimination of forced labour in the country. The Understanding remains in force and in 2007 the ILO and the Government agreed a Supplementary Understanding between the Government and the ILO. The Supplementary Understanding established a complaints mechanism to allow victims of forced labour to seek redress/remedies from the authorities.³⁵⁶ Since the reform process began in 2011, many observers, including the ILO, have welcomed the decrease in forced labour, but noted that the practice is still continuing in some areas.³⁵⁷ President U Thein Sein has made a public commitment to end forced labour by 2015.

Although there is now less risk to companies of forced labour being used in relation to projects, such as road construction, there is a need to remain cautious, as it was a common practice for several decades, and local government and other authority figures still sometimes resort to it. The ILO noted that while there are currently relatively few complaints of forced labour in the private sector, this may be because in Myanmar forced labour is generally perceived to be associated with the Government³⁵⁸.

ILO Fundamental Principles and Rights at Work: Child Labour in Myanmar

Child labour is widespread throughout Myanmar, including as tea shop or restaurant attendants, street vendors, manual labour, waste collectors or beggars, in food processing and light manufacturing, and on farms in rural areas. The risk of child labour to companies operating in Myanmar is high, as they are working in a wide variety of industry sectors. Moreover, ascertaining someone’s age in Myanmar is not always straightforward. Birth registration in urban areas was reported at 94%, but in rural areas the rate was only 64%.³⁵⁹ Moreover, many people, especially under-18s and ethnic minorities, do not have any form of official identification which indicate their date of birth.

An August 2014 report by one telecoms licensee noted that on-site inspections of its supply chain found cases of underage labour (15 – 17 years old) and child labour (under 15 years old), including on tower construction sites.³⁶⁰ In May 2015 the same company reported they had uncovered additional cases of child and underage labour in its supply chain, as they continued their work to eradicate all such cases in tower construction sites.

The Government’s ratification of *ILO Convention No 182 on the Worst Forms of Child Labour* in December 2013³⁶¹ is part of the Ministry of Labour’s reported aim to eradicate

³⁵⁶ [ILO in Myanmar](#)

³⁵⁷ ILO Committee on the Application of Standards [Extract from Record of Proceedings](#) (June 2012), para 18.

³⁵⁸ ILO, [Update on the operation of the complaint mechanism in Myanmar](#), report of the ILO Liaison Officer to ILO Governing Body, 319th Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2. Please note that complaints include underage military recruitment.

³⁵⁹ UNICEF, [Situation Analysis of Children in Myanmar 2012](#) (2012).

³⁶⁰ Telenor Myanmar, [Business Sustainability Update](#), Telenor, 19 August 2014. Children were immediately removed from the sites. The company’s policy states that no one under 15 will be employed and that workers must be at least 18 years of age to work on tower construction sites, as the company considers the work to be potentially hazardous. It also works to educate and train local suppliers and the community on its child labour policies. See also Myanmar Times, [Telenor works to address its child labour troubles](#), 22 May 2015,

³⁶¹ Eleven Media, [Myanmar Vows To Root out Child Labour By 2015](#), (4 May 2014).

the worst forms of child labour by 2015. Parliament approved the ratification of the convention in July 2014, with full implementation pledged by the Government in December 2014.³⁶²

Overview of the Revision of Myanmar Labour Laws

In addition to the laws on freedom of association and collective bargaining noted above, new laws with regard to labour passed by Parliament since the 2011 elections include the 2013 *Minimum Wage Act*, the 2012 *Social Security Law*, and the 2013 *Employment and Skills Development Law*. Other laws are believed to be in draft form or in the process of being drafted, including a *Shops and Enterprises Act*, an *Occupational Health and Safety Act* and a *Factories Act Amendment Bill*. The ILO is currently working with the Government to come up with an overall legal and policy framework on labour, with the aim of drafting one comprehensive labour code after 2015 that would consolidate these laws and draft laws into a coherent code or framework.³⁶³ Given the rapid enactment of labour laws, it is likely that there will be overlap and contradiction within the laws, at least until the more comprehensive labour code is in place. The legislative agenda is currently very crowded as many laws are still in Parliament and Parliament itself will be dissolved some time prior to the elections in late 2015.

Working hours are generally very long but with new labour laws in place, there is a focus on reducing hours. The new 2013 *Minimum Wage Law* provides for a minimum wage to be set; however the minimum wage rate, or rates, have not yet been set. The Ministry of Labour has undertaken a cost of living survey during 2015 to help determine it.³⁶⁴ The law requires that salaried workers should have one day off per week with pay, and the payment of over-time if a salaried worker works on the day of leave (Article 16d). Protections for daily wage workers are predictably less. However, if a worker in a daily wage job works less than the set hours per day because the employer requires fewer hours, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f). The *Minimum Wage Law* also provides for penalties if the employer fails to pay the minimum wage.³⁶⁵ Labour experts have noted that both employers and workers in Myanmar do not fully understand the concept of a minimum wage.

The 2012 *Social Security Law* provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system from a social security fund, which both employers and workers pay into. The Law revokes the 1954 *Social Security Act*,³⁶⁶ and came into effect on 1 April 2014.³⁶⁷ The *Social Security Rules* (Notification No. 41/2014) are also in place.³⁶⁸ However, as of January 2015 only

³⁶² The Irrawaddy, [Govt to Start Child Labor Elimination Policy in December](#), 18 July 2014.

³⁶³ ILO is expecting to put in place a full [Decent Work country programme in 2016](#).

³⁶⁴ Myanmar Times, [Labour ministry plans survey to set minimum wage](#), 25 December 2014.

³⁶⁵ Ministry of Labour, Employment and Social Security, [The Minimum Wage Law 2012](#).

³⁶⁶ *The Social Security Law*, 2012, on file with IHRB.

³⁶⁷ New Light of Myanmar, [State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers](#) (1 May 2014).

³⁶⁸ [Myanmar Garment Manufacturers Association, Labour Laws and Regulations](#)

1.5% of the population was registered in the social security system, according to a Ministry of Labour official.³⁶⁹ It appears that companies with two or more employees are required to pay social security, this includes those in the ICT sector.³⁷⁰ The Ministry of Labour has announced that some benefits from the new social security scheme will be paid beginning in April 2014.³⁷¹

The 2013 *Employment and Skills Development Law* provides for skills training and a fund into which employers pay. The Law also provides for the establishment of an employment and labour exchange office by the Ministry of Labour, Employment and Social Security. Significantly, written employment agreements between employer and employee will now be required under Chapter 3 of the law. The law went into effect on 30 November 2013 and revoked the 1950 *Employment and Training Act*.³⁷²

The 1951 *Leave and Holiday Act* was amended in July 2014 and provides for leave, holiday, maternity leave and covers daily wage, temporary and permanent workers.³⁷³ The forthcoming *Occupational Health and Safety Act* is expected to be passed by Parliament by September 2015.

Chapter II (Article 3) of the *Settlement of Labour Dispute Law* requires an employer with more than 30 workers to form a Workplace Coordinating Committee (2 representatives of workers, 2 representatives of employer) whether or not there is labour organisation (e.g. union) in the enterprise.

Awareness and Enforcement of Labour Rights

There is an overall lack of awareness by workers and employers of these new legal rights and safeguards. The ILO, trade unions, and other labour activists are helping to inform both workers and employers about the new labour laws, and poorly understood concepts such as collective bargaining and a minimum wage. So far enforcement of the new laws is piecemeal, and full-scale implementation will be a long-term process. Although the Factories and General Labour Law Inspection Department (FGLLID) is the main Government agency responsible for occupational safety and health, a number of other agencies in other ministries are responsible for specific areas or sectors related to safety and health at work and/or public safety and health in general. These include the Ministry of Mines, Ministry of Industry (boilers and electrical equipment), Ministry of Construction, Ministry of Agriculture and Ministry of Health etc.³⁷⁴ The Government recognizes the need for a greater number of trained labour inspectors for worksites and is reportedly taking steps to increase the number of qualified inspectors.

³⁶⁹ [Social Security Sign-up slow in coming](#), Mizzima, 5 January 2015

³⁷⁰ This excludes except for government departments, international organizations, seasonal farming and fishing, non profit organizations, establishments operating less than three months, family and domestic businesses. *Social Security Law*, August 2012, Section 11, a) and b) and Section 12, b), on file with IHRB/MCRB.

³⁷¹ Irrawaddy [Burma's Social Security Enrollees to see Benefits Boosted by April](#) 29 January 2014.

³⁷² *Employment and Skill Development Law* (2013), unofficial translation on file with IHRB.

³⁷³ [Myanmar Garment Manufacturers Association, Labour Laws and Regulations](#)

³⁷⁴ Labour Briefing paper commissioned by IHRB, August 2013, on file with IHRB.

B. Field Research Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

ILO Fundamental Principles and Rights at Work: Freedom of Association & the Right to Collective Bargaining

Human Rights Implicated: Right to assembly; Right to freedom of association and collective bargaining

Field Assessment Findings

- There was a general **lack of worker-management engagement** in most companies across the ICT value chain, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **Unskilled workers tend to be relieved to secure a job at all** because the supply of workers greatly exceeds work available. This leads to a tendency for workers to **refrain from raising workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety (H&S) standards, or barriers to unionising.
- **At fibre factories, workers were unaware of their basic association and collective bargaining rights**, for example understanding there must be a minimum of 30 members. They did not feel the company would allow it even if it was acceptable under national law, and were concerned that joining a political party could also affect their jobs.
 - Workers were **able to raise complaints at meetings or anonymously through a letter box system**, but issues previously raised, such as deductions from daily wages and bonuses had **failed to be addressed**.

ILO Fundamental Principles and Rights at Work: Non-Discrimination

Human Rights Implicated: Right to non-discrimination; Right to work; Right to just and favourable conditions of work

Field Assessment Findings

- It was very unusual for **any women to work on tower construction**.
 - This was often justified on the grounds that it unsafe for them due to night work and distances between the site and their village/ accommodation.
 - Where women were able to work on tower construction sites, they were only allowed to do certain manual tasks, such as backfilling or moving materials.
- **Racial and religious tensions were observed in some areas, mainly where communities identified the company or its workers as Muslim** This followed intercommunal violence in other parts of the country:
 - Researchers heard of several incidents in which subcontractors of a company from a majority Muslim country were disturbed by communities protesting the

- company's presence in their area.
- Workers were denied accommodation due to working for that company;
- Communities threw stones at cars carrying workers of companies that were perceived to be owned by Muslims.

ILO Fundamental Principles and Rights at Work: Forced Labour and Child Labour

Human Rights Implicated: Right to freedom from forced labour and servitude; Right to freedom from child labour; Right to an adequate standard of living; Right to education

Field Assessment Findings

- Researchers heard of **several cases where workers were brought on to dig fibre cable trenches due to a debt owed to the group leader**. This often arose where workers asked for advance payments during the rainy season in order to make ends meet until the next crop yields. As such, workers were often in positions of **debt bondage**, reporting that where they expressed a wish to quit or move to another job the creditor threatened increased interest rates.
 - This impact was heightened where workers were also **required to purchase food, water and other supplies from labour leaders, often at inflated prices and on a credit-based system**.
- Occasional practices of reviewing identification to verify workers' age were reported, but many more instances of lack of identification cards or documents were described to researchers, indicating a **general lack of basic measures to prevent underage workers in fibre cable digging in particular**.
- Fibre cable line workers often had to travel long distances from their homes in order to take up work. They sometimes brought their children with them as they could not afford child care or because it was difficult to reliably arrange due to moving from site to site regularly. As such, **children were regularly left with someone connected to the works in the worker camps during the 10 hour shift periods**.

Employment Status

Human Rights Implicated: Right to just and favourable conditions of work; Right to equal payment for equal work

Field Assessment Findings

- Across the ICT value chain **employment contracts were not being used** in the majority of observed cases, with the limited exception of direct, permanent employees of a tower company.³⁷⁵
 - Given this, **wage slips** itemising pay and deductions were not being provided.
- It was reported that manual labourers and construction **workers regularly secured jobs through relatives/connections. Wages were already negotiated** and contracts are not given, as workers will "take what they have been given".

³⁷⁵ The research team was not permitted to meet the staff of the telecoms operators so this does not necessarily apply to those employers.

Working Hours, Wages and Benefits

Human Rights Implicated: Right to just and favourable conditions of work; Right to an adequate standard of living

Field Assessment Findings

- **Daily wage workers** typically worked every day possible to maximise income while work was available, thereby exceeding the working time limits under international standards.
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws, such as the Minimum Wage Law have recently come into force.
- **For tower construction:**
 - It was regularly reported to researchers that **workers did not receive any rest days until after the completion of a site**, i.e. usually a 1-1.5 month build period.
 - **Working hours** were often 7 or 8 a.m. until 5 or 6 p.m. with a (usually 30-60 minute) lunch break. A second night shift was occasionally reported of 7 p.m. to 11 p.m.
 - **Wage rates varied** depending whether workers were directly employed by tower companies, labour sub-contractors, or brought on for peak periods (such as on foundation sections) as day labourers from nearby villages.
 - Worker daily wages were reported anywhere between 5,000 kyat per day up to 15,000 kyat (30,000 kyat if able to work a double shift)
 - Overtime was not usually paid. Where it was reported as a practice, for example where workers worked beyond 11 p.m., the rate given was not specified.
- **For fibre line digging:**
 - **Working hours** were commonly cited as 6 or 7 a.m. to 6 or 7 p.m. by managers, but workers often reported that they were often pressured to continue until target distances were dug regardless of the hours worked.
 - **Workers were not given set rest days** as they were not paid until their target distance had been dug, which was dependent on soil conditions and the number of workers grouped together.
 - **Wages often did not amount to levels sufficient to cover basic needs:**
 - Workers were paid according to distance dug, with no reflection of soil conditions or geography where it takes more time and effort to achieve the same distances. As such, **where less distance was achieved, workers regularly struggled to earn enough to feed themselves or families.**
 - **Sick pay was not provided.** As such, workers continued to work 12 hour days of hard labour even when ill in order to ensure their incomes.
- **For fibre cable factories:**
 - Working hours:
 - Working hours lasted around 8 hours per day.
 - Overtime was only paid after 8 years of continuous work.
 - Wages:

- The basic daily wage rate was 2,200 kyat (\$2), but workers reported not receiving salary increases or promotion despite 4 or 5 years continuous service.
- Bonuses were reportedly provided for regular attendance.
- Leave:
 - Workers received one and a half days off per week.
 - Workers were able to take public holidays off with pay.
 - Workers did not receive paid sick leave or company-provided insurance.
 - Workers received 10 days unpaid annual leave.
 - Female workers were entitled to three months paid maternity leave at the basic salary band.

Working Conditions and Provision of Facilities to Workers

Human Rights Implicated: Right to an adequate standard of living; Right to just and favourable conditions of work; Right to non-discrimination

Field Assessment Findings

- **Observed working conditions for fibre cable digging were particularly harsh:**
 - **Workers had to dig long distances of trenches manually**, without any mechanical digging or drilling equipment, even in mountainous and extremely rocky areas.
 - As above, **12 hour work days** were common practice.
 - **Workers were expected to dig set distances each day, ranging from 2 – 10 metres each day per worker.**
 - **If a worker was injured, they had to repay any medical expenses** covered by their company.
 - **Language barriers** were a commonly reported problem between managers and workers. Researchers heard that workers were often unsure whether any complaints or issues they raised were properly reported to the managers responsible.
- **Little to no facilities or equipment are provided to fibre cable diggers:**
 - **Workers were not provided with any equipment** such as shovels and pick axes and had to pay for their own tools or had the costs deducted from their salaries.
 - **Workers were not provided drinking water** and had to source their own, for example requesting from surrounding residents or boiling ground water.
 - **Workers had to find or build their own accommodation with their own money**, despite often being transported long distances from their homes for long periods of time in order to continue working on the lines. This **usually consisted of make-shift tents from tarpaulins and sticks**. Camp areas were commonly in nearby fields or off the side of the road and did not have any running water, power or adequate sanitation facilities.
 - Workers had to **pay for all food and supplies while on the job**, despite relocating far from home for long periods of time to undertake the work.
 - Workers were **commonly required to buy food through the wife of the group labour leader**, and several reports were received of **charging**

workers prices far above market value for their food supplies.

- Workers often had to **similarly pay for other supplies:** candles, blankets, mattresses, buckets of water to cook or shower with, as well as wood for cooking.
- **Some fibre factory workers were provided with accommodation** in permanent structures that were heated and had running water and electricity.
 - Workers' families were allowed to stay with them.
 - Rooms were reportedly 10 square feet, though researchers were unable to visit them due to time constraints.
 - Workers were provided three meals per day, consisting of unlimited rice and up to two cuts of meat.

Health, Safety & Environment (HSE)

Human Rights Implicated: Right to the highest attainable standard of physical and mental health; Right to life, liberty and security of the person

Field Assessment Findings

- Workers of subcontractors were commonly not informed about which tower construction company or telecoms operator the tower was being built for, which implies that the operator's and their 1st tier subcontractor's **health and safety and other operational standards may not be being cascaded down to the site level.**
- **Workplace attention to health and safety varied greatly** amongst the tower and fibre sites visited by researchers.
- Field teams regularly witnessed tower construction workers and fibre trench workers **without personal protective equipment (PPE)**, for example:
 - Not fastening **safety harnesses** when climbing the towers;
 - No **gloves**, e.g. while digging fibre cable trenches;
 - **Canvas shoes** rather than hard toed shoes;
 - No **hard hats**.
- **Even where workers had PPE to hand:**
 - Researchers observed a number of occasions where **workers asked if they "actually needed to wear it"** or companies reporting workers not wearing it due to discomfort, such as not wearing safety suits in hotter weather, indicating lack of enforcement of PPE use by all workers while on site.
 - It was common for workers to have to **buy or replace their own PPE, or compensate the value if they damaged it while working.**
- **Failure to ensure emergency first aid kits were available at tower sites** was also a common occurrence.
 - Where companies did provide first aid kits or fire extinguishers, workers reported they **did not know how to use them** in cases of emergencies and had not been provided any training.
- **For fibre factories:**
 - PPE in the form of cotton gloves was provided.
 - Workers received training on how to work machines and use the fire extinguisher.

Conflict Areas

Human Rights Implicated: Right to life, liberty and security of the person; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.
- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk.
- Researchers also received reports from workers that they were aware that landmines **may have historically been laid with land mines around infrastructure in conflict areas.** This led workers to avoid walking through certain locations. The measures companies took to protect their workers in such circumstances were unclear.

Business Relationships

Human Rights Implicated: Right to just and favourable conditions of work

Field Assessment Findings

- **Tower company acknowledgement and action concerning their responsibility for the safety of workers was uneven.**
 - Some tower companies indicated worker safety was **the responsibility of their subcontractors alone.** They did not provide any safety guidelines or training to subcontractor managers or workers, did not regularly monitor site safety or track incidents.
 - **Others undertook subcontractor skills-based and safety training and regular site monitoring to ensure safety standards** were upheld and practices corrected.
 - Of those tower companies who had systems in place for incident reporting and escalation of issues to more senior levels of the company depending on the severity of the incident, it was reported that **labour subcontractors may fear reporting incidents for fear of reprisal or lost business.**
- **Choosing to operate without contracts between tower companies and their subcontractors was a common occurrence.** This indicates the more rigorous control of working conditions by telecoms operators is not consistently carried through to business partners through contractual conditions committing subcontractors to meeting business partners' standards.

Myanmar Good Practice Examples:

- Some subcontractors ensured PPE was provided to their workers and used, provided emergency first aid kits and fire extinguishers, and paid workers' medical bills where incidents arose, despite not receiving safety guidelines or training from tower companies or telecoms operators.
- A small number of fibre cable digging companies provided workers with digging equipment, PPE and tents and supplies for accommodation without charge.

C. Key Human Rights Implications for the ICT Sector

Using International Standards

- **Benchmarking international standards:** Given the quantity of labour laws being adopted, it is likely that there will be overlap and contradiction within the laws, and missed opportunities to align with international labour standards. As noted above, the ILO is working with the Government to develop one harmonised, overarching labour code that is expected to be better aligned with ILO standards. Until such time, benchmarking policies and practices against international standards rather than Myanmar law is a better basis for developing policies and practices that respect the human rights of workers (see Part D).

Workplace Issues

- **Trade unions:** There is a need to provide relevant information and explanation to employees and other workers on their labour rights, particularly in light of the many new laws and the fact that independent trade unions are permitted for the first time in 50 years. The almost non-existent trade unions in the ICT sector are clearly unlikely to be ready to fulfil that role fully in the near future. This is especially the case in the ICT sector, where the manufacture of ICT equipment is very limited and where portions of the sector that pose higher risk impacts on workers - such as in fibre and cable installation or tower construction – are often positioned in remote and dispersed areas of the country with self-regulation by the ICT companies as the only safeguard. Given the non-existent to nascent awareness and understanding of the right to freedom of association and collective bargaining, companies should ensure that their workers are aware of and able to exercise their rights, and engage constructively with trade unions where workers choose to establish them.
- **Business partners:** Local Myanmar companies will need support in meeting a wider range of contracting requirements around quality, working conditions, health and safety and anti-corruption. Telecoms operators, active network equipment providers, tower companies, and the other main contractors should put in place specific contractual requirements together with monitoring, support, training, and relevant incentives and disincentives with business partners supplying goods and services to prompt uptake and respect for relevant international, national and company standards. As highlighted during the field assessments, working conditions, including health and safety issues, were raised by workers of sub-contractors. These workers were in lower-skilled, lower paid, manual labour positions, working on a temporary or irregular

basis in which working conditions and preventative measures could be haphazard, with unclear access to company-provided health services or facilities.

Forced Labour and Other Forms of Labour Exploitation

- **Vigilance to the continued but declining risk of forced labour:** While the incidence of forced labour in Myanmar is diminishing, ICT tower construction companies and fibre cable operators in particular should remain vigilant to the potential risks of forced labour. There is still the potential for forced labour by the *tatmadaw* in connection with road building and infrastructure construction although it is unclear whether any of this activity is happening in connection with the rollout of the ICT infrastructure. The ILO is not yet proposing to disband the Forced Labour Complaints Mechanism and change will take time to trickle down, particularly where there are financial, strategic or other advantages to be gained in using forced labour of local villagers.³⁷⁶
- **Other forms of labour exploitation:** Myanmar is a least developed country (LDC) with a high degree of rural poverty; an uneducated population; underemployment; corruption and a current lack of worker awareness about their rights and few trade unions. Many of the jobs for such local communities will be in unskilled, daily wage jobs, often controlled via third party labour brokers operating either formally or informally - such as in the construction of the network infrastructure.
- **Migrant and temporary workers:** While the prevailing pattern has been one of out-migration from Myanmar to other countries in search of work, as the economy develops, that trend may reverse with migrant workers from surrounding countries entering in search of work, particularly in border regions. Migrant workers are often particularly vulnerable to labour exploitation.³⁷⁷ These circumstances create the possibility of exploitative working conditions and practices that can in some cases fall within the definition of forced labour, where work is undertaken by a person under the menace of a penalty. Workers indicated they are keen for any kind of paid work, so they are often very reluctant to speak out about what can be exploitative working conditions.
- **Using labour brokers/labour agencies:** The field assessments indicated formal recruitment agencies and labour brokers are not yet commonly visible in network rollout operations. They are however present in other industries (e.g. pipeline construction) where various sub-standard practices have been observed, including not providing basic protections for workers, such as failing to uphold basic working conditions, provide written and understandable contracts, or pay a living wage, and charging workers for PPE provision (see the Oil & Gas Sector-Wide Impact Assessment, section 4.4³⁷⁸). ICT companies will need to pay careful attention to the working arrangements and conditions for day labourers or temporary workers engaged through a third party labour agency or broker (who could also be a worker/team leader) to ensure that they are not directly linked to situations of exploitation. International labour standards prohibit labour brokers from taking fees

³⁷⁶ The ILO reports a reduction in occurrences generally throughout the country but notes that “forced labour remains a problem,” and that the “number of reported cases of forced labour in the private sector is relatively small ... but that this does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government.” ILO, [Update on the operation of the complaint mechanism in Myanmar](#), GB.319/INS/INF/2 (October 2013).

³⁷⁷ See the [Dhaka Principles for Migration with Dignity](#).

³⁷⁸ MCRB, IHRB, DIHR, “[Myanmar Oil & Gas Sector-Wide Impact Assessment](#)” (2014).

from workers for job placements; instead, any placement fees should be paid by the employer. While the Myanmar Government has not ratified the relevant international labour convention,³⁷⁹ it is a global standard in this emerging area of human rights risk that serves as a relevant guide for company practice. Employers should:

- set in place a clear recruitment policy for hiring of staff or use of labour brokers;
 - ensure that supervisors and managers are aware of the signs of exploitation;
 - pay the recruitment fees for workers themselves and prohibit accepting payments or other inducements from labour brokers or workers;
 - monitor the allocation of jobs and use of agencies for signs of suspicious practices;
 - ensure that all workers, including temporary workers, have access to a grievance mechanism to complain about potential or actual violations of their labour rights.
- **Monitoring business relationships:** The risks of labour rights violations tend to increase with each tier of the supply chain. Most negative human rights impacts tend to occur to those workers in lower-skilled, lower paid, manual labour positions which are temporary or irregular and are often dependent on whether the workers are contracted directly for a fibre installation or tower company or for their sub-contractors.

Child Labour

- **Business partners:** While there is a very low likelihood of child labour in direct employment situations within skilled operations of the ICT sector, given the prevalence and general acceptance of child labour in Myanmar and the difficulties of validating age, companies should be alert to the possibility of child labour being used in supplying products or services, such as in construction or catering, directly linked to their operations. As noted above, assessments will need to include a specific focus on different groups at risk of abuse, and there are an increasing range of tools available on children to assist companies.³⁸⁰ (See also Part 4.8 on Groups at Risk).

Discrimination

- **Female representation in the workforce:** Discrimination against women and girls in education and the workplace is widespread in Myanmar.³⁸¹ The current rate of female employment in the ICT sector is low, as it is in many other countries. (See also Part 4.8 on Groups at Risk).
- **Ethnic and religious discrimination in the workforce:** Employers need to be aware of the potential for ethnic and religious tensions and discrimination in recruitment and the workplace. Inter-communal tensions between Buddhists and Muslims mean companies will need to be alert to the potential for discrimination, recognising that who represents the company and in which positions, is an issue of high importance.³⁸² Workers' ethnicity/religion will not be readily apparent, particularly to non-Myanmar managers. The best way for employers to try to understand the ethnic make-up of

³⁷⁹ ILO, [C181 - Private Employment Agencies Convention](#), 1997 (No. 181).

³⁸⁰ UNICEF and the Danish Institute for Human Rights, [Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#) (2013).

³⁸¹ For example, in [Coca Cola's report to the US State Department](#) on its activities in Myanmar, the company highlighted that it found that women were being paid approximately 11% less than male colleagues for the same work.

³⁸² From IHRB, [From Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries](#), (2011), pp. 73-76.

the workplace is presents difficult challenges; surveys of nationalities in mixed settings may create more tensions than they solve. Furthermore, many Myanmar citizens are of mixed origin or self-identify in various ways so there will often not be a clear answer. A better approach may be management awareness of the sensitivities, clear company policies on non-discrimination, reinforcement of those messages and modelling an approach to equal opportunities that includes active measures to achieve those outcomes. There are few easy answers on how to address hostility that may spill over into the workplace; specialised expertise and re-emphasising a commitment to non-discrimination are a good place to start.

- **Community composition considerations:** It is also essential that companies are aware of the ethnic composition of communities where they operate and from where they may recruit. Myanmar's ethnic minorities make up an estimated 30 - 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.³⁸³ One location may have a mixture of ethnicities. For example there are many different ethnic groups in Shan State besides the Shan, including the Pa'o, Palaung (Ta'ang), and Bamar. Kayin State comprises other groups besides Kayin, including Mon, Pa'o and Bamar. Different ethnicities have different languages and traditions, which need to be taken into account in the workplace. This is especially important given the current rollout phase and expansion into new ethnic areas. As of March 2015, nearly 250 towers are planned for construction in Northern Shan State. 300 are planned for Rakhine state, while over 350 are planned in Kachin State.
- **The disabled:** The disabled are an invisible group in the population and even more invisible in the workforce. As in many other countries, it will take positive, active steps by employers to recruit and maintain disabled workers, and making them an integrated part of a workforce not used to disabled co-workers.³⁸⁴ Where possible, companies may consider incorporating the principles of universal design (defined as the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design). (See also Part 4.8 on Groups at Risk).
- **Lesbian, gay, bisexual and trans-gender (LGBT):** Employers need to be aware of discrimination against LGBT people in the workplace and society more generally, and the fact that same-sex relationships are still criminalised. (See also Part 4.8 on Groups at Risk).

Health & Safety

- **Health & Safety and Accident Prevention:** Health and safety are core concerns in ICT construction operations, particularly tower construction and fibre cable digging. The field research indicated that in numerous operations, there was a failure to meet even the most basic health and safety provisions such as drinking water, much less other important protections such as PPE. There is a clear need for greater attention to basic health and safety throughout network construction activities. There are clear challenges in cascading those standards through to subcontractors' and other

³⁸³ Transnational Institute/Burma Centrum Nederland, [Access Denied: Land Rights and Ethnic Conflict in Burma](#), (May 2013).

³⁸⁴ See MCRB and Deaf Resources Centre Guide: [Corporate Social Responsibility and Disability \(CSR-D\) – A Guide for Companies](#) (Sept. 2014). See also, ILO, [Disability in the Workplace: Company Practices](#) (2010).

business partners operations. Through contractual requirements, monitoring and support, there is an opportunity to build the awareness and skills of local companies around HSE management. More robust protections are required in post- and active conflict areas, especially where armed groups may interact with site locations, or there are risks of the existence of land mines around nearby infrastructure.³⁸⁵

- **Sector-specific health and safety risks:** There are a number of sector specific occupational health and safety risks in connection with the installation of communications equipment, such as exposure to electrical fields, electromagnetic fields (EMF) and exposure to laser light during cable connection and inspection activities or working at elevations.³⁸⁶ One of the most commonly cited public concerns is over the potential health effects associated with exposure to EMF (such as from mobile phone base stations). To date, there is no empirical data demonstrating adverse health effects from exposure to typical EMF levels from power transmissions lines and equipment³⁸⁷. However, the WHO will conduct a formal risk assessment of all studied health outcomes from radiofrequency field exposure by 2016.³⁸⁸ Exposure to the radiofrequency fields emitted by mobile phones is generally more than a thousand times higher than from base stations, so the greater likelihood of any adverse effect being due to handsets means that research has almost exclusively been conducted on possible effects of mobile phone exposure.³⁸⁹ However, two international bodies have developed exposure guidelines for workers (and the general public), based on a detailed assessment of the available scientific evidence, albeit they are now quite dated (2005 and 2009 respectively).³⁹⁰ There is no data available on whether Myanmar has EMF standards for workers³⁹¹ which means that companies should be looking to international or regional standards for appropriate safeguards for workers.
- **Health risks:** The rollout of telecommunications infrastructure across the country requires frequent use of motor transport. Give the poor state of Myanmar's roads and the steadily increasing rate of motor accidents and fatalities,³⁹² companies should prepare and implement motor vehicle safety programs to protect the safety of their

³⁸⁵ A concern which was raised during the consultations to the [Myanmar - Telecommunications Sector Reform Project: environmental and social management framework](#) (2013), p 63.

³⁸⁶ For a discussion and suggested safeguards, see IFC, Environmental, Health, and Safety Guidelines - Telecommunications (2007), section 1.2.

³⁸⁷ IFC, *ibid*.

³⁸⁸ WHO, [Electromagnetic fields and public health: mobile phones](#), Fact sheet N°193, Reviewed October 2014. The fact sheet lists the "Key Facts" as follows: "Mobile phone use is ubiquitous with an estimated 6.9 billion subscriptions globally; The electromagnetic fields produced by mobile phones are classified by the International Agency for Research on Cancer as possibly carcinogenic to humans; Studies are ongoing to more fully assess potential long-term effects of mobile phone use; WHO will conduct a formal risk assessment of all studied health outcomes from radiofrequency fields exposure by 2016.

³⁸⁹ WHO, [What are the health risks associated with mobile phones and their base stations?](#), Online Q&A (20 September 2013). An earlier WHO "Background" on base stations and wireless technology from 2006 noted "Recent surveys have indicated that RF exposures from base stations and wireless technologies in publicly accessible areas (including schools and hospitals) are normally thousands of times below international standards."

³⁹⁰ Institute of Electrical and Electronics Engineers (IEEE). *IEEE standard for safety levels with respect to human exposure to radio frequency electromagnetic fields, 3 kHz to 300 GHz*, IEEE Std C95.1, 2005 and International Commission on Non-Ionizing Radiation Protection (ICNIRP). *Statement on the "Guidelines for limiting exposure to time-varying electric, magnetic and electromagnetic fields (up to 300 GHz)"*, 2009.

³⁹¹ WHO, Global Health Observatory, Legislation, [EMF Standards](#) (accessed 28 April 2015).

³⁹² [Present State of Road Safety in Myanmar](#) (2013).

workers and the communities in which they operate.³⁹³ In many places long-haul truckers have significantly higher rates of sexually transmitted diseases than the host communities. A specific education and training program for transportation contractors may be necessary if there are a lot of trucking services to be used.

Expectations of Local Employment

- **Different perceptions of “local”:** There are high expectations of employment from local communities. While companies may meet “local hire requirements” by hiring workers from other parts of Myanmar, for local communities “local” hiring means from within the very immediate area. This mismatch in terminology and perceptions may create longer-term tensions around projects, and genuinely “local” workers are likely to be frustrated with the limited numbers and levels of jobs available which were largely unskilled, low wage and temporary. According to the *2012 Foreign Investment Law*, all unskilled workers must be Myanmar nationals.
- **Mismatching skills set:** Beyond construction periods where unskilled labour is needed, local communities often do not have the skill set to match requirements of the ICT sector as compared to other sectors.

D. Relevant International Standards and Guidance on Labour Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- [IFC Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
- [IFC General Environmental, Health and Safety Guidelines](#)
- [IFC/World Bank Group Environmental, Health, and Safety Guidelines for Telecommunications](#)
- ILO, [Declaration on Fundamental Rights and Principles at Work](#)
- [UN Guiding Principles on Business and Human Rights](#)

Relevant Guidance:

- IFC:
 - [“Good Practice Note: Non-Discrimination and Equal Opportunity”](#)
 - [“Good Practice Note: Workers’ accommodation: processes and standards”](#)
 - [“Measure & Improve Your Labor Standards Performance: Performance Standard 2 Handbook for Labor and Working Conditions”](#)
- IHRB:
 - [“Dhaka Principles for Migration with Dignity”](#)
 - [“ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights”](#)
- ILO:
 - [“Indicators of Forced Labour”](#)
 - [“Combating forced labour: a handbook for employers and business”](#)

³⁹³ See, IFC [General Environmental, Health and Safety Guidelines](#), (2007), section 3.4.

- [“The Labour Principles of the UN Global Compact – A Guide for Business”](#)
- ILO pages on [Postal and Telecommunications Workers](#)
- Verite, [“Help Wanted programme and Fair Hiring Toolkit”](#)

Myanmar Initiatives on Labour Issues Linked to the ICT Sector:

- ILO, [Initiative for a Decent Work Country Programme in Myanmar](#)
- ILO, [Forced Labour Complaints Mechanism](#)
- Government of Norway, [Capacity building and technical assistance on implementation of the Freedom of Association Law](#)
- Geek Girls Myanmar, [Inspire and Encourage the Next Wave of Female Tech Professionals in Myanmar](#)

Part 4.7

Land

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Land Issues, and Linked Initiatives in Myanmar

A. National Context

Land is often the most significant asset of most rural families in Myanmar. An estimated 70% of Myanmar's population lives in rural areas and are engaged in agriculture/aquaculture and related activities.³⁹⁴ Many farmers use land communally (that is, share the use of land amongst themselves), establishing longstanding land use patterns informally by custom rather than legal documentation.³⁹⁵ These customary land tenure systems are especially prevalent in mountain and hill areas inhabited by ethnic minorities. Given that much of Myanmar's rural land is not formally registered, this has led to weak or non-existent protection of usage rights and tenure for small-scale farmers, communities, ethnic minorities and other groups at risk of land expropriations. Rural people also continue to be at risk of dispossession from their land due to expropriation and debt, which has over several decades led to landlessness among the population.

Since the recent political reform process began in 2011, there has been consistent reporting of protests against "land grabs"³⁹⁶ in many parts of the country in the press and by non-governmental organisations. In addition, large-scale land allocation by the Government has increased significantly in the past decade.³⁹⁷ While some of these "land grabs" are new, many of them originate in land expropriations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. Some land in Myanmar has been returned to farmers and others since the reform process began. However, there are still tens of thousands of rural people who have lost their land due to Government expropriation. Moreover, dozens of farmers and land rights activists have been arrested recently for peacefully protesting against land expropriations by the authorities.³⁹⁸

There have also been several land disputes in major metropolitan areas. For example, during 2014 dozens of villagers from Michaungkan, suburban Yangon, staged protests in downtown Yangon over land they say was taken from them by the military in 1990.³⁹⁹

³⁹⁴ See [UNDP About Myanmar](#), and [CIA World Factbook, Burma, Economy](#)

³⁹⁵ Transnational Institute, "Access Denied" p 11, May 2013, <http://www.tni.org/sites/www.tni.org/files/download/accesdenied-briefing11.pdf>

³⁹⁶ The term "land grab" in Myanmar is used to cover a wide range of situations, including land disputes and government/military expropriation of land for companies and its own use.

³⁹⁷ OECD, "OECD Investment Policy Reviews: Myanmar 2014" (March 2014), pg. 324 *ibid*

³⁹⁸ See for example Amnesty International Annual Report 2014/2015, Myanmar country entry, February 2015, <https://www.amnesty.org/en/documents/asa16/1065/2015/en/>

³⁹⁹ "[Michaungkan protestors stand fast as deadline passes](#)", Democratic Voice of Burma, 4 October 2014.

Special Economic Zones (SEZs) and other industrial zones near urban areas also present challenges with regard to land disputes. In the Thilawa SEZ near Yangon, dozens of families have had their land expropriated by the Government and have protested about the deprivation of livelihoods and inadequate conditions in their resettlement area.

In addition to the significant confusion caused by different types of land tenure systems in the country, Myanmar has significant displaced communities that retain a claim to their lands, even though they do not currently have possession. Some ethnic minorities in the east of the country have been displaced for decades, leading to very weak tenure over their original land, which they may not have occupied for years, and may now be used by others. More recently, since mid 2011 some 100,000 ethnic minority civilians have been displaced in northern Myanmar as a result of ongoing internal armed conflict, and almost 140,000 have been displaced by inter-communal violence in Rakhine State since June 2012. This newly displaced population may not be allowed to occupy and use their land when they attempt to return to it.

As a result, ascertaining the provenance of land ownership in Myanmar is not straightforward: existing land records may not reflect true ownership; many people do not have sufficient documentation of their land rights; and many have claims to land through customary land tenure systems which are not officially recognised by the Government of Myanmar⁴⁰⁰.

Land Use for the Telecommunications Sector

ICT companies need to purchase or lease land for their operations, whether it is for offices, ICT parks or infrastructure development. Compared to some of the sectors increasing their operations in Myanmar such as agriculture and mining, the ICT sector has a smaller and far more dispersed land footprint. The infrastructure is characterised by small tower sites (although nearly 8,000 towers are planned for 2015) as well as over 5000 kilometres of narrow trenches for laying cable and fibre. The remainder of the footprint is essentially office space for day-to-day operations across the sector, some of which has been grouped together into 'ICT Parks'. There is negligible manufacturing in the sector so this part of the value chain currently has no footprint to speak of but could increase. For the most part, the "over the top" services sector does not have a physical presence in the country. SIM cards and equipment are distributed through a myriad of small shops, often selling a wide range of goods.

Tower construction companies acquire land for towers by leasing the land from the owners for typically a long-term period of typically 15 years.⁴⁰¹ As detailed below, companies ask permission from the owners and their immediate neighbours to rent the site and construct and operate the towers. Some of the land being used for towers is paddy land,⁴⁰² which is protected for food security reasons and cannot easily be converted to other uses. Moreover, permission for conversion of paddy land on which rice is being grown needs to be granted by the national level authorities before it can be reclassified for other uses. This considerably slows the process, and increases the opportunity for requests for bribes as the requests move through various levels of bureaucracy. Tower

⁴⁰⁰ For a more detailed discussion of land issues, see: Myanmar Centre for Responsible Business, [Briefing Paper on Land Issues in Myanmar](#), March 2015

⁴⁰¹ [Ooredoo builds 100 towers as launch looms closer](#), Myanmar Times, 26 May 2015.

⁴⁰² Farmland Management Rules: http://www.burmalibrary.org/docs14/Farmland_Rules-en.pdf

companies have been helping the land owners to get the land reclassified from paddy land to grant land⁴⁰³ so that it can then be leased out.

Some of the land used for towers is farmland which also requires a conversion process to change the designation, but this can be done at the state level. Even in urban areas, the lack of proper land documentation is causing delays. The tower companies have experienced delay and confusion among the authorities about what documents are needed to change land registration status and register long term leases and have proposed several solutions to the authorities to speed up the process.

The companies laying fibre/cable are digging trenches, laying fibre/cable then covering the trenches. As such, they are not entering into lease arrangements but instead may be making a one time payment for the disturbance of the land, usually without further formal arrangements.

Recently, a mobile operator publically noted that the Government had set a fixed price for leasing land held by ministries or administrative bodies (such as YCDC in Yangon) if leased for tower construction.⁴⁰⁴ The specific fixed price is not publically available.

World Bank Guidance for Land Use for the Telecommunications Sector in Telecommunications Sector Reform Project

The World Bank is currently financing and implementing a USD\$31.5 million telecommunications sector reform project in Myanmar to: improve the enabling environment for the telecommunications sector and extend coverage in selected remote pilot locations; and establish priority eGovernment technological foundations and institutional capacity.⁴⁰⁵ It has a set of environmental and social safeguard policies⁴⁰⁶ that apply to most World Bank projects and that are applicable to this telecommunications sector reform. As part of the environmental and social management framework (ESMF)⁴⁰⁷ for the project, the World Bank developed a set of land lease guidelines for the roll out of pilot telecommunications infrastructure in rural areas that are commercially non-viable for operators to service without a one-time subsidy and not part of the networks being rolled out by the licensed operators⁴⁰⁸. All sites where telecommunication masts/ towers will be installed to extend connectivity will be selected and managed in line with the ESMF.

As the ESMF notes “[r]ecognizing that land markets are poorly developed and there are few or no experiences with land leasing arrangements for telecommunications towers and masts in Myanmar, principles for such arrangements have been developed under this ESMF” because “tenure rights are rapidly evolving in rural Myanmar.” The series of steps

⁴⁰³ Grant land is “Owned and allocated by the state, grant land is common in cities and towns, but rare in village areas. The state may lease grant land out for extendable periods of ten, thirty, or ninety years. Grant land is transferable, is subject to land tax and may be reacquired by the state during a lease period in accordance with laws governing compulsory acquisition.” USAID, [Property Rights and Resource Governance](#), Burma, pp 10-11

⁴⁰⁴ Telenor Myanmar Sustainability Briefing, Yangon (May 21st 2015)

⁴⁰⁵ World Bank, [Telecommunications Sector Reform](#)

⁴⁰⁶ <https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

⁴⁰⁷ [Myanmar - Telecommunications Sector Reform Project: environmental and social management framework](#) (2013). The Environmental and Social Management Framework describes the baseline project environmental conditions and impact, provides guidance for environmental and social assessment processes.

⁴⁰⁸ World Bank, Myanmar - Telecommunications Sector Reform Project: environmental and social management framework (Vol. 2): [Land lease guidelines](#) (English)

set out are intended to mitigate impacts on rural communities. The rural telecommunications service providers are expected to make a long-term lease contract on a commercial basis with willing land owners/occupants when building their infrastructure. The procedures require the verification that all land leases are carried out with appropriate arrangements and on a commercial basis, without coercion or under duress and there is no legacy issue in any land transactions regarding the leasing of land to be carried out in association with the project. If land markets are underdeveloped in the pilot area, as will be the case for most pilot sites, the lease fees should be set that will be broadly sufficient to cover the long-term livelihood loss as a result of the leasing.⁴⁰⁹ The project will not ask the government to acquire land by exercising its power of eminent domain, nor will the government be asked to move people involuntarily. The rural telecommunications service providers will be expected to put in place feedback mechanisms to handle grievances and compliance will be monitored by the Bank task team.

The Guidance notes that because land tenure is not fully established in rural Myanmar and rural population may have informal claims to the land, care should be exercised to clarify if indigenous claims to lands identified for housing infrastructure exist, and whether any individuals use the land to gain a livelihood, before a decision is made to determine where infrastructure should be built.

Land Policy Framework

Reform of land policy and law in Myanmar remains incomplete. The current land regime is characterised by a patchwork of new and old laws that often leads to overlap, contradiction and confusion for current and prospective owners and users. Moreover, the land registration system is considered inefficient and insufficient, with complex requirements and lack of benefits for registering land.⁴¹⁰ The cadastral (land mapping) system is outdated, which further exacerbates land disputes, as land classifications and mapping used by different government ministries may overlap or not reflect current land use patterns.

Land in Myanmar is classified into several different categories, including Freehold Land, Grant Land, Reserved Forest Land, Farmland, Grazing Land, Religious Land, amongst others. This means for example that a plot of land may be classified on maps as Reserved Forest land, when in fact the land may now be used as farmland, without a change in the classification.⁴¹¹ As a result, land tenure rights – the right to use, control, or transfer land⁴¹² - are often insecure, posing a major problem.

The new land laws⁴¹³ do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights

⁴⁰⁹ Ibid.

⁴¹⁰ OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 108.

⁴¹¹ Food Security Working Group’s Land Core Group, “[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)”, (Nov. 2012), pp 7-10.

⁴¹² “What is land tenure”, FAO, <http://www.fao.org/docrep/005/y4307e/y4307e05.htm>.

⁴¹³ *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012). See for further description, Land Core Group, “[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)” (Nov. 2012).

(i.e. individual rights to use and enjoy the property of another).⁴¹⁴ Experts have recommended that the Government formally recognise customary law for land use rights and provide mechanisms for communal ownership of land to ensure *inter alia* ethnic minority rights are protected.⁴¹⁵ In addition, the Government may be declaring land vacant that in reality is not. This has resulted in large numbers of landless who would not appear in any Government records but who may nonetheless be affected by displacement and compensated for at least economic displacement if they have lost their livelihoods, and could be addressed as part of a social investment programme.

It is expected that demands for land will inevitably increase with further economic development and investment. There is a recognised need in Myanmar for a written National Land Use Policy and comprehensive umbrella national land law. The Land Allotment and Utilisation Scrutiny Committee, a Cabinet-level committee, was established in 2012 with a remit to focus on a National Land Use Policy, land use planning, and allocation of land for investment.⁴¹⁶

A working group of the original Land Allotment and Utilisation Scrutiny Committee which included civil society representation and external experts formulated a draft Land Use Policy, which was made available for public consultation on 18 October 2014.⁴¹⁷ The consultations were due to be completed in December 2014. However the government later announced that the finalization of the draft policy would be delayed so that consultations could continue. A revised draft National Land Use Policy is expected to be sent to the President after a further wide consultation to take place in June 2015.⁴¹⁸ The Policy will guide the drafting of an umbrella Land Law, expected also to be discussed during public consultations. As such, a new Land Law is not expected to be passed by the current Parliament in 2015. While the development of such an overarching policy document is a needed and welcome step, civil society in Myanmar fear that poor farmers' land rights will not be adequately protected under the Policy.⁴¹⁹

Furthermore, there are increasing calls from CSOs and also from the recent OECD Investment Policy Review for companies to use a process of free, prior, informed consent (FPIC) for any kind of land acquisition or use in Myanmar, and not only in connection with land belonging to or used by ethnic minorities.⁴²⁰

Legal Framework for the Acquisition or Lease of Land

Acquisition by/with the Myanmar Government

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but also provides for ownership and protection of private land property rights.⁴²¹ The

⁴¹⁴ "...the written and unwritten rules which have developed from the customs and traditions of communities..." Land Core Group, above, pp 15-16.

⁴¹⁵ Land Core Group, above, pp 23-24.

⁴¹⁶ Food Security Working Group's Land Core Group, "[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)", (Nov. 2012), p 12.

⁴¹⁷ The [English version of the text of the draft policy](#)

⁴¹⁸ [Delayed land-use forum scheduled for June](#), Myanmar Times, 29 April 2015,

⁴¹⁹ [NGOs, Farmers Concerned After Reviewing Draft Land Use Policy](#), Irrawaddy, 1 November 2014

⁴²⁰ OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014).

⁴²¹ Myanmar Constitution (2008), Articles 35, 37, 356 and 372.

Government can carry out compulsory acquisitions in the state or public interest (see below). A private investor may acquire land or land use rights from either the Government or from a private land owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either the 2012 *Vacant, Fallow and Virgin (VFV) Land Management Law* or the 2012 *Farmland Law* – see below), land acquisition is governed by a 120 year old law, a holdover from the former British colonial period. The 1894 *Land Acquisition Act* provides that the Government can carry out land acquisitions for a company when the acquisition is “likely to prove useful to the public” (Article 40(1)(b)). The Government has responsibility for carrying out the acquisition and distributing compensation but the funds for compensation are to be provided by the company acquiring the land. Land in kind can be provided in place of monetary compensation. The law sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land.

Vacant, Fallow and Virgin (VFV) Lands

The 2012 *Vacant Fallow and Virgin (VFV) Lands Management Law* and *VFV Rules* (see below), are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as VFV may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the Government classifies as “vacant” under the VFV. The complicated registration procedures under the 2012 *Vacant Fallow and Virgin (VFV) Lands Management Law* and the 2012 *Farmland Law* mean that smallholder farmers, a large percentage of Myanmar’s population, will struggle to register their land tenure claims and are at risk of having their land registered by more powerful interests. Potentially developers could register their tenure claims as land users of farmland and so-called VFV land, which has in fact long been occupied by others. By not recognising informal land rights, and formalising land rights through titling despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices. This has potential to create or exacerbate tensions or even conflict.⁴²²

Article 55 of the 2012 *VFV Rules* gives the Central Committee for VFV Land Management the right to repossess VFV land that had been granted to others for, among other things, the “implementation of basic infrastructure projects or special projects required in the interests of the state”, and also where natural resources are discovered on VFV lands. Compensation is based on current value (Article 56). The 2012 *VFV Law* and *Rules* do not provide for procedures for objections to be made to the acquisition or to the compensation provided. Nor do they provide procedures for judicial review, which has been widely criticised. The VFV legislation is strict in prohibiting and criminally penalising persons that “encroach” on VFV land without permission, “obstruct” VFV land rights owners, and “destroy the benefit” of immoveable property on VFV land. These criminal provisions may be abused through their use against protestors seeking reform or remedy in respect of VFV land.

⁴²² Transnational Institute, “[Access Denied: Land Rights and Ethnic Conflict in Burma](#)”, (May 2013)

Farmland

With respect to farmland, the 2012 *Farmland Law* makes clear that applicants who are individuals must be citizens (Articles 6(a)(v), 7(a), (iv)). Under the 2012 *Foreign Investment Law* (FIL), there are restrictions on foreign investment in agriculture under Article 4(h), but Article 5 provides for the Myanmar Investment Commission, with approval from the Government, to allow investment.⁴²³

Farmland rights under the 2012 *Farmland Law* are freely transferable (subject to discrete restrictions such as transfers to foreign investors, discussed in greater detail below). This has been seen as problematic, since it exposes poor farmers to the temptation to sell their land use rights for short term gain, potentially leaving them landless and without a livelihood.⁴²⁴ The problem is not the fact that farmland rights may be transferred through private negotiations and agreements, as this gives land rights owners the ability to convert their property assets into cash value when they choose. The issue is to what extent protection should be provided to sellers. Many states' contract laws commonly provide protections against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation. The 2012 *Farmland Law* also allows for the "repossession of farmland "in the interests of the state or the public"⁴²⁵ provided that "suitable compensation and indemnity is to be paid and the farmland rights holder must be compensated "without any loss" (Article 26). As with the *VFV Law*, the *Farmland Law* and *Rules* do not provide for procedures for objections to be made to the acquisition or compensation awarded, or for judicial review.

Non-Citizens' Use of Land

With respect to foreign investors, the *Restriction on the Transfer of the Immoveable Property Law* (1987) previously restricted foreign companies from buying land or leasing land for a term exceeding one year. Private investors may now acquire land rights from private persons through ordinary contractual agreement, subject to the following legal restrictions. First, land ordinarily cannot be sold or transferred to a foreigner through private transaction.⁴²⁶ The Government may however allow exemptions from these restrictions and *Union Government Notification No. 39 of 2011*⁴²⁷ sets out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article 16(c) *VFV Law*) (Article 14 *Farmland Law*). Under the 2012 *Foreign Investment Law*, foreign investors can obtain leases for an even longer period – 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment. Leases can be even longer for land in "the least developed and less accessible regions."⁴²⁸

⁴²³ Foreign Investment Law 2012, <http://www.moj.go.jp/content/000123996.pdf>.

⁴²⁴ Displacement Solutions, "[Myanmar at the HLP Crossroads](#)" (Oct. 2012).

⁴²⁵ The distinction drawn between interests of the state and interests of the public is troubling, but it may be premature to draw conclusions without knowing the nuances of the provision in Burmese.

⁴²⁶ The 1987 Transfer of Immoveable Property Restriction Act prohibits the sale or transfer of immoveable property, and the lease of such immoveable property for more than one year, to a foreigner or foreigner-owned company (Articles 3-5).

⁴²⁷ [Notification 39/2011](#) on the Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law

⁴²⁸ Ministry of Planning and Economic Development, "[Notification 11/2013, Foreign Investment Rules](#)", (31 Jan 2013)

The Foreign Investment Rules provide certain protections against abuses but these apply only to leases by foreign investors under the Myanmar Investment Commission (MIC) permit regime. Leases must be submitted to the MIC and the person leasing the land can make a complaint to MIC if the investor fails to pay the promised lease payment or carry out any provision in the agreement. MIC can thereafter terminate the lease. MIC is also entitled to terminate the lease after necessary investigations if the investor violates a law on the land. Notably, a foreign investor shall not be permitted to lease land “in a place that the public is not desirous to transfer and vacate.”⁴²⁹ If there are occupants, the foreign investor must submit to MIC the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement, including payment of the current price plus and damages.⁴³⁰ This indicates that with respect to land leased by foreign companies that is privately negotiated, involuntary resettlements in theory cannot be compelled. However, given the wide scope of this provision, whether the Government can or will enforce this veto is questionable. Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.⁴³¹ However, the 2012 *Foreign Investment Law* and the 2013 *Citizens Investment Law* are currently being redrafted to create a single law for all investors and these provisions could change.⁴³²

Resettlement

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. As discussed above, the 1894 Land Acquisition Act does provide for compensation for land the Government has acquired in the public interest, but with only limited safeguards and no provisions concerning resettlement. In addition, the current *Foreign Investment Rules* provide some general prohibitions on involuntary resettlement as noted above.

Land Dispute Mechanisms

In recognition of the problem of land disputes, the Government has established three bodies to deal specifically with land issues. However, they do not have the authority to enforce resolution of problems relating to land. The Land Allotment and Utilisation Scrutiny Committee and the Parliament’s Farmland Investigation Commission (with a mandate to accept complaints from the public) were both established in July 2012.⁴³³ In 2013 the Land Utilization Management Central Committee headed by a Vice President was set up to implement the findings of the Parliamentary Commission. This Committee has reportedly agreed to return land or provide compensation for 474,000 acres (699 cases) but in July 2014 reports suggested that less than 150,000 acres may finally be returned. Moreover observers have noted that in some cases the land was returned to tenants, rather than owners of the land.⁴³⁴

⁴²⁹ Foreign Investment Rules, above, Chapter 15, para 126.

⁴³⁰ Foreign Investment Rules, above, Chapter 15, para 126.

⁴³¹ Foreign Investment Rules, above, Chapter 15, para. 125.

⁴³² See Comments on the latest draft of the Myanmar Investment Law, Myanmar Centre for Responsible Business, 27 March 2015, <http://www.myanmar-responsiblebusiness.org/pdf/2015-03-30-MCRB-Comments-on-draft-Myanmar-Investment-Law.pdf>

⁴³³ [Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#), pp 12-13, Food Security Working Group’s Land Core Group, November 2012.

⁴³⁴ [“MPs pressure govt. to return farmland”](#), Myanmar Times, 7 July 2014.

The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broader range of issues, has noted that most of the complaints they receive are in relation to “land grabs”. The Myanmar Legal Aid Network, a wide network of law firms and legal groups for legal aid across the country, is currently taking a number of cases to court, including those of farmers and others charged with trespassing on land taken from them.

B. Field Research Findings

The field research focused on parts of the ICT value chain where land acquisition processes were most significant (for infrastructure roll out)⁴³⁵ and where land owners or users were most at risk (i.e. rural communities) and not on land acquisition for office use in cities where land registration and markets are more developed. The findings are based on the roll-out experience of private sector telecoms operators. While the field research team did discuss land acquisition with state-owned enterprise MPT, the team did not have the opportunity to discuss land acquisition with military-owned enterprise MECtel. MECtel usually locates infrastructure inside military compounds or on land held by the military.

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Consultation Prior to Land Acquisition

Human Rights Implicated: Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- There were numerous cases where individuals and communities claimed there was **no informed consultation and participation** about land acquisitions or tower or fibre projects using land in immediate proximity to their homes.
- In cases where there was prior informed consultation and participation, it was predominantly **only with the land owner/user and the (two to four) immediate neighbours** who, under the land acquisition process, were needed to sign consent forms. In many of those cases, **those asked to sign agreements were unclear of their purpose or content.**
- There were **very few cases** found where any ICT company or Myanmar Government had done **wider community consultation regarding the network rollout**, land needs and plans, and the ways in which the rollout would affect their lives and livelihoods, positively or negatively.
- In many cases, community members:

⁴³⁵ For example, TowerXchange reports in October 2014 that “based on the volume of orders they are seeing, the tower installation firms have spoken to are more bullish than the GSMA’s forecast of 17,300 towers by 2017, with many feeling that the tower count in Myanmar by 2017 will be 25,000.” TowerXchange – the independent community for the emerging telecom markets, “The Myanmar tower rollout: FAQs” (updated November 2014)

- received **no prior information about the intention to acquire their land or land near their homes**, only understanding the reason was to build a tower or lay the cable line once it became apparent during construction or digging;
- were **not consulted** or given an opportunity to become informed about the **broader project of building the network**. Instead, information was given only with respect to the land registration process (see Due Process below) and compensation;
- were given **no choices** or opportunity to negotiate about the plot of land or restrictions on land use;
- often **did not know for which telecom operator** the tower construction company was building, or the cable line was being dug;
- were **not given any information to make contact or complain** either with the cable laying company, tower construction company or telecom operator.
- It was a **regular occurrence for communities to host tower construction managers and/or groups of workers, in their homes during the build period, without compensation** for the accommodation, water or laundry use. While this was by agreement, it often **lasted for a period longer than originally agreed** and some cases involved more **workers than agreed** and/or **also their spouses and children** (and sometimes pets!).
- **Commonly raised community concerns included:**
 - **not knowing which company was involved** in the construction (whether fiber cable or tower)
 - **not having a company contact** in cases of issues or emergencies;
 - **not being provided basic information on the safety of the tower**, including:
 - whether the tower could withstand earthquakes or severe weather;
 - whether they would be subjected to unsafe levels of radiation from the tower;
 - whether they would be electrocuted by the tower during rain showers;
 - **noise from generators powering the towers** causing a disturbance, headaches, and small cracks in walls/floors.
 - **tower sites being fenced but not locked**, compelling villagers to “guard” the site to ensure children or others do not wander in.

Due Process in Acquisition

Human Rights Implicated: Right to not be arbitrarily deprived of property; Right to an adequate standard of living; Right to freedom of expression

Field Assessment Findings

- The field assessment findings **affirmed the complexity and opacity of the land acquisition process and regulatory framework** outlined in the National Context section above.
- Reports were received of **construction taking place on paddy land or farmland, without the necessary documentation, including land conversion approval**. Private companies noted that receiving the land conversion approval for farm or paddy land was “impossible” due to administrative delays, bribery, and in some cases farmers lacking requisite documentation needed to apply for the conversion. However a regional-level minister expressed awareness of the complexity of the

approval process, and suggested regional-level government is working to ease the process for both landowners and companies engaged in the roll-out.

- **For tower construction**, interviews indicated of a **relatively consistent process was followed by most companies that resulted in a signed lease for land owners**:
 - A “site hunter” comes to the home/farm to investigate the land and suitability for a tower site;
 - If suitable, they discuss with the village leader/administrator their intention to build on the land, how much land they will need (usually about 50 square metres) and where, how long construction will take (usually a 28 day target), and their rental and compensation rates;
 - The village leader/administrator and site hunter(s) discuss with the land owner their intention to build the tower:
 - The company usually facilitated the process of getting the land registered as “grant land” under the required Form 105. (If paddy land, this was first applied for at regional level, then approved at national level before it can be issued). This generally took 1-2 months.
 - The land owner must get the signed consent of (usually 2-4) immediate neighbours confirming they do not object to the construction.
 - A contract (usually a land lease) is signed between the land owner and company.
- **Fees and costs for registering as grant land** were generally incorporated into the lease agreement (not putting land owners out of pocket), but the **fees and costs cited varied greatly** from 500 kyats (\$0.46USD) up to 40 lakhs (\$3,709USD), by location.
- It was often the tower site hunter’s or village leader/administrator’s job to **verify who was the true land owner**:
 - National Registration Card census registration and land title were cited as among key initial documents sought. However, there are still high risks of misidentifying “true” land ownership in Myanmar even using such evidence, given wide-spread practice of customary ownership and the fact that Myanmar only recently completed its first census in 30 years, which is still widely regarded as problematic because *inter alia* people in some areas of armed conflict and intercommunal violence were not counted.
 - Depending on the circumstances, companies may bring in local lawyers to meet the land owner and assist them in applying for the needed documents;
 - Researchers heard general estimates that around 10% of prospective sites fail because documents cannot be obtained.
 - Researchers heard of some cases in which Myanmar officials subtly requested bribes in order to return the proper documentation.
- Though contracts were commonly signed with land owners confirming the lease arrangements, a **copy of the contract was often not provided to the land owner** and researchers were regularly told by **land owners that they did not fully understand the content of what they were signing**.
 - Most contracts appeared to include **automatic renewal clauses**, meaning unless the land owner gives notice of their wish to cancel or renegotiate the agreement prior to the completion of the agreed term they will automatically be tied into a renewed term.

- As companies involved in **laying fibre** were not using land for an extended period of time, they did not use more formalised processes or documents to negotiate access. **One time compensation for disturbance of land was sometimes paid.**

Compensation for Land Acquisition and Use

Human Rights Implicated: Right to not be arbitrarily deprived of property; Right to an adequate standard of living; Right to an effective remedy

Field Assessment Findings

- Compensation rates for rental of tower sites varied greatly** (including both rooftop and ground towers), **from 2 lakh kyats monthly (\$185USD) up to 72 lakh (\$6,676USD) monthly**, depending on the location and the land tax to be paid.
- Most land owners were agreeing to lease periods of 10-15 years** for positioning towers on their land, though periods of 5 and 25 years were also reported. As above, contracts often included **automatic renewal clauses**.
- Lease payments were usually paid annually**, though some companies paid owners every quarter, some every 6 months and others every 2 years.
 - Some land owners expressed a preference for larger (e.g. 3 year) up front payments** in order to have sufficient capital to start a business or new venture.
 - As above, **application fees for registering the land in order to host the tower were usually incorporated into the payment for the lease.**
 - Some companies paid additional **monthly security fees to the land owner to look after the tower site.**
- Most lease agreements included percentage increases**, often 3-5%, every 3-5 years.
- For fibre construction on religious land** it was found that leases and lease payments were not formalised and no official approval had been required. Instead, companies **simply made donations.**
- For tower construction on religious land** the formal authorization required at the township level was obtained. Neighbor consent was also obtained. Stakeholders did report difficulty receiving satisfactory information from company representatives regarding the lease, acquisition, and construction process.
- Most companies seemed to operate according to standard compensation ranges. Some **provided site hunters with financial incentives to ensure lease agreements within the specified ranges**, e.g. allowing them to keep the amount left over between the agreed fee and top of the specified range, or receive a commission for staying within the range.
- A few cases were reported of **lack of compensation for trees/crops cut down** to make room for towers or loss of income from their yields.

Access to Remedy for Land Grievances

Human Rights Implicated: Right to an effective remedy; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- As mentioned above, there were **regular reports of communities and land**

owners not knowing which company was responsible for fibre cable digging or tower construction, including whom to contact in cases of emergency or grievance.

- **Cases of noise disturbance from generators powering towers were generally resolved**, in some cases by the village administrator.
- **Some communities complained of damage by the company of roads, as well as of company-provided road repairs that failed to restore the quality of the road prior to the company's use.**

Conflict Areas

Human Rights Implicated: Right to life, liberty and security of the person; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.
- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk.
- Researchers also received reports from workers that they were aware that landmines **may have historically been laid with land mines around infrastructure in conflict areas.** This led workers to avoid walking through certain locations. The measures companies took to protect their workers in such circumstances were unclear.

Myanmar Good Practice Examples:

- **Written lease agreements were regularly signed with land owners for towers** (though, as above, copies were often not provided to land owners or they claimed they did not understand the content fully).
- **Most lease agreements included percentage increases**, often 3-5%, every 3-5 years.
- **Companies often facilitated the registration application process, reducing or removing the burden on land owners.**
- Given the lack of a uniform and accessible land registry, regular reports were received of companies accepting alternative forms of documentation. This can offer a significant protection but can also be a significant risk if this is used to bypass customary owners. As a result, **some companies also seemed to be undertaking more detailed due diligence to identify the "true" land owners**, including direct discussions with villagers and local authorities.

C. Key Human Rights Implications for the ICT Sector

Considerations for Land Acquisition / Use

- **Being sensitive to concerns about “land grabbing”:** There has been extensive reporting in the press and by civil society organisations in recent years of outright “land grabs” with little pretence of following the law, and of villagers being deprived altogether of compensation, with or without official expropriation, receiving reduced payment for land, or being denied any recognition of ownership⁴³⁶ by Government authorities, the military and business. There may therefore be legitimate concern about land grabs in connection with existing and planned ICT projects. Even though the vast majority of land transactions for ICT infrastructure is through long-term leases between willing lessee/lessor, this issue could be a source of tension with local communities and subject of advocacy by civil society groups. Operators and tower companies should expect close public scrutiny of their approach to land issues.
- **Effective, transparent and equitable procedures:** The rollout of the ICT infrastructure has a geographically extensive footprint. Companies should adopt consistent and effective procedures for consultation and compensation to make sure that this wide range of people impacted by operations are dealt with equitably and transparently across thousands of sites and thousands of kilometres of fibre.
- **Recognition of customary title:** Given the lack of a uniform and accessible land registry establishing land ownership, the lack of recognition of customary ownership, and the significance of land-based livelihoods and attachment to ancestral lands, any approach to land use should recognise those customary rights and deal with customary owners on the same basis as more formal land owners. This requires detailed due diligence to understand who the customary owners are, often with direct consultation with communities and local authorities. The field research findings indicated that there was often a lack of information provided, with consultations limited to immediate neighbours. Such short-cuts may lead to tensions with local communities where there is no wider explanation or process to raise concerns. (See Part 4.9 on Stakeholder Engagement).
- **Risks to farmers:** Paddy land or farmland is preferred for tower construction because it is flat and easy to reach. Under the current land classification, it is not allowed to be used for anything other than cultivation without government approval which is not always immediately forthcoming. Where towers have been constructed without approval or in advance of approval, subsequent strict enforcement of land laws could

⁴³⁶ The Land Core Group, a grouping of Myanmar and international NGOs working on land issues, has documented 13 cases of land confiscations in central Myanmar in September 2012 (Land Core Group, “13 Case Studies of Land Confiscations in Three Townships of Central Myanmar” Sep. 2012, on file with IHRB.). Over the last several years the Transnational Institute has focused on land rights problems in Myanmar’s borderlands where ethnic minorities live. See for example TNI, “Financing Dispossession, China’s Opium Substitution Programme in Northern Burma” (Feb. 2012); [“Developing Disparity: Regional Investment in Burma’s Borderlands”](#) (Feb. 2013), and “Access Denied: Land Rights and Ethnic Conflict in Burma”, (May 2013). Myanmar civil society, including those which are ethnic minority-based, have also reported on land grabs without compensation or recognition of customary ownership. The Karen Human Rights Group has documented land disputes and land grabs in Karen areas over a number of years. See KHRG website, particularly [“Losing Ground: Land conflicts and collective action in eastern Myanmar”](#) (Mar. 2013). The Human Rights Foundation of Monland has also reported on such abuses, particularly at the hands of the military, in ethnic Mon areas. See for example Human Rights Foundation of Monland, [“Disputed Territory: Mon farmers’ fight against unjust land acquisition and barriers to their progress”](#), (Oct. 2013).

potentially result in farmers being penalised for renting to tower companies, and create a risk to their livelihoods. If farmers are penalised, companies should be ready to put in place remedial compensation to ensure that there is no impact on their livelihoods.

- **Speculation:** Companies should also be aware that there have reportedly been cases in other sectors involved in land acquisition of speculators moving in to acquire land in areas where it is thought that investment projects may be implemented. These speculators seek to acquire land cheaply from original land users who are unaware of the development, hoping to profit from compensation payments. This can create tensions with the original users, who may feel cheated when land use compensation is subsequently paid

Land in Areas Affected by Armed Conflict & Communal Tension

- See Part 4.10 on Conflict and Security.

D. Relevant International Standards and Guidance on Land Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- [ILO Convention 169](#), Indigenous and Tribal Peoples Convention (1989), Part II – Land
- [FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (2012)
- The World Bank Myanmar Telecommunications Environmental and Social Management Framework (ESMF) and Land Lease Guidelines
- [IFC Performance Standard 5 and Guidance Note – Land Acquisition and Involuntary Resettlement](#)
- The [IFC/World Bank Group Environmental, Health, and Safety Guidelines for Telecommunications](#) also provide relevant guidance on siting infrastructure and other aspects of community safety.

Myanmar Initiatives on Land Linked to the ICT Sector:

- The World Bank supported Myanmar Telecommunications Sector Reform Project [Land Lease Guidelines](#) provide valuable guidance for other ICT companies involved in land acquisition given the rapidly evolving status of tenure rights in Myanmar.
- The UN-Habitat, Supporting the implementation of the [Land Administration and Management Programme \(LAMP\)](#) by the Myanmar Settlements and Land Records Department (SLRD)
- [Myanmar Food Security Working Group](#) and the [Land Core Group](#)

Part 4.8

Groups at Risk

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Groups at Risk, and Linked Initiatives in Myanmar

A. National Context

Myanmar is one of the most culturally diverse countries in Southeast Asia, making for a complex interplay of ethnic identities. Many ethnic minority leaders believe that the Burman(Bamar)-dominated central Government instituted a policy of “Burmanisation” to suppress ethnic minority cultures, languages and religions, and treat ethnic minorities as “second-class citizens”.⁴³⁷ There are also several other groups that are at risk of marginalisation. These groups are particularly at risk of the impacts of increasing change in the country, due to poverty, lack of stature to make their voices heard in the process of shaping those changes, and an inability to resist more powerful forces. They risk being left behind in Myanmar’s rush to transform itself.

Human Rights Defenders

According to the United Nations, a “human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified primarily by what they do. It is through a description of their actions and of some of the contexts in which they work that the term can best be explained.⁴³⁸ As in many countries, there are many human rights defenders in Myanmar, including people working in civil society organisations (CSOs) and community-based organisations (CBOs), trade union, student and religious leaders, journalists, and Myanmar people working in INGOs and UN agencies.

A vibrant and resourceful network of CSOs and CBOs is active at both the national and local levels in Myanmar, including many ethnic minority-based groups. In the aftermath of Cyclone Nargis in May 2008, Myanmar CSOs greatly expanded and organised as they worked to help survivors. They have remained a significant positive force in the country and have been able to engage with the Government to some extent. Since 2011 Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights.

⁴³⁷ For a further explanation and discussion of these issues, please see Transnational Institute and Burma Centrum Netherlands reports from 2011 to 2013.

⁴³⁸ [Office of the UN High Commissioner for Human Rights](#),

While many developments since the 2011 reform have increased the space for human rights defenders to operate, there have been some worrying recent developments such as the arrests and imprisonment of several local journalists (see Chapter on Freedom of Expression and Censorship); the continued arrests of demonstrators under the 2011 *Peaceful Assembly Law*, many of them protesting against land grabs; and unchecked inter-communal violence. The run-up to the General Elections expected to take place in November 2015; the uncertain constitutional amendment process; and the ongoing peace talks with armed ethnic minority groups are all factors which have led and may lead to greater tensions between civil society, including journalists, and the government, and within civil society itself.⁴³⁹

Religious Communities

Buddhist and Muslim

After the controversies around how ethnic minorities could identify themselves in the March-April 2014 census, the government decided not to publish ethnicity and religion data⁴⁴⁰. Analysis of census information reveals that an estimated total of 1,206,353 people were not enumerated in parts of Rakhine State, Kachin State and Kayin State. This represents 2.34 percent of the population. However this number was counted in the overall Myanmar population total figure of 51,486,253.⁴⁴¹

The percentage of Muslims in the population is also an extremely sensitive issue in the light of recent violence and Buddhist fears of an increasing Muslim population.⁴⁴² Muslims, who live in many parts of Myanmar, are a minority of the population. Anti-Muslim sentiment and discrimination are widespread in Myanmar, not only against the Rohingya,⁴⁴³ a Muslim group living in Rakhine State, but also against other Muslims in other parts of the country. Inter-communal violence between Buddhists and Muslims broke out in Rakhine State during June 2012 but has also affected other areas of the country.⁴⁴⁴

In the wake of the 2012 violence, almost 140,000 people in Rakhine State remain displaced,⁴⁴⁵ many of them in camps under very poor conditions, and most of them Muslim. Muslims living in camps in Rakhine State are not able to travel in order to access employment or health care. Muslims who live in northwestern Rakhine State also face longstanding restrictions on movement and cannot leave their townships without official permission, greatly impacting their livelihoods.⁴⁴⁶ On 11 February 2015 the President

⁴³⁹ [Civil Society Organizations and the Extractives Industries in Myanmar – a Brief Overview](#), Myanmar Centre for Responsible Business, October 2014,

⁴⁴⁰ See: [The Union Report – The 2014 Myanmar Population and Housing Census](#).

⁴⁴¹ The Republic of the Union of Myanmar, The [2014 Myanmar Population and Housing Census, Census Report Volume 2-A, May 2015](#).

⁴⁴² For a discussion of Muslim population figures in the context of the March-April 2014 census, see International Conflict Group, "[Myanmar Conflict Alert: A Risky Census](#)", (Feb. 2014).

⁴⁴³ The Myanmar Government does not accept the term 'Rohingya' and refers to the population as 'Bengali'.

⁴⁴⁴ In Meiktila in the centre of the country, over 40 people were killed in March 2013. In July 2014 further inter-communal violence broke out in Mandalay, Myanmar's second largest city, resulting in two deaths and dozens arrested and wounded DVB, "[Mandalay riots reveal splintered community, complex agendas](#)" (8 July 2014).

⁴⁴⁵ [USAID, 6 February 2015](#)

⁴⁴⁶ Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar, February – July 2014, Arakan Project, on file with IHRB.

revoked all temporary identity cards, known as White Cards, leaving many Muslims, including Rohingyas, but also some ethnic minorities, without a valid form of identity card, impacting on their ability to travel, obtain employment and vote.⁴⁴⁷

Some members of the Buddhist Sangha (clergy) in Myanmar lead the “969” movement, which claims, amongst other things, that Muslims are trying to take over the country. The “969” movement encourages Buddhists to boycott Muslim businesses, and has some popular support.⁴⁴⁸ Of the two international telecoms companies which were granted licenses in Myanmar, Ooredoo is based in Qatar, a Muslim-majority country. After the awards were granted, some radical nationalist Buddhist monks called for a boycott of the company and a general boycott of all Muslim-owned shops and businesses in Myanmar.⁴⁴⁹

Moreover, building on widespread anti-Muslim sentiment, some Buddhist leaders called on the Government to enact legislation to “protect” Buddhism. There are three laws in Parliament that would restrict the following: religious conversion to non-Buddhist religions; inter-faith marriage; and polygamy. The *Population Control Healthcare Bill* was passed by Parliament in April 2015. International human rights organizations have noted that the *Population Control Healthcare Bill* may be used selectively against certain ethnic and religious minorities as there is no non-coercion or discrimination clause in the bill..⁴⁵⁰

Other faiths

People of other faiths also face discrimination and marginalisation. Christians comprise a small minority in the country, but most Chin and Kachin ethnic groups are Christian, with smaller numbers of Karen and Karenni Christians. Christians, like other members of minority religions, are generally not promoted to senior positions within the civil service or military. Ethnic minority Christians face restrictions on their religious freedom, including restrictions on building places of worship and destruction of religious venues and artefacts. These abuses are particularly acute in the context of the armed conflict in Kachin and northern Shan States.⁴⁵¹

Women

Myanmar acceded to the *UN Convention against All Forms of Discrimination against Women* (CEDAW) in July 1997. The 2008 *Myanmar Constitution* does not include an effective constitutional guarantee of substantive equality⁴⁵² nor in practice do women

⁴⁴⁷ The White Cards expired on 31 March 2015. Global New Light of Myanmar, 12 February 2015, and [International Crisis Group, CrisisWatch No 139](#), p 12, 2 March 2015

⁴⁴⁸ ICG, [The Dark Side of Transition: Violence Against Muslims in Myanmar](#)” (Oct 2013).

⁴⁴⁹ [Nationalists call for Ooredoo boycott](#), Myanmar Times, 6 June 2014,

⁴⁵⁰ See [Myanmar: scrap ‘race and religion laws’ that could fuel discrimination and violence](#), Amnesty International and International Commission of Jurists, 3 March 2015.; Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, Advance Unedited Edition, A/HRC/28/72, p 9-10, 9 March 2015; and “Burma’s Population Control Bill Threatens Maternal Health Program”, Physicians for Human Rights, 22 April 2015, *Population Control Healthcare Bill*.,

⁴⁵¹ United States Commission on International Religious Freedom, [2013 Annual Report](#) (2013), p 22; 23-25.

⁴⁵² Article 350 guarantees that women have the enforceable right to the “same rights and salaries” as that received by men “in respect of similar work.” The use of the term “similar work” will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW. Myanmar Legal Framework Background Paper for IHRB, p 83, on file with IHRB.

receive equal pay for work of equal value.⁴⁵³ Although the law guarantees equality between men and women, enforcement is weak and women are under-represented in Government and in most traditionally male occupations. In order to address some of these issues, in October 2013 the Government launched a 10 year action plan for the advancement of women.⁴⁵⁴ The ADB and the UN are supporting the Government in carrying out a gender situational analysis that will provide a far more detailed assessment of the status of women in the country;⁴⁵⁵ the results will be published in June 2015.⁴⁵⁶

Women can be particularly at risk of negative impacts because they have fewer livelihood options than men, due to social status, family and cultural roles and expectations, and lower literacy levels,⁴⁵⁷ and as a result, are disproportionately affected by poverty.⁴⁵⁸ While the 2014 census reported an overall female literacy rate of 86.9%.⁴⁵⁹ girls are often not able to attend school, particularly in remote mountainous border regions, which means that women are on the whole are less educated, leading to a lower literacy rate. Without access to education, women cannot access the job market, remain in low paid positions and are more prone to exploitation.

Sexual violence against women in the context of internal armed conflict in Myanmar has been reported for many years.⁴⁶⁰ However a recent report by the Gender Equality Network discussed violence against women in non-conflict situations, such as intimate partner violence, including marital rape, and sexual assault and harassment outside the home. The report recommended that companies implement policies to address and effectively respond to sexual harassment and violence in the workplace.⁴⁶¹

There are numerous women's organisations in the country that speak out on a range of issues, including on the impact of business operations.⁴⁶² Some women's organisations campaigning against have received anonymous death threats via Facebook and on their mobile phones.⁴⁶³

⁴⁵³ UNFPA Myanmar, "[The 100th International Women's Day celebrated in Yangon, Myanmar](#)" (8 Mar. 2011).

⁴⁵⁴ UNDP, "[Women's National Strategic Plan for Women Advancement Released](#)" (4 October 2013).

⁴⁵⁵ ADB, "[46484-001: Support to the Preparation and Dissemination of the Myanmar Gender Situational Analysis](#)" (Dec. 2012).

⁴⁵⁶ [Myanmar's Gender Status Analysis gets the go-ahead](#), UNFPA Myanmar, 18 January 2015,

⁴⁵⁷ See: [The Union Report – The 2014 Myanmar Population and Housing Census](#), p. 37 on literacy ratios: male 92.6%, female 86.9%

⁴⁵⁸ US Department of State, "[2013 Country reports on Human Rights practices, Burma 2013 Human Rights report](#)" (2013).

⁴⁵⁹ The Republic of the Union of Myanmar, The 2014 Myanmar Population and Housing Census, Census Report Volume 2-A, May 2015

⁴⁶⁰ Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, paragraph 35, 9 March 2015, A/HRC/28/72.

⁴⁶¹ "[Behind the Silence: Violence against women and their resilience in Myanmar](#)", Gender Equality Network, October 2014,

⁴⁶² The Tavoyan (Dawei) Women's Union reported in February 2015 that women who protested about damage to livelihoods and the environment caused the Dawei Special Economic Zone and related projects in the southeast of the country also experienced harassment. "Women activists facing harassment by proponents of the Dawei Special Economic Zone", Tavoyan Women's Union, 25 February 2015,

⁴⁶³ See The Irrawaddy, "[We Will Not Back Down](#)" (19 June 2014).

Children

The Myanmar Government ratified the International Convention on the Rights of the Child (CRC) in 1991, and acceded to the CRC Optional Protocol on the Sale of Children, Child Prostitution, and child sexual abuse images in January 2012⁴⁶⁴ and ILO Convention No. 182 on the Worst Forms of Child Labour in December 2013. Nonetheless Myanmar law diverges from the CRC in some significant areas. For example, the provisions of the 1993 Child Law define a child as becoming an adult at 16 years rather than 18 years, and sets the minimum age of criminal responsibility at seven years old. Although the Government has stated that it will reform the law to bring it into line with the CRC, this has not yet occurred.

While the usual and often exclusive focus is on child labour when discussing potential private sector impacts on children, ICT projects can have a wider set of impacts on children, as a consequence of their physical and cognitive immaturity. There is an increasing range of tools regarding children available to assist companies in identifying and understanding potential impacts on children.⁴⁶⁵

Child Labour

The 2008 Constitution reaffirms the State's responsibility to provide free basic education and health care for children.⁴⁶⁶ The majority of children attend primary school, but the net completion rate is only 54%. Of these, only 58% go on to secondary school.⁴⁶⁷ Due to widespread poverty and the unstable economic situation, many children drop out of school and work for low pay to help earn money for their families.⁴⁶⁸

Child labour is widespread and visible throughout Myanmar in various sectors (see census data in Part 4.6 on Labour). Children also end up as beggars on the streets, bus and railway stations and at tourist attractions. One survey found that one third of child labourers worked as street vendors.⁴⁶⁹ The Government is working with the ILO and UNICEF to reform laws and end the worst forms of child labour. The minimum age for the employment of children is set at 13 years, which is in line with international standards for light work, but not in line with the international standard of 15 years for regular work.⁴⁷⁰ The 1993 *Child Law* classifies children between the age of 14 and 17 as youths, and allows them to engage in "light duties". However, the term "light duties" is not defined.⁴⁷¹ Children are frequently victims of economic exploitation, as employers generally pay them less despite their high contribution of labour.⁴⁷²

⁴⁶⁴ [UN Treaty Collection](#)

⁴⁶⁵ UNICEF and the Danish Institute for Human Rights, "[Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#)" (2013).

⁴⁶⁶ UNICEF, above. pg. 4-5

⁴⁶⁷ UNICEF, [Situation Analysis Myanmar](#), p 76 and p 83, July 2012,

⁴⁶⁸ Democracyfor Burma, "[Child labour continues in Burma](#)" (4 February 2011).

⁴⁶⁹ UNICEF, "[Situation Analysis of Children](#)" (2012), p 116.

⁴⁷⁰ Freedom House, "[The Global State of Workers' Rights – Burma](#)" (31 August 2010).

⁴⁷¹ US Department of State, "[2013 Country reports on Human Rights practices, Burma 2013 Human Rights report](#)" (2013).

⁴⁷² Child Rights Forum of Burma, "[CRC Shadow Report Burma](#)" (29 April 2011).

Child Sexual Abuse Images Online

The increasing use of ICT services to distribute and access child abuse images⁴⁷³ has given rise to numerous global coalitions and initiatives to disrupt posting of and access to such images and to protect child victims.⁴⁷⁴ Such actions are a violation of children's rights and are a crime under international law. As noted by one of the leading NGOs working on disrupting the availability of child sexual abuse content hosted anywhere in the world, many legitimate online services are abused by those wishing to distribute child sexual abuse imagery.⁴⁷⁵ Given the relatively low penetration of ICT services in Myanmar to date,⁴⁷⁶ it has not been a key concern for children protection groups, but is likely to rise up the agenda together with other increasing concerns for child protection as the country opens further.⁴⁷⁷

Under Section 66 of Myanmar's Child Law, the production or resale of child sexual abuse images can result in maximum fine of 10,000 MMK and a two-year prison sentence.⁴⁷⁸ The use of a computer to sell, let to hire, distribute, publically exhibit, or put into circulation obscene objects is criminalised⁴⁷⁹ under the Penal Code, including for legal persons.⁴⁸⁰ However Myanmar does not have explicit provisions which require Internet Service Providers (ISPs) to report suspected child sexual abuse images to law enforcement or another agency upon the discovery of suspected child sexual abuse images or other types of child abuse/child sexual exploitation circumstances on their network.⁴⁸¹

Ethnic Minorities

Ethnicity is a complex, contested and politically sensitive issue where ethnic groups have long believed that the Government manipulates ethnic categories for political purposes.⁴⁸² (See Part 4.10 on Conflict and Security for information about ethnic minority armed groups). Myanmar's ethnic minorities make up an estimated 30 - 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.⁴⁸³ Political boundaries in Myanmar are to some extent organised

⁴⁷³ A note on terminology: although the Optional Protocol to the UN Convention on the Rights of the Child uses what was the common term at the time to protocol was adopted "child pornography", the terminology has shifted to using the term "child abuse images" in order to convey more clearly the concept that any involvement with such images is a crime.

⁴⁷⁴ See for example: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/index_en.htm, ecpat.net

⁴⁷⁵ Internet Watch Foundation, <https://www.iwf.org.uk/about-iwf/news/post/407-new-tactics-mean-137-increase-in-identified-child-sexual-abuse-imagery>

⁴⁷⁶ See for example UNICEF's 2012 Situational Analysis which highlighted many other existing child protection concerns in the country, but as of the 2012 date, there would have been little significant data or practice available. www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf. See for example, the Myanmar Centre for Responsible Business, *Myanmar Tourism Sector Wide Impact Assessment* that highlighted rising concern and attention to the exploitation of children in tourism, p. 157-158.

⁴⁷⁷ See for example, UNICEF, *Child Safety Online – Global Challenges and Strategies* (2011).

⁴⁷⁸ <http://www.burmalibrary.org/reg.burma/archives/199701/msg00204.html>

⁴⁷⁹ Myanmar Penal Code, Section 292.

⁴⁸⁰ Myanmar Penal Code, Section 11.

⁴⁸¹ International Centre for Missing and Exploited Children, *Myanmar Country Report*.

⁴⁸² International Crisis Group, *Myanmar Conflict Alert: A Risky Census* (Feb. 2014).

⁴⁸³ Transnational Institute/Burma Centrum Nederland, *Access Denied: Land Rights and Ethnic Conflict in Burma*, (May 2013).

according to ethnic demographics. The seven states are named after seven large ethnic minority groups – namely, Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan States. Although the Bamar do not have a specific state named after them, they are the dominant ethnic group living in the country, especially in the seven Regions (Sagaing, Magwe, Tanintharyi, Mandalay, Yangon, Ayeyarwady, and Bago). There are also six self-administered areas that are part of Regions or States, each named after the minority national race that forms the majority in the relevant area (Naga, Danu, Pa-O, Palaung, Kokang and Wa Self-Administered Areas)⁴⁸⁴.

The term “indigenous people” is not widely understood, nor is the term generally used. The 2008 *Myanmar Constitution* makes no reference to ethnic minorities or Indigenous Peoples, but instead uses the term “national races”. Article 22 of the Constitution, provides for “(i) development of language, literature, fine arts and culture of the national races; and (ii) promotion of solidarity, mutual amity and respect and mutual assistance among the national races; and promotion of socio-economic development including education, health, economy, transport and communication, of less-developed national races”.

However the term ‘national races’ is not defined, and is generally interpreted by applying the 1982 *Myanmar Citizenship Law*, which defines 135 national races in its 1983 Procedures.⁴⁸⁵ Under the *Myanmar Citizenship Law*, nationals of Myanmar include the “Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D.”⁴⁸⁶ Almost all Rohingya are denied citizenship under the 1982 *Myanmar Citizenship Law*, either because they do not meet its stringent and discriminatory citizenship requirements, or where they do, because they lack the documentary evidence required. People of Chinese, Indian or Nepali heritage are mostly denied full citizenship under this law because they do not automatically qualify under “national races”.

The 2014 national census used the 135 categories of national races, with people required to check one of them, or indicate “other”; there was no option to indicate the frequent mixed heritage of many residents. This categorisation is strongly contested by ethnic minorities, as they believe it does not accurately represent their true ethnicity and also that the Government, comprised primarily of ethnic Bamars, is using this to lower the real number of each broad ethnic group. A last minute Government decision prevented those Muslims in Rakhine State identifying as Rohingya to write in “Rohingya” as their ethnic group during the census process.⁴⁸⁷ The Government has not yet released ethnicity data.

The Protection of the Rights of National Races Law⁴⁸⁸ enacted on 24 February 2015 gives further effect to Article 22 of the 2008 Constitution. Article 3 includes the purposes of the law: (e) “to aim for the socio-economic development of less-developed national races including education, health, economics and transportation.” While Article 3 of the law

⁴⁸⁴ Article 56, Constitution.

⁴⁸⁵ See: Burma Library, “[Burma Citizenship Law of 1982](#)”.

⁴⁸⁶ Article 3, Myanmar Citizenship Law.

⁴⁸⁷ See International Crisis Group, “[Counting the Costs: Myanmar’s Problematic Census](#)” (15 May 2014).

⁴⁸⁸ <http://www.pyithuhluttaw.gov.mm/lawdatabase/?q=my/law/431> (no translation available)

provides for ‘access to equal citizenship rights for all ethnic groups’, and “for ethnic groups to have full access to rights enshrined in the Constitution”, it does not explicitly protect ethnic minorities against discrimination. The law states that no one can behave with intent to incite hatred, animosity and disunity among ‘national races’ and that ethnic rights and entitlements cannot be restricted without a sound reason. It establishes a Minister for National Races to be appointed by the president with the approval of the union Hluttaw. In article 9 the Ministry’s duties and mandate includes (e) carry out all round development activities including education, health, economics and transportation of less developed national races for their socio-economic development and article (j) “carry out activities to develop, maintain, protect and improve language, literature, arts, culture and traditions of minority and ethnics’ tribes in danger of extinction”. It is not yet clear whether this will extend to supporting the development of online content in ethnic minority languages.

People Living With Disabilities

The 2014 Census reported a disability rate of 4.6% of the total population.⁴⁸⁹ A 2010 study noted that people with disabilities in Myanmar suffer from widespread discrimination and exclusion within their communities, families, and from society as a whole. Disabled children and women were identified as the most vulnerable.⁴⁹⁰ Moreover, Myanmar activists have reported that people living with disabilities are not adequately protected by law and have called for stronger protection for this population, as they are at risk of abuse.⁴⁹¹ There is a severe lack of education for people living with disabilities; a Myanmar Government study reported that almost 50% of disabled people received no education whatsoever. The survey also reported that 85% of disabled people were unemployed.⁴⁹² There have been very few employment training programs for people with disabilities, and there is a much greater need for more vocational training and employment, supported by funding. A law on disabilities was drafted by a group of disabilities advocacy organisations and the Ministry of Social Welfare, the Myanmar Government entity responsible for people living with disabilities,⁴⁹³ and submitted to Parliament in December 2014.

Myanmar acceded to the *International Convention on the Rights of Persons with Disabilities* (CRPD) in December 2011.⁴⁹⁴ Several international and Myanmar aid agencies are actively working to assist and advocate for disabled people in Myanmar, including through working with local CSOs. The Myanmar Centre for Responsible Business (MCRB), along with the Deaf Resources Centre, has published a bilingual Guide for companies wishing to integrate people with disabilities into their Corporate Social Responsibility (CSR) policies, increase the level and quality of employment for people with disabilities, and contribute to the improvement of products and services for people with disabilities.⁴⁹⁵

⁴⁸⁹ The report listed four types of disability: walking, seeing, hearing, intellectual/mental. See The Republic of the Union of Myanmar, *The 2014 Myanmar Population and Housing Census, Census Report Volume 2 -A*, May 2015

⁴⁹⁰ Salai Vanni Bawi, “[Understanding the Challenges of Disability in Myanmar](#)” (2012).

⁴⁹¹ Myanmar Times, “[Activists call for stronger laws to protect Myanmar’s disabled](#)”, 21 January 2013,

⁴⁹² The Irrawaddy, “[In Burma, Children with Disabilities Struggle to Access Schools](#)” (5 November 2013).

⁴⁹³ [Myanmar Ministry of Social Welfare](#).

⁴⁹⁴ [United Nations Treaty Collection](#).

⁴⁹⁵ “[Corporate Social Responsibility and Disability](#) (CSR-D), MCRB and Deaf Resources Centre, August 2014

Lesbian, Gay, Bisexual and Transgendered (LGBT) People

Article 377 of the *Penal Code*, based on British colonial law, criminalises any activity that the Myanmar authorities decide constitutes “carnal intercourse against the order of nature.”⁴⁹⁶ The LGBT Rights Network in Myanmar has called for the abolition of this article, which can be used against people in same-sex relationships. LGBT activists reported widespread discrimination, and general societal lack of support.⁴⁹⁷ The US State Department’s 2013 Annual Human Rights Report states that LGBT people in Myanmar face discrimination in employment, including denial of promotions and dismissal.⁴⁹⁸ LGBT activists have reported online abuse, including death threats against them. After the wedding of two gay men, there was a spike in such abuse online.

B. Field Research Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Religious Communities
Human Rights Implicated: Right to non-discrimination
Field Assessment Findings <ul style="list-style-type: none">As noted in Part 4.6 on Labour, racial and religious tensions were observed, mainly where communities identified the company or its workers as Muslim:<ul style="list-style-type: none">Researchers heard of several incidents in which subcontractors of a company from a majority Muslim country were disturbed in their work by communities protesting the company’s presence in their area;Workers were denied accommodation due to working for a Muslim company;Communities threw stones at cars carrying workers of companies that were perceived to be owned by Muslims.

Gender
Human Rights Implicated: Right to non-discrimination
Field Assessment Findings <ul style="list-style-type: none">With respect to the acquisition or leasing of land for tower or cable sites, in principle, there is no legal impediment to providing payment for land or lease compensation to women or women-headed households. Nonethelsss,

⁴⁹⁶ Lawyers’ Collective, “[LGBT Section 377](#)” (23 November 2010). This Penal Code is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.

⁴⁹⁷ [LGBT Groups Call for Burma’s Penal Code to Be Amended](#), The Irrawaddy, 29 November 2013,

⁴⁹⁸ US State Department, above.

households are registered in the husband's name and therefore in general compensation was handed over to the male household head. However, widows or single mothers would also be able to obtain compensation same way as male headed households.

- As noted in Part 4.6 on Labour, it was very unusual for **any women to work on tower construction**.
 - This was often justified on the grounds it was unsafe for them due to night work and the distances between the site and their village/ accommodation.
 - Where women were able to work on tower construction sites, they were only allowed to do certain manual tasks, such as backfilling or moving materials.
- **Perceptions of women working in the ICT sector were mixed** amongst interviewees. Given traditional cultural norms in Myanmar, many indicated women and girls should not work and should stay at home to support their families. However, just as many indicated that female workers were excelling at programming and that there were more female students than male students at computer universities, including at masters level.

Children & Young People

Human Rights Implicated: Rights of the child

Field Assessment Findings

- Field researchers heard **repeated appeals for better curricula and facilities within schools and universities, especially regarding technology and engineering**:
 - Primary schools have not yet integrated ICT education into curricula, leading to a lack of basic skills needed to successfully pursue university programmes on ICT amongst the majority of Myanmar young people. This is compounded by the large proportion of Myanmar children who do not complete middle school.
 - Myanmar universities and the ICT industry were seen as disconnected; many students interviewed felt the university curriculum needed to be redesigned in consultation with the ICT industry.
 - The computer and tech university curriculum was seen as 10 years behind, for example teaching students on the use of visual basic programming language (created in 1991) rather than the more recent successor visual basic.NET (created in 2002). Companies seeking to hire qualified local staff noted skill gaps, and low job-readiness skills as limiting factors.
- **Numerous cases of the negative impacts of over-use or misuse of the Internet were shared with researchers**, particularly by concerned parents. This was mainly ascribed to the sudden exposure to the Internet without any education on the safe or balanced use of technology. For example, some children have dropped out of school as a result of addiction to online gaming.
- As noted in Part 4.6 on Labour, occasional practices of reviewing identification to verify workers' age were reported in fibre cable installation projects, but many more instances of lack of identification cards or documents were described to researchers, indicating a **general lack of basic measures to prevent underage workers in fibre and cable installation in particular**.

- Fibre cable line workers often had to travel long distances from their homes in order to take up the work. They often bring their children with them as they cannot afford child care or it is difficult to reliably arrange due to moving from site to site regularly. As such, **children were regularly left waiting in the worker camps during the 10 hour shift periods.**

C. Key Human Rights Implications for the ICT Sector

Understanding and Addressing Differentiated Impacts of Projects

- **Understanding the Myanmar context:** As set out in the National Context section above, Myanmar has a very diverse population, interwoven in a complex and often conflict-ridden environment. Myanmar legal standards often fall below the international legal standards to protect groups at risk. The groups at risk are often (at best) neglected and at worst, subject to persecution by the government. In these situations, in addition to international guidance on engagement and employment or contractual arrangements with groups at risk, more specific guides for, or advisers on, Myanmar context should be used.
- **Identification and engagement:** A first step in understanding what potential impact a project or services may have on groups at risk is to identify which vulnerable groups may be in the potential workforce and surrounding community as part of the company's due diligence process. Parts of the ICT value chain are spread across the country and their workers and stakeholders will vary according to the particular demographic environment. This assessment may require additional specialist sociological or anthropological expertise and methods to identify, locate and engage individuals or groups at risk of abuse and marginalisation, which may often need to be done separately, and sometimes discretely.
- **Differentiated assessments and prevention:** The objective of an assessment is to better understand how impacts may affect each potential group at risk, and in particular, to understand who could experience adverse impacts from the proposed project or service more severely than others. This should be done using disaggregated data and community consultations to identify, assess and discuss potential impacts and measures to appropriately avoid, minimise, mitigate or compensate for impacts. This may require differentiated prevention or mitigation measures to address the greater severity of impacts. Monitoring of potential impacts should track impacts on these individuals or groups on a disaggregated basis.
 - Groups at risk should also be able to benefit from ICT sector equally with others. This too may require distinct measures. For example, if job training is offered, there may be a need for specialised or separate training provided for individuals from groups at risk who might lack the necessary skills to find a job with the sector and may face exclusion from the dominant group.
- **Considering the potential exposure of users at risk:** As noted in other chapters of this report (See in particular Part 4.1 on Freedom of Expression and Part 4.3 on Lawful Interception and Part 4.2 on Hate Speech), some of those groups highlighted in this chapter are subject to specific risks within Myanmar. ICT companies who provide services for or affecting these groups (such as by hosting online content) should consider these vulnerabilities in advance of offering services. They should consider what steps can be taken to modify policies, procedures or services to avoid or

minimise negative impacts on them, which might derive from hate speech, bullying or unlawful surveillance.

- **As an example: addressing child safety online:** As Myanmar does not have specific laws covering child safety online and is unlikely to be able to prioritise these issues given the wide range of other child protection challenges in the country, it will fall to companies to take action to protect young users and to disrupt the use of their services to transmit child abuse images. Telecommunications operators and Over The Top services, as well as software companies, need to consider the range of potentially severe impacts on children that can occur through different forms of violence and exploitation. For example, the online sale and trading of child abuse images is considered a crime in most jurisdictions and prohibited under international human rights law. Other negative impacts arise from broader child safety issues online, such as "cyber bullying", "grooming", the illegal sale of products such as alcohol or tobacco to children, or graphic content encouraging self-harm. Companies should report clearly abusive images or behaviours promptly to law enforcement authorities once they become aware of them. Beyond this, there is a range of approaches that companies should draw on, including:
 - providing direct links and information on ways for users to report abusive images or behaviours such as bullying;
 - training moderators to help identify and respond to concerning or suspicious behaviour in online forums and services for children;
 - implementing effective age and identity verification mechanisms at the level of individual users;
 - implementing appropriately heightened security measures for personal information that has been collected from children (including any location-related information, which can pose particular risks to children);
 - seeking parental consent before using or disclosing information collected from children;
 - considering any unintended consequences of decisions on child safety (for example, posting information about unaccompanied children on privately-run, post-disaster family reunification websites); and
 - engaging with external child safety and children's rights experts, including relevant civil society organisations and government, to provide on-going feedback and guidance on the company's approaches.⁴⁹⁹

Business Leadership

- **Modelling equal opportunity:** Addressing entrenched discrimination demands a change in societal attitudes, which often requires prompts from many directions to tip the balance towards broader acceptance. These can include messages from the political leadership – the President's office has repeatedly called for building an "inclusive and sustainable" Myanmar – as well as changes in law and changes in peer countries. However, changes can also start with the private sector modelling equal opportunity and demonstrating the benefits. This is an important role that businesses of all sizes in the ICT value chain can play, through leadership messages and by

⁴⁹⁹ See for example, UNICEF & ITU, [Guidelines on Child Protection Online](#), [The Mobile Alliance against Child Sexual Abuse Content](#), [Global Alliance on Child Sexual Abuse Online](#). The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children has not made online protection a priority in its [2012-2016 workplan](#)

creating workplaces that are not only visibly free of discrimination but also moving towards equal opportunity for the groups at risk of marginalisation noted above.

- **Highlighting impacts on investment climate:** Societal discrimination and exclusion are not unique to Myanmar. However, if discrimination and exclusion becomes more entrenched and overt, it will undermine the positive picture of ongoing political and economic reforms. Businesses, collectively or individually, could highlight the negative impact that discrimination, communal violence, and an inadequate response from the government towards protecting those at risk can have on the investment climate.
- **ICT design for vulnerability and accountability:** As outlined in Part 3 on sector-level impacts, there are more opportunities for positive impact from the ICT sector than potentially any other industry developing within Myanmar's fast moving landscape. The nature of the ICT sector – able to bridge long distances affordably and in real time – positions it to combat exclusion and vulnerability. For example, ICT can increase access to doctors and medical services for the elderly, disabled or displaced who are in desperate need of healthcare but often unable to travel or afford it, or provide people with disabilities with accessible online employment opportunities.

D. Relevant International Standards and Guidance on Groups at Risk, and Linked Initiatives in Myanmar

Relevant International Standards:

- [IFC Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
- [ILO, Discrimination \(Employment and Occupation\) Convention \(No. 111\)](#)
- [UN Convention on the Elimination of Discrimination Against Women](#)
- [UN Convention on the Rights of Persons with Disabilities](#)
- [UN Convention on the Rights of the Child](#)

Relevant Guidance:

- European Commission, "[ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)"
- IFC, "[Good Practice Note, Non-Discrimination and Equal Opportunity](#)"
- ILO, "[Working Conditions of Contract Workers in the Oil & Gas Industry](#)"
- ILO, "[Disability in the Workplace - Company Practices](#)"
- CSR-D, "Guide on Corporate Social Responsibility and Disability" and in Burmese, MCRB and DRC, "[Corporate Social Responsibility and Disability \(CSR-D\) - A Guide for Companies in Myanmar](#)"
- UNICEF, UN Global Compact, Save the Children, "[Children's Rights and Business Principles](#)"
- UN Global Compact, "[Women's Empowerment Principles](#)"
- UN "[Inter-Agency Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'](#)"

▪

Part 4.9

Stakeholder Engagement & Access to Remedy

In this section:

- A. National Context
- B. Field Assessment Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Stakeholder Engagement and Grievance Mechanisms, and Linked Initiatives in Myanmar

A. National Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently people's rights to speak freely or assemble peacefully were forcefully suppressed for 50 years. As a result, many individuals are still reluctant, even fearful, about speaking out against the Government or military in particular. Ethnic diversity, and experience of armed conflict and inter-communal violence, have resulted in significantly different perspectives on the role of the government and business which may be difficult for outsiders to access and understand. The ability to organise NGOs to address key concerns was extremely difficult until Cyclone Nargis in May 2008, when the authorities began to tolerate the participation of civil society in humanitarian work, although CSO leaders were also arrested and imprisoned at the time. The Government has historically placed itself as the main interface between companies and communities. This approach will take time to change, but is now beginning to happen.

The country has suffered and continues to suffer an accountability deficit that will take far longer to change, starting with mindset. At the highest levels reformers in the Government have indicated their willingness to be held accountable and have taken several significant steps to join international initiatives to begin to address both international and domestic concerns. These include joining the Extractive Industries Transparency Initiative (EITI),⁵⁰⁰ and initiating its application to the Open Government Partnership (See Part 3 on Sector Impacts). The challenges of getting these initiatives off the ground – both of which require active engagement of civil society that is able to speak freely – indicate the challenges ahead in changing mindset at all levels of Government. Those changes are important for many reasons, not least because the more formal structures for citizens and others to hold government to account – such as a functioning

500 [Myanmar EITI](#) is based on a number of principles including transparency and accountability. EITI membership also requires that civil society are able to operate freely and “... are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate.” EITI Standard, Protocol: Participation of Civil Society.

independent judicial system - are very weak and will take years to address. In the meantime, the highest levels of Government need to ensure that they are sending clear and consistent signals on the importance of accountability and transparency. This, and putting in place mechanisms like the E-Government Master Plan may help reduce the governance gap (See Part 3 on Sector Impacts).

Freedom of Expression

Since the reform process began in 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.⁵⁰¹ (See Part 4.1 on Freedom of Expression).

Freedom of Assembly

In December 2011 the Parliament enacted the Law Relating to Peaceful Assembly and Peaceful Procession, which permits peaceful assembly for the first time in several decades. However, prior permission from the Government (the Township Police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are unduly onerous. Article 18 of the law has often been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions. It acted as a significant deterrent as it provided for up to one-year imprisonment for those who demonstrate without prior permission.⁵⁰² Parliament amended the law on 19 June 2014; new amendments now reportedly oblige the authorities to grant permission for peaceful demonstrations unless there are “valid reasons” not to do so, and punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.⁵⁰³ However, the amended law still provides for the arrest and imprisonment of peaceful protesters.

Protests, including against private sector projects, particularly in the extractive industries, have been suppressed in the past, sometimes violently. The authorities continue to crack down on such protests, with participants arrested and sometimes subjected to ill-treatment.⁵⁰⁴

Freedom of Association

A network of civil society and community-based organisations is active at both the national and local levels, including many ethnic minority-based groups. In the aftermath of

⁵⁰¹ In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar President's Office, “[Order No. 3/2013](#)” (28 January 2013) and “[Order No 2/88](#)”.

⁵⁰² Pyidaungsu Hluttaw, *The Right to Peaceful Assembly and Peaceful Procession Act* (Dec. 2011). Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of “chants; approximate number of attendees etc, Chapter 3, 4.

⁵⁰³ DVB, “[Peaceful Assembly Bill passed, now awaits President's signature](#)” (19 June 2014).

⁵⁰⁴ Norwegian Council on Ethics, Pension Fund Global, “[Recommendation on the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India and Korea Gas Corporation from the investment universe of the Government Pension Fund Global](#)” (2012). See also the [2013 Recommendation](#) concerning the post-construction phase of the project.

Cyclone Nargis, Myanmar CSOs greatly expanded and organised as they worked to help survivors. They have remained a significant positive force in the country and have been able to engage with the Government to some extent. Since 2011 Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities.

An early draft of the Association Registration Law required all groups to be formally registered, with severe penalties for failing to do so. CSOs raised this as a key concern, with the EITI CSO group asking for clarification before agreeing to participate in EITI. The law was adopted in July 2014 with this provision removed. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at township, state or national level, thereby potentially restricting their area of operation.⁵⁰⁵ The website of the International Centre for Not-for-Profit Law (ICNL) provides information on laws relating to Myanmar civil society.⁵⁰⁶

Corruption

Myanmar ranks 156th out of 175th on Transparency International's Corruption Perception Index.¹⁷⁴ In December 2012 the President announced that the Government would tackle pervasive corruption in its ranks, acknowledging problems of weak governance,¹⁷⁵ and ratified the UN Convention against Corruption (UNCAC).¹⁷⁶ An Anti-Corruption Law was enacted on 7 August 2013 by the legislature although the President's Office submitted comments highlighting the law's weaknesses and inconsistencies with UNCAC.¹⁷⁷ An Anti-Corruption Commission was appointed in February 2014. The Commission involves 15 members, five of who are appointed by the President, with another five each appointed by the speakers of both houses. However MPs have raised concerns that the Commission is not effective, noting in September 2014 that it had only dealt with three out of 533 cases.⁵⁰⁷

While it is encouraging that the Union Government has acknowledged the problem and begun to take steps to address corruption, it remains a major risk for companies investing in Myanmar. Given the home state anti-corruption laws that apply to many of the larger international ICT companies and the significant fines for violations, this will be an on-going issue as it will take time for corruption to be significantly reduced in all levels of Government. Speaking out publicly about tackling corruption is an important contribution businesses can make towards this.

Lack of Transparency

Interactions between the Government and the people of Myanmar have been marked by a lack of transparency on the part of the authorities, including about business operations. Recently the Government has begun to take steps to improve transparency through

⁵⁰⁵ DVB, "[Activists relay worries of draft association law to parliament](#)" (5 June 2014).

⁵⁰⁶ ICNL, "[NGO Law Monitor: Myanmar \(Burma\)](#)" (accessed 25 July 2014).

⁵⁰⁷ The Irrawaddy, "MPs Voice Doubts Over Burma's Anti-Corruption Commission" (24 September 2014), <http://www.irrawaddy.org/burma/mps-voice-doubts-burmas-anti-corruption-commission.html>

Government-controlled media and the President's and Ministry websites.⁵⁰⁸ For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits;⁵⁰⁹ and the Directorate of Investment and Company Administration's (DICA) website which contains a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.⁵¹⁰ However, there is currently no freedom of information (FoI) law in Myanmar. Civil society is advocating for FoI legislation, and the Open Myanmar Initiative (OMI), a consortium of CSOs, is conducting research and convening discussions on such a law.⁵¹¹ Local Government generally does not provide relevant information to communities about business operations in their areas, as revealed by SWIA field assessments in the ICT, tourism, and oil and gas sectors. (See Part 4.1 on Freedom of Expression).

Accountability: Judicial and Non-Judicial Mechanisms

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared to make complaints about the authorities or companies were at risk of reprisals, including arrest, torture, and imprisonment. Since the reform process began in 2011, there has been a marked increase in calls by communities to provide redress for abuses, particularly around "land grabs" and labour rights. The Government's response has been at times contradictory, which may be partially explained by the different levels of government involved in responses, at the Union and local levels. The President has repeatedly exhorted all levels of government to be more accountable, but at the local level, and indeed in some Union Ministries, such accountability is still absent. The lack of clarity is also due to tensions between reformers in the Union Government and its more conservative elements.

Some of the global initiatives the Government has joined or committed to join, such as under EITI and the Open Government Partnership, include independent, third party checks on whether the government is meeting its obligations to promote more open civil society that can hold the government to account.

Arrests of peaceful protestors increased during 2014, and in March 2015 police beat and arrested student demonstrators in Letpadan, Bago Region. The President ordered an investigation into the police handling of another student protest in Yangon, but no investigation into police beatings in Letpadan is known to have taken place,⁵¹² nor have the results of the Yangon investigation been announced.

With respect to the judiciary, reforming the rule of law in Myanmar has been a major focus of President U Thein Sein's administration. The Government's "Framework for Economic

⁵⁰⁸ See for example: <http://www.president-office.gov.mm/en/> and <http://www.modins.net/myanmarinfo/ministry/home.htm>

⁵⁰⁹ See: <http://www.mol.gov.mm/en/>

⁵¹⁰ See: <http://dica.x-aas.net/dica/permitted-investment-company>

⁵¹¹ Eleven Media, "Rights group pushing for freedom of information law", <http://www.elevenmyanmar.com/politics/rights-group-pushes-freedom-information-law?page=1>.

⁵¹² The Diplomat, "Myanmar to Investigate Violent Protest Crackdown", 11 March 2015, <http://thediplomat.com/2015/03/myanmar-to-investigate-violent-protest-crackdown/>

and Social Reforms” notes “the lack of effectiveness and predictability of the judiciary”.⁵¹³ The judicial system is widely considered to be “under-resourced, politically influenced and lacking in independence.”⁵¹⁴ However, reform will take a long time, and substantial resources, and, not least, changes in attitude to the rule of law, starting from the bottom up, with attention to legal education. The legal education system has been eroded by decades of under-investment, and the legal profession greatly constrained by long-term political restrictions, leading to a major shortage of lawyers taking up cases.⁵¹⁵

Judicial independence in Myanmar to date has been essentially non-existent,⁵¹⁶ with judges accustomed to acting “as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and the application of precedent”.⁵¹⁷ While there are basic principles of separation of powers provided by the Constitution, it is not complete. A 2013 report by the parliamentary Rule of Law and Stability Committee, led by Daw Aung San Suu Kyi, found “continued intervention by administrative officials in the judicial system.”⁵¹⁸ This indicates that structural changes will be required to put in place a rigorous separation of powers. There is no Ministry of Justice.

Systemic corruption in the administration of justice is a major concern, manifesting itself through bribes, delays, and obstructions,⁵¹⁹ with a widespread local perception that the courts in Myanmar are corrupt and unfair.⁵²⁰ As a result, many would “[resort] instead to local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable.”⁵²¹ These local-level mechanisms generally involve village leaders and/or elders’ councils. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders’ council, a small group of respected men in a village. If one party to the problem does not agree with the solution reached, they can take the matter to the township level, but this rarely happens because it is seen as being too expensive, considering both the administrative legal costs and bribes that would have to be paid.

There is currently little in the form of a legal aid system in Myanmar, making it impossible for many to afford the time and cost commitments of using the court system. In conflict areas, the issue may be taken to the administration of the controlling armed group.⁵²² In addition to the courts, other bodies responsible for the administration of justice, including

⁵¹³ “Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”, (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 116

⁵¹⁴ OECD, “OECD Investment Policy Reviews: Myanmar 2014” (March 2014), pg. 27.

⁵¹⁵ See: International Commission of Jurists, “Right to Counsel: The Independence of Lawyers in Myanmar”, (Dec 2013)

⁵¹⁶ Human Rights Resource Centre, “Rule of Law for Human Rights in ASEAN: A Baseline Study” (May 2011), pg. 163, citing Asian Legal Resource Centre, Amnesty International, “Myanmar: No Law At All – Human Rights Violations under Military Rule” (1992).

⁵¹⁷ 67 International Bar Association’s Human Rights Institute, “The Rule of Law in Myanmar: Challenges and Prospects” (Dec 2012), 56

⁵¹⁸ The Irrawaddy, “Interference in Judicial System Harming Burmese People: Lawmakers” (14 August 2013).

⁵¹⁹ International Commission of Jurists, above.

⁵²⁰ See: USIP, “Burma/Myanmar Rule of Law Trip Report” (June 2013), pg. 5 and 34.

⁵²¹ See: USIP, above, p. 5.

⁵²² See: USIP, above, p. 5.

the police, lack the training and capacity to enforce the rule of law (though the EU has been providing training to improve the human rights performance of Myanmar's police).⁵²³ The Government has also taken a number of actions to provide non-judicial grievance mechanisms to the public in the absence of a fully functioning judiciary (see Box x below). However, these mechanisms are already overloaded with complaints and hindered by limited mandates. Since the reform process began, these committees and the Myanmar National Human Rights Commission have received thousands of complaints from the public about abuses at the hands of the Government and military, but, as noted above, many of these people still await a resolution to their problems.

Many businesses commonly seek to incorporate safeguards into their investment contracts by ensuring access to international – rather than domestic – arbitration tribunals in the event of an investment dispute.⁵²⁴ Myanmar acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards in April 2013, which entered into force July 2013.⁵²⁵ This solidifies the ability of foreign investors to submit disputes with Myanmar Government and commercial partners to international arbitration. The Myanmar legislature is now reportedly considering a new law based on the 1985 UNCITRAL Model Law on International Commercial Arbitration to replace the 1944 Arbitration Act, which would enable Myanmar courts to recognise and enforce international arbitral awards.⁵²⁶

An equivalent assurance of access to remedies for most Myanmar people affected by private sector operations is still a practical impossibility. Accountability in Myanmar is a new phenomenon and one that will take time to take root. Given the inefficiencies and acknowledged corruption in the judiciary and the inability of even the ad hoc commissions to resolve complaints, there is a clear lack of access to effective avenues for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred - especially at the local level.

Table 22: Existing Non-Judicial Grievance Mechanisms in Myanmar

- Daw Aung San Suu Kyi was appointed to head up a new **parliamentary Rule of Law and Stability Committee** formed in August 2012 to serve as a mechanism for the general public to lodge complaints about government departments. In one month it received over 10,000 complaint letters regarding courts within the Yangon Division alone.⁵²⁷

⁵²³ EU Delegation to Myanmar, "EU Crowd Management Training Supports Reform of Myanmar Police Force" (Feb 2014).

⁵²⁴ More recently, the EU and Myanmar have begun discussions on an investor-state dispute settlement mechanism with Myanmar. See for example: Herbert Smith Freehills, "Myanmar and the European Union to enter into an investment protection agreement" (13 March 2014).

⁵²⁵ *New York Convention on the Recognition of Foreign Arbitral Awards* (1958) (accessed 15 July 2014).

⁵²⁶ Singapore International Arbitration Blog, "Draft Arbitration Bill in Myanmar" (June 2014).

⁵²⁷ Regarding the various bodies noted, see further: Hnin Wut Yee, "[Business & Human Rights in ASEAN – A baseline study: Myanmar chapter](#)" (April 2013).

- The **President's Office** opened a **public access portal** for people to submit opinions and complaints directly to the President.⁵²⁸
- A non-judicial **labour dispute settlement system** to resolve disputes between employers and workers is in place, but implementation is still weak due to lack of adequate knowledge about the newly enacted labour laws.
- There are a number of mechanisms to hear land disputes, including a **parliamentary committee on land confiscation inquiry**, but without a mandate to give binding decisions. (See Part 4.7 on Land)
- The **Myanmar National Human Rights Commission (MNHRC)** was established in September 2011, but the MNHRC Law was only enacted on 28 March 2014. The MNHRC has a broad mandate of promoting and monitoring compliance with human rights. It is empowered to investigate complaints and contact the concerned person, company or government department and can recommend action. It can also make its recommendations public. It can undertake inquiries and will prepare an annual report to the President and Parliament. It is also mandated to consult different stakeholders including CSOs. The President selects members after proposals by a selection board. While the law provides that proposed members should have expertise or knowledge in different areas relevant to human rights including from civil society, it does not guarantee pluralism, nor a total independence from the Executive, in accordance with the Paris Principles.⁵²⁹ It received over 1700 complaints in its first 6 months of operation, a majority of which involved land grabs.
- The **ILO and Myanmar Government have agreed a complaints mechanism** to allow victims of forced labour an opportunity to seek redress/remedies from government authorities in full confidence that no retaliatory action will be taken against them.⁵³⁰ The October 2013 report by the Myanmar Liaison Officer notes that there has been an increasing number of complaints about forced labour in association with land confiscation, with people either losing their livelihoods completely or being required to work on land which they have traditionally occupied.⁵³¹

B. Field Assessment Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Engagement and Remedy on Privacy Issues

⁵²⁸ [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 114.

⁵²⁹ OHCHR, [“OHCHR and NHRIs”](#) (accessed 15 July 2014).

⁵³⁰ ILO, [“Forced Labour Complaint Mechanism”](#) (accessed 15 July 2014).

⁵³¹ Section 6, ILO, [“Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body”](#) (319th Session, Geneva, 16-31 October 2013), GB.319/INS/INF/2.

Human Rights Implicated: Right to privacy; Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- **Lack of awareness of privacy concerns among users:** Users on social media were observed sharing sensitive personal data including bank statements and checks for donations or even more sensitive information about health status without appropriate protections. Users reported being unaware of how to configure privacy settings in their social media accounts. Users also reported being unaware of how to report on content on social media.
- **Lack of policies or clear communication of policies:** Data retention policies were absent, or in some cases not clearly communicated to the customer/user even when internally present (e.g 5 years for retention of customer data on paper).
- See Part 4.4 on Privacy for further information on the National Context, Field Research Findings and Implications for ICT Companies.

Engagement on Freedom of Expression and Opinion

Human Rights Implicated: Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to participate in public life

Field Assessment Findings

- See Part 4.1 on Freedom of Expression for further information on the National Context, Field Research Findings and Implications for ICT Companies.
- See Part 4.2 on Hate Speech for further information on the National Context, Field Research Findings and Implications for ICT Companies.

Engagement with Workers

Human Rights Implicated: Right to freedom of association; Right to freedom of assembly; Right to form and join trade unions and the right to strike; Right to just and favourable conditions of work; Right to freedom of expression and opinion

Field Assessment Findings

- There was a general **lack of worker-management engagement** in most companies across the ICT value chain, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **At fibre factories, workers were unaware of their basic association and collective bargaining rights**, for example understanding there must be a minimum of 30 members. They did not feel the company would allow it even if it was acceptable under national law, and were concerned that joining a political party could also affect their jobs.
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws, such as the Minimum Wage Law

have recently come into force.

- See Part 4.6 on Labour for further information on the National Context, Field Research Findings and Implications for ICT Companies.

Grievance Mechanisms for Workers

Human Rights Implicated: Right to freedom of association; Right to freedom of assembly; Right to form and join trade unions and the right to strike; Right to just and favourable conditions of work; Right to freedom of expression and opinion

Field Assessment Findings

- **Unskilled workers tend to be relieved to secure a job at all** because the supply of workers greatly exceeds work available. This leads to a tendency for workers to **refrain from raising workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety (H&S) standards, or barriers to unionising.
- Workers at fibre factories were able to raise complaints at meetings or anonymously through a letter box system, but **issues previously raised, such as deductions from daily wages and bonuses had failed to be addressed.**
- **Language barriers** were a commonly reported problem between managers and workers. Researchers heard that workers were often unsure whether any complaints or issues they raised were properly reported to the managers responsible.
- See Part 4.6 on Labour for further information on the National Context, Field Research Findings and Implications for ICT Companies.

Engagement on Land Issues

Human Rights Implicated: Right to an adequate standard of living; Rights of minorities; Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- See Part 4.7 on Land for further information on the National Context, Field Research Findings and Implications for ICT Companies.
- There were numerous cases where individuals and communities claimed there was **no informed consultation and participation** about land acquisitions or tower or fibre projects using land in immediate proximity to their homes.
- In cases where there was prior informed consultation and participation, it was predominantly **only with the land owner/user and the (two to four) immediate neighbours** who, under the land acquisition process, were needed to sign consent forms. In many of those cases, **those asked to sign agreements were unclear of their purpose or content.**
- There were **very few cases** found where any ICT company or Myanmar Government had done **wider community consultation regarding the network rollout**, land needs and plans, and the ways in which the rollout would affect their lives and livelihoods, positively or negatively.
- In many cases, community members:

- received **no prior information about the intention to acquire their land or land near their homes**, only understanding the reason was to build a tower or lay the cable line once it became apparent during construction or digging;
- were **not consulted** or given an opportunity to become informed about the **broader project of building the network**. Instead, information was given only with respect to the land registration process (see Due Process below) and compensation;
- were given **no choices** or opportunity to negotiate about the plot of land or restrictions on land use;
- often **did not know for which telecom operator** the tower construction company was building, or the cable line was being dug;
- were **not given any information to make contact or complain** either with the cable laying company, tower construction company or telecom operator.
- It was a **regular occurrence for communities to host tower construction managers and/or groups of workers, in their homes during the build period, without compensation** for the accommodation, water or laundry use. While this was by agreement, it often **lasted for a period longer than originally agreed** and some cases involved more **workers than agreed** and/or **also their spouses and children** (and sometimes pets!).
- **Commonly raised community concerns included:**
 - **not knowing which company was involved** in the construction (whether fiber cable or tower)
 - **not having a company contact** in cases of issues or emergencies;
 - **not being provided basic information on the safety of the tower**, including:
 - whether the tower could withstand earthquakes or severe weather;
 - whether they would be subjected to unsafe levels of radiation from the tower;
 - whether they would be electrocuted by the tower during rain showers;
 - **noise from generators powering the towers** causing a disturbance, headaches, and small cracks in walls/floors.
 - **tower sites being fenced but not locked**, compelling villagers to “guard” the site to ensure children or others do not wander in.

Access to Remedy for Land Grievances

Human Rights Implicated: Right to an effective remedy; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- See Part 4.7 on Land for further information on the National Context, Field Research Findings and Implications for ICT Companies.
- As mentioned above, there were **regular reports of communities and land owners not knowing which company was responsible** for fibre cable digging or tower construction, including whom to contact in cases of emergency or grievance.
- **Cases of noise disturbance from generators powering towers were generally resolved**, in some cases by the village administrator.
- Some communities complained of **damage by the company of roads**, as well as of company-provided road repairs that failed to restore the quality of the road prior to

the company's use.

Conflict Areas

Human Rights Implicated: Right to life, liberty and security of the person; Right to just and favourable conditions of work; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- See Part 4.10 on Conflict and Security for further information on the National Context, Field Research Findings and Implications for ICT Companies.
- There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.
- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk.
- Researchers also received reports from workers that they were aware that landmines **may have historically been laid with land mines around infrastructure in conflict areas.** This led workers to avoid walking through certain locations. The measures companies took to protect their workers in such circumstances were unclear.

Myanmar Good Practice Examples:

- The Myanmar Centre for Responsible Business convened a stakeholder consultation for an ICT company operating in the sector to discuss potential human rights risks for their forthcoming operations.⁵³²
- From November 4th to December 2st 2013, MCIT issued a call for public comments on "Proposed Rules for Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering, and Competition. Responses by 21 organizations⁵³³ (including private sector companies, civil society organizations, and international governments) were posted online at www.myanmarpublicconsultation.com. This may have been the first online consultation by the Myanmar government. Unfortunately the website is now defunct and the consultation documents and responses are no longer publicly available.
- On 21 May 2015 one of the telecoms operators held its first public sustainability

⁵³² <http://www.myanmar-responsiblebusiness.org/news/discussion-ericsson-civil-society-groups.html>

⁵³³ Companies that responded were Aether Company, Apollo Towers Myanmar Ltd, AVP Viom Networks, Digicel Myanmar Tower Company, Ericsson, Frontiir, GSMA, KDDI, LIRNEasia, Pan Asia Majestic Eagle Ltd, Ooredoo, Orange, Redlink, SingTel, SK Telecom, Telenor, VDB Loi, YTP. Others responding were MIDO and the US Government. MCRB's response is available [here](#).]

seminar in Yangon, outlining human rights risks and ongoing compliance initiatives. The event was held with two-way translation.

- In March 2015, MCIT held a public forum in Yangon, focused on the health impacts on Myanmar mobile networks, with the support of the mobile industry association and one of the network providers. Research was presented focusing on international protection limits compared to radiation levels at base stations in Yangon and Mandalay. Findings showed that EMF radiation levels were far below acceptable limits set by the World Health Organization (WHO). MCIT also produced an information brochure, including information on EMF radiation and international standards in Burmese. While the session and production of the brochure are positive steps, plans around translating the brochure into ethnic languages are unclear. This is especially important given the current geographic focus of the national telecommunications rollout. It is also unclear whose responsibility it is to distribute the brochure.

C. Key Human Rights Implications for the ICT Sector

- **Building relationships with stakeholders:** In the ICT sector, many of the stakeholders are also potential customers, so many companies in the ICT value chain should have an even greater incentive to get stakeholder consultation right from the start, whether it is with communities where services are being introduced (including on-line communities) or with individuals. However, many stakeholders will not be familiar with key concerns about the sector nor used to engaging through ICT services, such as social media. As a start (and as noted in other parts of this Report), there is a need for basic awareness raising of the Myanmar population on key issues on using ICT services that could affect them such as data protection (see Chapter 4.4 on Privacy), protecting identify online (see Chapter 4.1 on Freedom of Expression) and appropriate behaviour (see Chapter 4.2 on Hate Speech). Appropriate engagement from the start matters because it: i) demonstrates respect for the community, who have experienced either neglect or reprisals until very recently; ii) is a process for providing information to and receiving information from communities relevant to operations; iii) enables communities to raise concerns and grievances; and iv) helps both companies and communities to understand needs and expectations.
- **Absent government:** The Government at various levels has its own role to play in informing local communities about forthcoming changes in telecommunications services, about network roll out in their area, about forthcoming construction. Yet the field research indicated very little government engagement with local communities, leaving the task entirely to the companies to inform and engage with local communities.
- **Independent and human rights-based community engagement:** There is still a high level of fear and distrust of Government and the military, given the history of human rights violations linked to the military, particularly among rural populations. While changes in attitude and political reforms will take some time to filter down to local authorities, companies cannot move equally slowly in adapting to the changes. Companies should seek to meet offline communities without the presence of military, police, or local authorities during consultations. Unless this is done, open and active participation and the credibility of the consultation exercise could be significantly

undermined. In areas where there is a long legacy of mistrust between communities and the local government or companies, trusted intermediaries may be required.

- **Meaningful and human rights-based engagement online:** The growing availability of ICT services in Myanmar provides the opportunity for ICT companies (and others) to use social media, interactions through their websites, and text messaging to interact with stakeholders in a way that was not previously possible. Given the lack of experience, companies will need to have clear and accessible guidance, including what action is expected of stakeholders and how stakeholder views will be considered and reflected. For on-line consultation, companies will need to be concerned about the safety and security of those participating in the consultation and provide accurate information to participants about any risks of surveillance in participating in the consultations. Companies must also be particularly sensitive to undermining or exposing human rights defenders, especially land rights activists, to potential arrest and imprisonment and respect anonymity if so required.
- **Meaningful engagement where ICT services have a footprint:** ICT infrastructure does not usually have a big footprint (apart from larger ICT Parks (see Part 5 on Cumulative Impacts); instead its footprint is repeated multiple times throughout the country, whether it is at the many tower sites or along hundreds of kilometres of cable trenches. The infrastructure footprint thus affects ultimately a significant number of individuals. It is therefore important for the network providers and their contractors (such as tower companies and fibre cable digging companies) to have robust stakeholder engagement procedures that are grounded in a concept of respect for rightsholders. This should be backed up with training to ensure that site hunters understand the core concepts of treating stakeholders fairly. With such a large number of stakeholders to deal with, and the race to construct infrastructure to meet licensing targets, there is a clear risk of stakeholders being treated only as one more item in a long checklist. While many interactions with stakeholders will be routine, the lack of awareness of many stakeholders of even what the activities are all about (see field research above), much less their rights, makes many of the stakeholders, particularly in rural areas, at risk of unfair practices. This is an area where the tensions between commercial pressures on tower companies and ditchdiggers to meet time targets and good practice on stakeholder engagement and even on respecting rights could arise. While the fee companies pay for access to land for infrastructure varies according to a number of factors including assessed damages to crops, or overall disruption by workers on site, the procedures should be consistent, transparent and accessible to stakeholders and in particular those whom companies are negotiating with. See Part 4.7 on Land for further information. Once the infrastructure is installed it should include contact phone numbers on the infrastructure so that local villagers are able to contact the company responsible if they have concerns about the equipment.
- **Stakeholder engagement in conflict areas:** See Part 4.10 on Conflict and Security.
- **Providing accurate and accessible information:** Companies should be prepared to engage with stakeholders with a very low level of literacy, scientific knowledge or understanding about key concerns and be prepared to respond accurately and understandably in a way that is accurate, balanced and understandable in local languages. This includes health and safety issues (whether the tower could withstand earthquakes or severe weather; concerns about unsafe levels of radiation from the

tower (see below); concerns about being electrocuted by the tower during rain showers); accurate information about which companies are involved in the tower site and where concerns should be raised; and providing clear explanations to potential customers about potential costs (such as for roaming), privacy, etc.

- **Engagement carried out by business partners:** Sub-contractors are often the first “face” of forthcoming operations for the rollout of the network, sales of SIM cards or sales of other ICT equipment or services. Many of these will be local companies, including very small stores. Most companies operating in Myanmar, local and foreign, are unfamiliar with the concept of stakeholder engagement, including opening their business up to receiving complaints directly from workers and local communities through grievance mechanisms. Sub-contractors, particularly in construction, will need training and incentives/ disincentives to develop a positive interface with local communities from the earliest phase of roll-out.
- **Constructive engagement with civil society:** Some Government and company officials have been observed referring negatively to the emergence of “activists” and others with “political motives” as “stirring up opposition” among local communities. Even whether this behaviour extends to preventing tower construction on behalf of a company from a Muslim country, it should be viewed in the context of communities making use of new freedoms of expression and peaceful assembly. In other cases local and international groups are working with local communities to hold companies to account for negative impacts. Companies are encouraged to engage openly with civil society and community based groups to understand their concerns and provide accurate information about the company’s approach. They should model behaviour about freedom of expression that demonstrates support for the right in law and in practice. Dealing with criticism through constructive engagement rather than unhelpful labeling, (or worse, through actively undermining individuals or groups, violence or through putting them at risk of arrest),⁵³⁴ will demonstrate to authorities alternative mechanisms for dealing with dissent. Where there are arrests or violence in connection with a company’s operations that violate these rights, companies will be expected to raise the issue with the Government, quietly or publicly, individually or collectively, to express their concerns.

Accountability and Grievance Mechanisms

- **The need for alternative avenues to express concerns:** Accessing remedies in Myanmar is very difficult if not impossible in many cases, and there is – with good cause – little or no faith that the judicial system can currently deliver this. The frustration over lack of access to effective remedy for real or perceived damages to livelihoods can increase tensions between communities and ICT companies and their sub-contractors. Operational level grievance mechanisms – i.e. processes that allow concerns to be raised and remedied at the operational level (rather than at far away headquarters) – are therefore even more important in Myanmar, where there are few other outlets to resolve concerns; numerous unresolved legacy issues; new opportunities to express those concerns openly; a lack of experience in local Government in addressing complaints constructively and effectively; and in some

⁵³⁴ See the recent [report of the UN Special Rapporteur on the Situation of Human Rights Defenders](#), reporting on risks faced by land and environmental activists around some extractive projects.

cases a lack of organisations in communities with the experience and expertise to assist in moderating and mediating between the private sector and communities. In addition, there is evident frustration with what can be a bewildering array of contractors and sub-contractors without a core focal point for engagement and grievances. At present, such grievance mechanisms are largely absent or misunderstood in Myanmar.⁵³⁵ The field research indicated that with a few limited exceptions when some fibre companies posted contact numbers in case of emergency on landmarks along the cable path, communities had no information on who to turn to with concerns about telecommunications infrastructure e.g. noise, safety etc.

- **Effective operational level grievance mechanisms:** Given the lack of access to judicial remedies or to even functional non-judicial remedies, it is particularly important that companies provide operational-level grievance mechanisms for those working in or affected by their operations or services. Even where operations are managed well, communities or users are likely to have concerns about environmental, social and human rights performance. International human rights standards require access to remedy for harms, and international good practice recognises that engaging with communities early and resolving concerns (real and perceived) effectively is an essential part of operating successfully. Such grievance mechanisms should be implemented according to the criteria established in the UN Guiding Principles on Business and Human Rights,⁵³⁶ the increasing availability of good practice guidance specifically for the ICT sector (see section D below) and recent experiences in developing online grievance mechanisms (see section D below). Operational level grievance mechanisms should be a part of a broader community engagement strategy, starting with developing the mechanism with input from stakeholders wherever possible and using lessons learned from dealing with grievances to improve ongoing engagement with communities and on-going operations to avoid repeating activities that have been addressed through the mechanism and led to grievances in the first place. A grievance process can help companies better understand how ICT activities are being perceived and impacting, positively or negatively, on local communities, acting as an “early warning” system.
- **Specific considerations for online grievance mechanisms:** Considering the potentially large number of impacted rightsholders in the ICT sector (any of the millions of user’s rights could potentially be violated), an online grievance mechanism or reporting system accessible in the local language may be the best channel. Due to the potential vulnerability of impacted stakeholders wanting to report a violation to the company, it is important that any online grievance mechanism receives and transmits information securely. In order to build and maintain trust, companies should commit adequate resources to receiving, evaluating and responding to complaints submitted through a grievance mechanism.
- **Literacy considerations:** Given the variations in literacy in communities, among workers and users, there should be ways of expressing views and complaints that do not rely on reading/writing and are available to speakers of ethnic minority languages.
- **Access to other mechanisms:** Operational-level grievance mechanisms should not impede access to other remedies, judicial or non-judicial. Additional remedy options

⁵³⁵ MCRB recently held a workshop on grievance mechanisms on 3rd June 2015. Additionally, MCRB held a workshop on [community engagement for extractives companies](#) on 2nd February 2015.

⁵³⁶ See [UN Guiding Principle 31](#).

are expected to continue to evolve in Myanmar, given the focus by the Government and donors on improving the rule of law in the country.

Table 23: Grievance Mechanisms for the ICT Sector

Existing grievance mechanisms in the ICT sector are predominantly internal corporate mechanisms, such as ‘whistleblowing’ systems aimed at remedying issues of labour violations, or issues arising in the supply chain, such as the use of conflict minerals. Corporate grievance mechanisms addressing violations of freedom of expression or privacy are underdeveloped, if they exist at all. Some industry initiatives, such as the Telecommunications Industry Dialogue, are reportedly still in the stages of examining options for implementing relevant grievance mechanisms.⁵³⁷

Therefore, in the past 10 years or so, access to remedy for negative impacts involving ICT companies has usually been judicial rather than non-judicial. There have been court cases involving [Yahoo! in China](#), [IBM in South Africa](#), [Cisco in China](#) and [AT&T in the USA](#). The Yahoo! case, which centred on the company handing over details of users who had posted pro-democracy material and were subsequently arrested and jailed, was one of the catalysts for the establishment of the Global Network Initiative (GNI).

The events of the 2011 “Arab Spring” and the 2013 revelations of mass surveillance by secret services worldwide changed the landscape of legal cases brought against ICT companies for human rights abuses, now focused more in recent years on the sale of surveillance technology and associated negative impacts on human rights. There is currently one case being considered by French courts over the sale of surveillance technology to Libya, which accuses the company involved of complicity in torture.⁵³⁸ A verdict which goes against the company could result in the company being blacklisted or ordered to pay substantial fines.

Privacy groups have utilised other avenues to raise complaints associated with the sale or use of surveillance technology, such as the OECD National Contact Points.⁵³⁹ However, complaints brought through this avenue focus on the implementation of the OECD Multinational Guidelines and would not result in sanctions or fines against the company.

⁵³⁷ See Telecommunications Industry Dialogue Guiding Principles in [English](#) and [Burmese](#)

⁵³⁸ <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/libya/16959-the-amesys-case-the-victims-anxious-to-see-tangible-progress>

⁵³⁹ See the complaints brought by [Privacy International regarding the sale of surveillance technology to Bahrain](#) and the involvement of [6 telecommunication companies associated with the Tempora programme](#) ((where UK secret services allegedly tapped undersea fibre optic cables coming into the UK with the permission of the companies that owned them))

D. Relevant International Standards and Guidance on Stakeholder Engagement and Grievance Mechanisms, and Linked Initiatives in Myanmar

Relevant International Standards:

- [UN Guiding Principles on Business & Human Rights](#) (especially Principles 29-31)
- IFC: [PS 1 – Assessment and Management of Environmental and Social Risks and Impacts](#)

Relevant Guidance on Stakeholder Engagement:

- European Commission, [“ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights”](#)
- IFC, [“Stakeholder Engagement - Good Practice Handbook for Companies Doing Business in Emerging Markets”](#)
- Shift, [“Conducting Meaningful Stakeholder Consultation in Myanmar”](#)

Relevant Guidance on Grievance Mechanisms:

- European Commission, [“ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights”](#), particularly part 3.VI
- IFC, [“Good Practice Note: Addressing Grievances from Project-Affected Communities”](#)
- Access, [“The Forgotten Pillar: The Telco Remedy Plan”](#)
- European Union Agency for Fundamental Rights (FRA) [“Access to Data Protection Remedies in EU Member States”](#)
- FRA, Ongoing Project: [“National Intelligence Authorities and Surveillance in the EU: Fundamental Rights Safeguards and Remedies”](#)

Myanmar Initiatives Linked to the ICT Sector:

- Alliance for Affordable Internet (AFAI), quarterly Multi-Stakeholder Forum

Part 4.10

Conflict & Security

In this section:

- A. National Context
- B. Field Research Findings
- C. Key Human Rights Implications for the ICT Sector
- D. Relevant International Standards and Guidance on Security and Conflict Issues, and Linked Initiatives in Myanmar

A. National Context

The race to roll out

Myanmar will probably have the fastest takeup of mobile communications in history. There is currently a race taking place there to roll out the telecommunications network and secure customers among the Myanmar people, many of whom will be subscribing for the first time. Tower site hunters are continuing to actively search for sites, with an estimate of 250 towers being rolled out per month. Operators have improved coverage significantly in central and lower Myanmar, but are now beginning construction and rolling out in areas such as Kachin State and Northern Shan State, with areas such as Chin State and Rakhine State slated for rollout in late 2015. Operators are working to ensure that geographic targets set by the Ministry of Communication and Information Technology (MCIT) are met, including providing voice services to 75% of the country and data services for 50% of the country in 60 months⁵⁴⁰. This prompts companies to maximise population coverage within the confines of the geographic limits. These dynamics may push companies to consider roll out to areas that still have active armed conflicts as they will have dwindling options to choose “safe” (i.e. non-conflict) areas. Other parts of the ICT value chain are increasingly operating in all corners of the country as well.

The Myanmar Government, particularly the Tatmadaw (army), is still viewed by many ethnic minority populations with deep suspicion as a historically violent and predatory force. Business, especially the extractives sector, have similarly been viewed as predatory, and there is a risk that the ICT sector could be caught up by the broader suspicions of business. Ethnic minority leaders might worry that ICT will be a very well-received service, seen as being delivered or facilitated by government, thereby undermining their agendas and support from their communities. In other words, the telecommunications roll out may become associated with state penetration into former insurgent areas. In addition, ICTs bring ‘modernisation’ and the market economy which will impact traditional cultures and livelihoods patterns. On the other hand, ICT will be seen, at least by some, as contributing to the peace dividend, including by providing jobs

⁵⁴⁰ Telecommunications Operator Tender Evaluation and Selection Committee, “Press Release: Information Regarding the Tender for Two Nationwide Telecommunications Licences in the Republic of the Union of Myanmar” (2013 May)

and potentially supporting ethnic languages and cultures. ICT may promote the mobility that was so long denied, by helping minority groups maintain links with home.

Short History of Armed Conflict in Myanmar

Myanmar is very ethnically diverse. However, due to complexities and nuances in terms of language, culture and self-identification, it is difficult to identify a list of ethnic minorities. The current figure of 135 'national races' used by the Government is contested by many ethnic minority leaders who highlight its weak anthropological underpinning and believe it is an attempt to overstate the complexities for political ends. See Part 4.8 on Groups at Risk (specifically the sections on ethnic minorities and on the latest census).

Much of Myanmar's border areas where many of the ethnic minorities live, have been mired in non-international armed conflict for decades, and it has become a way of life for many, destroying lives, livelihoods, economies and the environment. (see also Groups At Risk Chapter). Ethnic minority armed opposition groups began fighting against the central government shortly after independence in 1948. The Tatmadaw in turn launched counter-insurgency offenses. Ethnic minority armed groups operated in all seven States – Kayin, Kayah, Shan, Mon, Chin, Kachin, and Rakhine States and parts of Tanintharyi Region. Ceasefires between the government and several armed groups began to be agreed in 1989 but were essentially only security agreements, with "ceasefire groups" allowed to retain their arms and to control some territory. This resulted in a freeze, rather than a halt, to some of the conflicts. However fighting continued in parts of the Kayin, Kayah, and Shan States in the east of the country as armed groups there continued in their armed struggle for greater autonomy from the central government.

In its decades-long counter-insurgency campaigns against various ethnic minority armed opposition groups, the Tatmadaw has committed a wide range of violations of international human rights and humanitarian law. As troops entered ethnic minority villages, they seized foodstuffs, destroyed villages, used civilians for forced labour, particularly portering, killed and tortured civilians, and forcibly displaced them. Armed ethnic minority opposition groups have also committed abuses, although to a lesser degree.⁵⁴¹ Ethnic grievances have centred on these abuses; the lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; religious freedom; and lack of education in ethnic minority languages.

Conflict has greatly inhibited economic development in the ethnic border areas, and poverty rates in these areas are high. For example 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State (though the World Bank's reinterpretation of the data suggests a rate of 77.9%) and 33% in Shan State; the national poverty rate is 26% (the World Bank's reinterpretation of the data reveals a 37.5% rate).⁵⁴²

⁵⁴¹ For a full discussion of the human rights situation in the counter-insurgency context, see reports from Amnesty International from 1988 – 2008, and Human Rights Watch.

⁵⁴² ADB, "[Interim Country Partnership Strategy: Myanmar 2012 – 2014](#), Poverty Analysis (Summary)" (2012)

Ongoing Conflicts

In June 2011 a 17 year ceasefire between major armed group the Kachin Independence Organization (KIO) and the government broke down. Fighting continues in Kachin and Northern Shan States between the two groups, with some 100,000 people displaced.⁵⁴³ Other armed groups there are also fighting against the tatmadaw, including the Ta'ang (Palaung) National Liberation Army, which is allied to the KIO. In February 2015 the Myanmar National Democratic Alliance Army, an ethnic Kokang (Han Chinese) armed group, launched an offensive against the tatmadaw in northern Shan State, where fighting is ongoing. 30,000 Kokang civilians fled to China; others were displaced internally. The President declared a State of Emergency and Martial Law the same month, granting wide powers to the tatmadaw in the conflict area.⁵⁴⁴

All of these conflicts have delayed and complicated the nationwide peace process. Moreover, both international and Myanmar NGOs have reported on violations in international human rights and humanitarian law, including forced displacement and labour, torture, and arbitrary arrests by the tatmadaw of ethnic minority civilians in the context of the KIO/TNLA – tatmadaw conflict.⁵⁴⁵

Post-Conflict Areas and the Peace Process

From late 2011 the Thein Sein Government started a new peace initiative, engaging in talks with almost all groups and agreeing written documents. A total of 14 individual ceasefire agreements have been signed, with active talks on a nationwide ceasefire agreement ongoing between the government and armed groups. As a result, fighting has been greatly reduced in Kayin, Kayah, and eastern Shan States as armed groups in those areas have agreed ceasefires with the government. On 31 March 2015 the government and armed groups agreed on a draft text for a Nationwide Ceasefire Accord (NCA); in May armed groups met among themselves for further discussions on the draft NCA. Formal signing of the agreement has yet to take place, with both sides needing to reach a consensus on which groups are eligible to sign the document.⁵⁴⁶ While these are historic developments, much work remains to take the next step of determining the highly political and complex questions around the government's structure and division of power and the shape of the future armed forces, with the November 2015 elections fast approaching and a new government taking power in early 2016.

Although fighting continues in Kachin and northern Shan States, ceasefires in other ethnic minority areas are mostly holding as a post-conflict landscape emerges. Fighting has largely ceased in Kayin, Kayah, and Chin States, and the 1995 ceasefire between the New Mon State Party and the government remains intact in Mon State. However there are legacy issues emerging, such as landmines planted by most parties to the conflicts, including non-state armed groups. The government is not yet a State Party to the Mine

⁵⁴³ 2015 UNHCR country operations profile - Myanmar, <http://www.unhcr.org/pages/49e4877d6.html>

⁵⁴⁴ International Crisis Group: [Deteriorating situation in Myanmar](#), Crisis Alert, 2 March 2015.

⁵⁴⁵ See for example "[Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State](#)", Human Rights Watch, March 2012

⁵⁴⁶ [International Crisis Group, Myanmar](#), 1 April 2015

Ban Treaty, although in 2012 it stated an interest in acceding to it.⁵⁴⁷ However, a major mine clearance operation in many parts of the border areas has yet to begin.

Ethnic minority ceasefire areas are rich in natural resources, including hydropower, hardwoods, and minerals. Ceasefires have made land more available to commercial interests, some of which are linked to the central Government and the military. Ethnic minority ceasefire groups also have business interests in their territories. At the same time these areas are highly militarized, including Myanmar troops and allied militias, ethnic minority armed groups, and armed criminal elements.

The nationwide ceasefire process will not necessarily bring an end to insecurity in Myanmar's border areas. In addition to the major armed groups at the peace table, there are numerous small splinter groups, village militias (some with hundreds of troops), and armed criminal gangs. Lack of economic opportunities, an easy availability of weapons, and weak security and rule of law mean that these areas will be characterised by insecurity for some time to come. If the peace process eventually leads to Disarmament, Demobilisation, Rehabilitation and Reintegration (DDRR) – which is still likely some years off – there will be the additional dynamic of former combatants with limited opportunities for lawful employment, and who may resort to extortion, racketeering and other criminal activities to support themselves, as some are already doing.

Intercommunal Violence

There has been a long history of intercommunal violence dating back to colonial times. In 1977 and again in 1991 there were major exoduses of Rohingya Muslims⁵⁴⁸ from northern parts of Rakhine state into Bangladesh, as a result of intercommunal clashes and abuses by state security forces. Most of the 250,000 who fled were subsequently repatriated under UN auspices, but there were no real efforts at reintegration, and the majority have no citizenship papers and are registered as “foreign residents” (white card holders) with fewer rights. These white cards were also withdrawn in 2015, leaving them without papers.

For over 20 years credible international organisations have reported on human rights violations against the Rohingya, including forced labour, forcible displacement, restrictions on marriage and freedom of movement, as well as the more recent violence against them.⁵⁴⁹ Moreover successive UN Special Rapporteurs on the situation of human rights in Myanmar have expressed concerns about such violations against the Rohingya.⁵⁵⁰

A new round of deadly violence erupted across much of the state in 2012. This has mainly been anti-Muslim violence by Buddhist mobs, although in northern Rakhine State where the Muslim population is in a large majority, there has also been Muslim-on-Buddhist

⁵⁴⁷ [Landmine and Cluster Munitions Monitor](#), Myanmar/Burma, November 2014

⁵⁴⁸ The Myanmar Government refuses to accept the term ‘Rohingya’ and refers to the population as ‘Bengali’

⁵⁴⁹ See for example Amnesty International, “[Myanmar: The Rohingya Minority: Fundamental Rights Denied](#)”, Index number ASA 16/005/204 (May 2004). Human Rights Watch, “[All you can do is pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State](#)” (April 2013) and International Crisis Group, “[The Dark Side of Transition: Violence Against Muslims in Myanmar](#)” (Oct. 2013).

⁵⁵⁰ Office of the High Commissioner for Human Rights, “[UN rights expert calls on Myanmar to address worrying signs of backtracking in pivotal year](#)” (18 March 2015).

violence. (See also Part 4.8 Groups at Risk). However, the most recent manifestation has been among the most intense and sustained and is partly linked to the new political realities and the competition for political power in Rakhine State. Under the military regime, the Rakhine minority was seen as a threat and systematically sidelined, and so there was effectively no political power to compete for.

Currently, there are almost 140,000 internally displaced persons in Rakhine State, many living in very poor conditions; the large majority are in Sittwe Township. Other Muslim populations have lost, or are at risk of losing, their livelihoods, compounded by longstanding restrictions on movement that prevent them travelling in search of work. Access to vulnerable populations for humanitarian organisations is a major challenge, with local Rakhine communities accusing them of pro-Muslim bias, and often intimidating humanitarian workers and blocking access to Muslim communities.

B. Field Research Findings

The final Myanmar ICT SWIA will provide more detailed information on how the field research was conducted and the stakeholders interviewed. The data is purposefully anonymised to highlight trends that should be the focus of attention as the ICT sector continues to develop. The research findings cannot be taken to apply to all situations or organisations interviewed.

Land
Human Rights Implicated: Right to life, liberty and security of the person; Right to take part in the conduct of public affairs; Right to information
Field Assessment Findings <ul style="list-style-type: none"> There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). In some cases a fee was paid for this access. Researchers received reports of cases of operational delays, where local groups, including armed groups, blocked access to sites, due to lack of consultation at the site level. While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all.

Labour
Human Rights Implicated: Right to life, liberty and security of the person; Right to just and favourable conditions of work
Field Assessment Findings <ul style="list-style-type: none"> Researchers observed fire-arms being carried by NSAGs present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk. Researchers also received reports from workers that they were aware that landmines may have historically been laid with land mines around infrastructure in conflict areas. This led workers to avoid walking through certain locations. The measures companies took to protect their workers in such circumstances were unclear.

C. Key Human Rights Implications for the ICT Sector

Interactions with Myanmar Military

- **Interactions with the Myanmar military:** Due to the legacy of armed conflict in certain areas, and clashes still occurring in some areas, ICT companies will have to be particularly sensitive of the risks of human rights violations being committed by the Myanmar military near to their areas of operations. Neither the field research nor other reports have indicated that the Myanmar military is providing security in connection with infrastructure rollout. However, the Tatmadaw has played a role in security strategic assets like oil and gas pipelines in the country. The military has a long history of human rights violations in ethnic minority areas including forced labour, illegal taxation, land confiscation and torture by troops. If the military were to provide security for network infrastructure construction or operation, operators would need to consider the safeguards that could be arranged with them to prevent human rights abuses in connection with any of their operations. The [Voluntary Principles on Security and Human Rights](#) (the VPs), an international initiative on security forces and human rights developed for the extractives sector, but applicable more widely, provides useful guidance for incorporating human rights into arrangements with public and private security providers. (see below, Security Providers). Myanmar does not need to 'join' the VPs. Companies, rather than countries, take the initiative to apply the VPs to their operations. However since doing so requires cooperation with security forces, to be effective, the Government should understand and support the VPs and their application. Some oil and gas companies are considering taking this advocacy forward⁵⁵¹.
- **Fear of surveillance:** ICT companies that operate within those parts of the ICT value chain that may be subject to surveillance requests from the Government should understand the historical context of surveillance in Myanmar, in particular in areas of conflict, and its often severe consequences. Currently there is a lack of appropriate legal safeguards on surveillance (see Chapter 4.3 on Surveillance and Lawful Interception). There may therefore be justifiable sensitivity among the population and civil society organisations to the possibility of continued surveillance, particularly in ethnic minority regions. There is a possibility for misunderstandings and tension if ICT companies are seen to be facilitating (and spreading) government surveillance. This is a risk, especially since a military-owned company (MECtel) is involved in the sector.

Security Risks

- **Land mines:** Land mines were previously placed around Myanmar's infrastructure as (reportedly) a means of preventing sabotage by local armed groups.⁵⁵² In addition, large swathes of the border areas are still seeded with landmines and other explosive remnants of war. There are no accurate maps of areas seeded with land mines and in the parts of the country where conflicts are still active, new land mines are being laid. There has been no systematic demining of the country. The ethnic armed groups generally know where land mines are in their areas of control. ICT companies

⁵⁵¹ See MCRB, [Myanmar Oil & Gas Sector Wide Impact Assessment](#), pp. 151-152.

will need to assess the risk of land mines being present near tower sites they are building or upgrading, as well as areas for fibre lines. They should ensure that they avoid these areas to protect the safety of their staff and the safety of contractor staff.

- **Security risks for Muslim staff:** There exist potential security risks to Muslim staff, or staff of a company regarded as Muslim where local communities hold anti-Muslim sentiments.
- **Security risks for expatriate staff:** There exist potential security risks to expatriate ICT company staff in Rakhine State given recent protests directed towards international aid workers
- **Exposure to criminal gangs:** Companies operating in conflict areas may become targets for bandit attacks, or extortion by armed groups or criminal gangs seeking to control access to areas or extort money to “protect” workers or facilities.

Engagement in Challenging Circumstances

- **Consultation in conflict affected areas with non-state armed groups (NSAG)s:** There are particular challenges in conducting effective consultations in conflict-affected areas. It is important to understand the dynamics of the conflict and the key stakeholders that need to be consulted, through a conflict mapping and stakeholder analysis. In areas where non-state armed groups (NSAGs) operate, it is critical to engage with them and the ethnic minority civil society groups operating in their areas. Most of these groups have bilateral ceasefire agreements with the Government that in principle authorise them to travel freely within the country (without arms) and meet with whomever they want. It is important to recognise that some of these groups have areas of political influence and authority that are far wider than the limited territory over which they have military control. It is also important to recognise that most ethnic minority border areas have never historically come under the administrative control of the central state. The larger NSAGs run parallel administrations, from health and education through to land registration, forestry and revenue collection. As the de facto authority in their areas, their agreement is necessary for any activities to take place. Companies should be aware of whom they are consulting with (or who those acting on their behalf are consulting with), and understand the risks of not consulting with NSAGs (but see below). It will also be important for companies engaging local contractors to understand the relationship between sub-contractors and NSAGs.
- **Consultations with communities in conflict areas:** It should not be assumed that the NSAG is representative of the views of all communities; in some cases relations may be coercive. Companies should identify others who are representative of different constituencies, including those whose voices who may not always be heard, such as women’s groups or marginalised communities; as well as the main power holders (who may not always be representative). In some cases – for example, meetings with leaders of NSAGs – contacts may have to be established through a trusted third party, who can provide a channel of communication and/or convene meetings. Experienced third party facilitators will need to be engaged to ensure that effective community consultations can take place in an atmosphere where people will be safe and confident to speak freely, something that the presence of either Government or NSAG representatives might hamper. In conflict contexts in particular, consultations with key stakeholders should be seen as a relationship-building

exercise more than an information-collection exercise; if handled poorly the consultation process could put communities at risk; if handled well, the sector could provide new models for business in post-conflict areas.

- **Consultations in intercommunal conflict areas:** In areas where there are inter-communal tensions and violence, such as parts of Rakhine State, similar challenges exist. Consultations themselves could present a risk of increasing tensions or prompt violence if Rakhine communities object to consultation with Muslim communities, or object to the provision of services to other communities due to concerns that this may give legitimacy to that community and its viewpoints. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics; local authorities are often not neutral.
- **Benefits sharing:** Many of Myanmar's ethnic minority areas are resource rich with considerable economic potential, but also have strong grievances about economic exclusion. There are therefore debates taking place across Myanmar about more local benefit from economic and industrial development, and appropriate compensation for the impact of these projects. This is a classically an extractives sector issue, but given the potential positive benefits of access to modern telecommunications, there is a risk ICT companies will experience similar tensions if their services are not rolled out to local populations. Given the current rollout plans, ICT services will not be rolled out to the whole country. The World Bank has a pilot programme to roll out services in areas not served by commercial operators, supporting the government in developing and using its universal service fund in line with international best practices and other initiatives to provide services in remote rural communities. This is an important target for collective action by the sector, civil society and government.

Land Considerations

- **Land rights and additional due diligence in conflict affected areas:** Given a legacy of land grabbing in the past, there are often strong local sentiments over land rights issues, and strong civil society organisation around land disputes. In conflict-affected areas, the situation has added complexities. Many of these areas are not included in the national cadaster, or are considered VEV land by default. Some NSAG administrations have their own systems of land registration, including recognition of communal rights, customary rights, and shifting cultivation. Weaknesses in these systems, corruption and lack of transparency mean that local populations are not always consulted on decisions, including the granting of land use rights for private sector operations. In some areas of contested authority, communities are sometimes not aware that such rights have been granted, or by whom. Local armed group commanders may give authorisations without the knowledge of their headquarters.⁵⁵³ The use of land mines in much of the border areas has restricted their use by communities and other potential land users; the fact that they have not been able to be utilised by rights holders for long periods increases the chances of dispossession. Land will be particularly susceptible to land grabs if future demining programs render it safe to use. The critical importance of land issues in the peace process has been recognised through the proposed establishment within the Myanmar Peace Centre of

⁵⁵³ See Karen Human Rights Group, "[Losing Ground: Land conflicts and collective action in eastern Myanmar](#)" (Mar. 2013) and TNI, "[Financing dispossession](#)" (Feb. 2012).

a Land Centre,⁵⁵⁴ focused on policy issues and technical issues such as geospatial mapping.

- **Additional land due diligence in areas of intercommunal conflict:** In areas of inter-communal tension, such as Rakhine State where almost 140,000 people, the vast majority of them Muslim Rohingya, have been displaced by inter-communal violence beginning in June 2012, companies will need to carry out particularly careful due diligence on the provenance of any land they may need to use. They should first establish whether there is a connection to persons displaced by inter-communal violence. Since displaced populations should be entitled to return to their homes, it is important for companies to avoid contributing to the problem, or appear to give tacit support to, or benefit from, the activities which have resulted in the displacement. Companies should obtain advice from local experts including relief agencies and civil society organisations operating in the area before deciding how to proceed.

Company Employed & Contracted Security Providers

- **Security Providers:** Some companies in the ICT value chain will require security guards for their towers and generators (where there are some reports of fuel and equipment theft), data centres or office buildings. It is important to ensure that contracted security providers (whether contracted directly or through a service) have had background checks to ensure security service owners, managers or guards have not been linked to past human rights abuses. They also need appropriate training on respecting human rights. Companies should ensure that working conditions and employment contracts, in line with labour rights standards, are integral parts of the contract with the security provider as security providers are often very poorly paid in Myanmar. Companies should consider prioritising members of local communities for security jobs, but bearing in mind where this may exacerbate inter-communal tensions, depending on the choices made. As noted above, the [Voluntary Principles on Security and Human Rights](#) provide relevant guidance, despite being developed for the extractives sector. In addition, if the ICT companies find that they need active protection of security, there is now an [International Code of Conduct for Private Security Providers](#)⁵⁵⁵ that sets private security industry principles and standards based on international human rights law. The code is open to signature by companies providing security services and will soon put in place a certification system that will certify company compliance with the code, providing additional assurance that service providers are trained in international human rights law principles.⁵⁵⁶ This is a relevant reference for screening potential service providers and should serve as a target for company commitment within a specified time period.⁵⁵⁷
- **Use of weapons:** Private security guards are unarmed in Myanmar, which lowers the level of risks to human rights posed by private security providers but does not eliminate all risks. Appropriate training in human rights will still be needed.⁵⁵⁸

⁵⁵⁴ [Myanmar Peace Centre](#)

⁵⁵⁵ [International Code of Conduct for Private Security Providers](#)

⁵⁵⁶ [International Code of Conduct for Private Security Service Providers](#). See also, MCRB, Myanmar Oil & Gas Sector Wide Impact Assessment, Chapter 4.7 on Security.

⁵⁵⁷ See, Myanmar Times, [The rise of private security](#), 05 January 2015

⁵⁵⁸ For further guidance, see [“Voluntary Principles Implementation Guidance Tools”](#).

However in ethnic minority areas, guards may be armed, which heightens risks and requires more immediate training on the appropriate use of force, and human rights.

D. Relevant International Standards and Guidance on Security and Conflict Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- [The Voluntary Principles on Security and Human Rights](#) is an initiative that includes governments, companies in the extractives sector, and NGOs. The Principles are designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights and which addresses working with public and private security providers.
- [International Code of Conduct for Private Security Providers](#)

Relevant Guidance:

- The IFC/World Bank Group Environmental, Health, and Safety Guidelines for Telecommunications provide guidance on siting infrastructure and other aspects of community safety.⁵⁵⁹
- The World Bank-supported Myanmar Telecommunications Sector Reform Project Land Lease Guidelines provides valuable guidance for other ICT companies involved in land acquisition, including calling for the identification of the presence of ethnic minorities during scoping and screening phases.⁵⁶⁰

⁵⁵⁹ IFC, "[Environmental, Health, and Safety Guidelines for Telecommunications](#)" (April 2007).

⁵⁶⁰ World Bank, Myanmar - Telecommunications Sector Reform Project: environmental and social management framework (Vol. 2) : [Land lease guidelines](#) (English).S

Part 5

Cumulative-Level Impacts

In this section:

- A. Introduction
- B. National Context
- C. Research Findings

A. Introduction

This chapter looks briefly at successive, incremental and combined environmental and social (including human rights) impacts from multiple projects or multiple ICT activities located in the same region or affecting the same resource.⁵⁶¹ Consideration of cumulative impacts is of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb and adapt to additional impacts (as may be the case in parts of neighbouring China),⁵⁶² but they can also be equally as important to consider in regions that will undergo significant growth, as is the case in Myanmar.

The study of cumulative impacts is often associated with projects with a large physical footprint – extractives, infrastructure – rather than industrial sectors with a small footprint like ICT. The majority of the ICT value chain is service-based. Its cumulative impacts are mostly social and occur at the sectoral and societal level (Chapter 3). Nonetheless, the sector may still create cumulative impacts on the ground particularly given its projected growth trajectory in the country. These should be considered and addressed in future government and company planning. Examples could include repeated digging of ducts for cabling, rather than the laying of a single duct for multiple users, or the erection of multiple towers in one location rather than shared facilities. Initial attempts by government to encourage sharing of infrastructure (towers and power generation) were not successful due to the speed of the rollout and differences in business models between operators. However, the government did take the initiative to bring the two operators together to discuss their site plans and to encourage communication between tower companies. This has limited the number of duplicate tower sites in the rollout.

Infrastructure used in the ICT sector (buildings or network infrastructure) placed in proximity adds incremental impacts to other existing, planned, or reasonably predictable future projects and developments, leading to an accumulation of impacts. Environmental and social impacts from one project alone are not always significant. Instead it is the building up of smaller impacts over time, or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly (for example where there is a rapid influx of people seeking jobs at, or in the

⁵⁶¹ Based on the definition in Franks, Brereton and Moran, "Cumulative Social Impacts," in Vanclay and Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, (2011). They are sometimes also referred to as "collective impacts."

⁵⁶² Franks et al in Vanclay and Esteves (Eds), p. 202

vicinity of, newly established projects, the “boomtown effect”). They can also be triggered by poorly designed policies that prompt companies to make the same mistakes over and over again.

The resilience of the environment or society to cumulative impacts depends upon both the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem (i.e., the degree to which they are susceptible to and unable to cope with injury, damage, or harm).⁵⁶³ Cumulative impacts can be negative (e.g. outmigration due to cumulative land acquisition results in government withdrawal of health services) or positive (e.g. cumulative economic developments in the area justifies opening of a public health clinic). In some cases, cumulative impacts can have both positive and negative effects.

If not managed, cumulative impacts can overwhelm environmental or social “carrying capacity” to withstand or recover from the changes and result in human rights impacts. They can act upon:

- **Institutions** – the accumulated impacts overwhelm the local capacity to provide services, including protection or fulfillment of the population’s human rights, such as education or health, providing remedies, or managing or changing the course of events;
- **Society** – the rapid onset and acceleration of the changes overwhelms societal structures and capacity to manage change, which may eventually lead to a rise in tensions or violence and a potential breakdown in law and order;
- **Environment** – the biophysical impact surpasses the environment’s carrying capacity with subsequent negative impacts on the right to water or other livelihood or health impacts.

B. National Context

As a first step in recognising that ministries and regional authorities need to consider cumulative impacts in the context of Myanmar’s rapid development, the Framework for Economic and Social Reforms (which sets the medium-term strategy for Myanmar’s development) identifies cumulative impacts as an important consideration:

*“Planners and policy-makers will need to consider the longer-term dimensions of a balanced strategy of economic, social, environmental and cultural development, recognising particularly that stakeholder groups can be affected simultaneously by projects or programs that are considered independently of each other without acknowledging their cumulative impact on particular stakeholders. Decision-making and monitoring processes will need to be open to such cumulative impacts. Taking a longer-term perspective may also help to resolve apparent trade-offs in situations where greater emphasis on equitable development in the short-term contributes to greater sustainability and economic growth over the longer term.”*⁵⁶⁴

⁵⁶³ IFC, [“Good Practice Handbook on Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets”](#) (2013).

⁵⁶⁴ [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 92. In addition, the current draft of the E(S)IA Procedure includes references to cumulative impacts, especially for complex projects

Myanmar has an ICT Master Strategy, but this strategy does not consider the regional implications of the strategy and therefore does not lay the groundwork for considering cumulative impacts of ICT developments in any particular areas. The regulatory framework for Environmental Impact Assessment requires consideration of cumulative impacts although practice is as yet undeveloped. However, most ICT projects are unlikely to require an EIA in Myanmar unless facilities or infrastructure are located on land of special importance, such as cultural sites or national parks.

C. Research Findings

The ICT Master Plan identifies the following developments that could lead to cumulative impacts.

ICT Parks

The ICT Master Plan sets out the intention to set up additional ICT Parks, building on the models of the Myanmar ICT Park in Yangon (established in 2001) and Yatanarpon Cyber City in Pyin Oo Lwin (established in 2007) which is currently underutilised. In 2015, the Myanmar Computer Federation announced that a new 300-acre ICT Park is to be constructed outside of Yangon in Thanlyin, noting that significant foreign investment will be needed to complete construction.⁵⁶⁵ Thanlyin is adjacent to Thilawa Special Economic Zone, south-east of Yangon. The Follow-up Report also suggests encouraging the development of such Parks in other Myanmar's Special Economic Zones. In addition to Thilawa these are Dawei, in the southeast of the country; and Kyaukphyu, in Rakhine State. Special Economic Zones provide incentives for businesses to operate within defined zones. The SEZ Law also provides for land acquisition and compensation to landusers.⁵⁶⁶

As noted in the ICT Master Plan Follow Up Report,⁵⁶⁷ there are benefits for firms based in the ICT Parks. Colocation facilitates collaboration to resolve problems, initiate technology forums and seminars, and promotes networking.⁵⁶⁸ For such Parks to be successful, the Follow Up Report suggests initial incentive policies such as providing discounts on land price, and abatement of lease rates, national and local taxes.

However concentrations of businesses in one area also create greater potential for negative cumulative environmental and social impacts, including the longer term impact of industrial activities within the area, transport infrastructure in and out of the zone, and demands on public services such as housing, healthcare and education for the workers and their families. In some countries, SEZ Laws reduce the labour protections for workers within the zones as further inducement to business. The Myanmar SEZ Law does not waive Myanmar labour requirements; however few Myanmar labour laws are in line with international labour standards (See Part 4.6 on Labour). Moreover, there are concerns with the land acquisition and resettlement processes the various SEZs that could be repeated by large footprint ICT Parks.

⁵⁶⁵ Eleven Myanmar, "[Thanlyin Picked for ICT Park](#)" (2015)

⁵⁶⁶ see MCRB, Land Briefing, p. 15, March 2015, <http://www.myanmar-responsiblebusiness.org/pdf/2015-04-02-LAND-Briefing.pdf>

⁵⁶⁷ MCIT, KOICA, ETRI, The Followup Project of the Myanmar ICT Master Plan," (2011)

⁵⁶⁸ MCIT, KOICA, ETRI, The Followup Project of the Myanmar ICT Master Plan," (2011), p. 165

Outsourcing

The Follow Up Report to the ICT Master Strategy notes that “Myanmar’s ICT industry has strength in the software industry and being supplier of overseas companies’ ICT outsourcing demand by subcontract or dispatch”. It encourages ramping up government demand as a way of stimulating both demand for such services and the supply of software engineers as well as deregulation to stimulate demand.⁵⁶⁹ The Report highlights the many benefits to the Myanmar economy including stimulating better education of software engineers, improving competitiveness, bringing the benefits of ICT to other sectors in the Myanmar economy. These many benefits should be weighed together with relevant regional experiences of the social impacts of developing a large sector of outsourcing services and considered as an integral part of the planning for such an expansion. While the job opportunities would provide an important step up the ladder, those developments should go hand in hand with ensuring decent work. The ILO is developing a Decent Work programme in Myanmar⁵⁷⁰.

Manufacturing

Currently, there is a limited ICT manufacturing in Myanmar, and the hardware industry is mainly based on trading and assembling. Limited manufacturing of fibre cable takes place at Yatanarpon Cyber City.⁵⁷¹ The follow up to the ICT Master Plan suggests government financial and administrative support to encourage ICT manufacturing, noting that “lately Myanmar is becoming more attractive location as it has competitive salary level comparing to other countries”⁵⁷². It makes a case for developing a handset industry.

Moving up the value chain in manufacturing could provide significant benefits to the Myanmar economy. But government planners should also consider the environmental, social and human rights impacts of developing manufacturing clusters in the ICT sector, considerations that are currently absent from the ICT Master Plan and the Followup Report. There are clearly economic benefits of developing manufacturing hubs. These need to be addressed together with the costs to the local environment, community and workers. There is increasing attention on the impact on human rights of the electronic sector in the global economy. This has prompted the creation of several multistakeholder and industry-led initiatives to address the rising legal and reputational challenges to the sector.⁵⁷³

Table 24: Relevant Guidance on Cumulative Impacts

- IFC, “[Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets](#)”
- UNGC “[Business & Human Rights Dilemmas Forum: Cumulative Impacts](#)”

⁵⁶⁹ MCIT, KOICA, ETRI, The Followup Project of the Myanmar ICT Master Plan,” (2011), p. 152.

⁵⁷⁰ [National Tripartite Dialogue: Presentation on Decent Work Country Program \(Myanmar\)](#), ILO December 2015

⁵⁷¹ Zaw Min Htwe, “[Opportunities and Challenges for a Foreign Invested Company at Yatanarpon Cyber City, Myanmar](#)” (December 2011), p. 17

⁵⁷² MCIT, KOICA, ETRI, The Followup Project of the Myanmar ICT Master Plan,” (2011), p. 169.

⁵⁷³ See for example the [Electronics Industry Citizenship Coalition](#). [Global E-sustainability initiative](#)

Part 6

Recommendations

Summary of ICT SWIA Recommendations

Government of Myanmar

1. Establish a coherent policy framework for the ICT sector with adequate safeguards.
2. Improve ICT legislative and regulatory reforms to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.
3. Improve legislative and regulatory reforms in other related areas to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.
4. Make the move from “surveillance state” by adopting a rights-respecting lawful interception model and maintaining open access to the internet.
5. Improve data protection standards and cybersecurity.
6. Demonstrate a commitment to free and open communication through a modern Freedom of Information Law and build meaningful transparency systems across Government.
7. Accelerate the implementation of Myanmar’s universal service commitment
8. Improve education of users and potential workers in the sector and send clear signals about respectful use of ICT’s.

Annex to the Recommendations: The Characteristics of a Rights-Respecting Lawful Interception Model

ICT Companies

1. Understand local operating contexts and histories.
2. Apply international standards of responsible business conduct in the absence of developed national legal frameworks.
3. Adopt a policy commitment to responsible business conduct, including a commitment to respecting human rights, and ensure the policy is embedded across the company and communicated widely to stakeholders.
4. Take account of local complexities and legacies when assessing the impacts both operations and business partners may have, and integrate and act on these findings.
5. Track responses to risks and impacts and communicate externally on the effectiveness of responses.
6. Engage with potentially affected stakeholders, particularly workers, communities, customers and users, to build understandings and demonstrate transparency and accountability.
7. Put in place mechanisms that can address concerns and grievances quickly and effectively.
8. Take collective action where appropriate to address human rights, social and environmental issues.
9. Develop strategies for creating positive impacts at the local, regional and national level.

Human Rights Defenders and CSOs

1. Engage actively in commenting on and debating ICT policy, legal and regulatory framework changes.
2. Hold companies to account on responsible business conduct, including around human rights.
3. Encourage companies and government to engage in multi-stakeholder discussion on human rights, social and environmental issues within the ICT sector.
4. Initiate and support efforts to educate the Myanmar public about safe and peaceful behaviour online, including counter-speech.
5. Increase media reporting on ICT sector.

Development Partners/Home Governments

1. Support the strengthening of human rights and social and environmental considerations within policy, legal and regulatory framework improvements, especially those highlighted in Recommendations 2 and 3 to the Myanmar Government.
2. Support implementation of the corporate responsibility to respect human rights by Myanmar and international companies.
3. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.

Investors

1. Conduct due diligence on companies in their portfolios that are involved in the ICT sector in Myanmar.
2. Engage with investee companies involved in the ICT sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.
3. Urge companies doing business in the ICT sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.

Users

1. Undertake basic steps to protect your privacy and security while using ICTs.

Part 6.1

Recommendations to the Government of Myanmar

1. Establish a coherent policy framework for the ICT sector with adequate safeguards.

The Government has embraced the importance of providing citizens with open access to technology, the important role of new technologies in driving innovation, and the need to increase the capacity of citizens to use technology. It has also committed to a “people-centred” approach to development. A balanced approach that stimulates the spread and uptake of ICT services while protecting the rights and interests of the population will be required to realise the positive potential of the ICT sector for Myanmar society.

Key Points for Implementation

- **Ensure the ICT policy frameworks are coordinated and set within the broader Framework for Economic and Social Reforms Policy Priorities for 2012-2015 (FESR),** which is targeted at “people-centred development, civic participation and human resource development... and poverty reduction.” In order to stimulate the kind of active and genuine civic participation envisaged by the FESR, the government should commit through the policy and legal framework to clear, justifiable limits on government involvement in and access to the ICT sector that is aligned with international standards and best practice. This would signal Myanmar’s readiness to demonstrate leadership in ICT governance.
 - Include adequate **social, human rights and environmental safeguards for private sector operations** (identified through the Report) in the **forthcoming Master Plans** relevant to the ICT Sector: the ICT Master Plan, the E-Governance Master Plan, and the Telecommunications Master Plan.
 - Underpin the ongoing work of developing the three ICT-related Master Plans, particularly the E-Governance Master Plan, with the objective of **advancing government transparency, accountability and public participation, facilitated by new and innovative ICT services.** As part of that commitment, engage in open, public and meaningful consultations on the Master Plans.
 - When developing new strategic directions for the ICT sector (such as further developing ICT parks, manufacturing or developing outsourcing services), **undertake ongoing identification, prevention and mitigation of the potential longer-term and cumulative environmental, social and human rights impacts** of these developments. (See Part 5 on Cumulative Impacts).
- ### 2. Improve ICT legislative and regulatory reforms to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.

Myanmar has embarked on an ambitious programme of legal and regulatory reforms across the board, including in the ICT sector. An appropriate legal framework can protect the rights of the population and encourage responsible business conduct.

Key Points for Implementation

- When adopting implementing regulations for the *Telecommunications Law*, *Computer Science Development Law* and *Electronic Transactions Law*, ensure the the criminal penalties that are currently provided for are carefully and clearly drafted to confirm that the **criminal penalties cannot be applied for legitimate expression**.
- The regulations should also clarify the procedures and safeguards for **blocking or filtering** content in line with international human rights standards.
- When drafting the forthcoming **lawful interception regulations** implementing the *2013 Telecommunications Law*, ensure they feature the characteristics set out in detail in the **Annex to these Recommendations on Lawful Interception**.
- Introduce regulations on **protecting data privacy** in line with international standards.
- Complete the **transformation of the Post & Telecommunications Department** of Ministry of Communications and Information Technology to establish an independent ICT regulator.
- Complete the transformation of Myanmar Post and Telecommunication (MPT) to a privatized telecommunications operator and Internet service provider (ISP)
- In view of the potential chilling effects of **SIM card registration** on freedom of expression, consider other options to mandatory registration.
- Mandate clear **data protection and security standards** for entities licensed to provide mobile money services
- Do not prevent companies from **reporting** on the nature and number of requests they receive from the government of Myanmar for lawful interception, communications data, content removal or blocking of websites, or requests for network shutdowns.

3. Improve legislative and regulatory reforms in other related areas to ensure appropriate safeguards around Government activities and a coherent framework for responsible business conduct in the ICT sector.

Key Points for Implementation

Freedom of Expression and Association:

- Amend the *Law Relating to Peaceful Assembly and Peaceful Procession* to **eliminate the criminalisation of protests**, which are increasingly taking place using ICT services.
- Amend laws which **greatly restrict the right to freedom of expression**, including *1908 Unlawful Associations Law*, *1950 Emergency Provisions Act*, *1923 Official Secrets Act*, and various articles of the *Penal Code*, especially *Article 505(b)*.
- Fully implement *Articles 3 and 4 of the 2014 Media Law*, which provide for “**freedom from censorship**” and freedom to criticize the government. Ensure that the media, including online journalists, are able to perform their legitimate functions without fear of censorship or arrest.

Land Use and Management:

- Ensure the forthcoming National Land Use Policy provides clear protections that reflect the **customary, informal and communal land ownership and use** arrangements in Myanmar, both in terms of protecting security of tenure and ethnic minority rights.

- Establish a **coherent legal framework in line with international standards** (such as the “FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security”)⁵⁷⁴ for private sector operations within the forthcoming comprehensive land law. This should ensure the protection of existing use and ownership rights while providing certainty and clarity around permitted transactions, which includes reforming existing land dispute mechanisms to enable enforcement of resolutions relating to land.
- Encourage telecommunications operators to follow the **World Bank’s Myanmar Telecommunications Environmental and Social Management Framework and Land Lease Guidelines**,⁵⁷⁵ including requiring their subcontractors to follow the Guidelines in all land dealings.
- Clarify and simplify **land classification** and use procedures to provide appropriate protection for food security and for farmers from unscrupulous land transactions. These should be sufficiently flexible to allow farmers pursue alternative livelihood options on a limited portion of their land (such as leasing it for telecom equipment) and/or encourage local entrepreneurship.

Labour:

- Develop a **comprehensive and overarching labour law framework** in line with international labour standards. Extend protection to all types of workers, including temporary and migrant workers. Given the expected expansion of employment in the ICT sector, and the competition to retain skilled Myanmar nationals, reinforcing the Government’s commitment to the ILO’s programme on Decent Work will be an important signal to workers and to ICT sector employers.
- Strengthen the **protection of workers involved in trade union activities** to ensure that they do not face discrimination or dismissal by employers solely for their legitimate trade union activities. Support trade unions to operate at the sector level so that they can adequately represent workers, including in growing sectors such as ICT where an increasing number of workers are expected to be employed. Raise awareness among employers with more than 30 workers about the legal requirement to put in place a **Workplace Coordinating Committee**.
- **Demonstrate that the Government is committed to gender equality** by encouraging the employment of the large number of female graduates in ICT studies on the basis of equal pay for equal work.
- Target **labour inspectors** to visit high-risk sites, such as tower construction and fibre trenches.

4. Make the move from “surveillance state” by adopting a rights-respecting lawful interception model and maintaining open access to the internet.

The Government has previously used ICT services to conduct surveillance of its citizens, both within the country and abroad. A modern legal framework to limit Government surveillance is overdue.

Key Points for Implementation

- Follow through on the stated commitment to **align its forthcoming lawful interception regulations to international human rights standards**. (See the Annex

⁵⁷⁴ <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

⁵⁷⁵ World Bank, Myanmar - Telecommunications Sector Reform Project: Environmental And Social Management Framework (Vol. 2): [Land lease guidelines](#) (English)

to these Recommendations on Lawful Interception). As it has with other draft ICT laws and regulations, the Ministry of Communication and Information Technology (MCIT) should make any draft legislation on LI available for public comment for at least three weeks, and publicise the consultation process.

- Publicly commit to **prohibit “mass surveillance”** (commonly understood to refer to the bulk access and/or collection of many users’ communications without prior suspicion of criminal activity). Such a commitment should also be incorporated into the forthcoming lawful interception regulation (which should authorise only targeted interception where there is a prior suspicion of recognizably criminal activity).
- **Refrain from purchasing and utilising invasive and often unregulated communications surveillance technology** to carry out communications surveillance. Once Myanmar intelligence agencies have such capabilities, it will be much more difficult to eliminate or regulate their use. It is important for the Government, and the ICT companies that may be subject to lawful intercept orders, to make the distinction between software and other tools that comply with international standards on lawful interception, and products that fall below international standards because they are unregulated and pose a risk to human rights.
- **Commit to never shutting down the internet.**
- **Clarify and limit the law on telecommunications network shutdowns In line with international standards.** A suspension of telecommunication services (mobile and/or landline) must be prescribed by law and only invoked if there is a real and imminent threat to national security or a national emergency. There must be a clear and transparent process around who is authorised to make a shutdown request, it should be limited in geography, scope and duration, and should be publicly reported after the fact. Network shutdowns affecting the whole country should never be authorised.
- **Make a commitment not to shutdown the network during the upcoming elections.** Instead put in place plans to deal with potential emergencies, such as appropriate restrictions on the circulation of mass messages inciting violence and hate speech.
- **Encourage a free and open internet by limiting restrictions on content.** In line with international standards, any takedown requests should target specific pieces of content, rather than access to whole domains.

5. Improve data protection standards and cybersecurity.

Myanmar currently does not have any requirements or standards on data protection for companies. A failure to protect people’s personal information and identity can pose significant risks to the right to privacy and security. As Myanmar puts in place its cybersecurity infrastructure, and the laws and regulations underpinning it, it will be important to balance the legitimate need to combat cybercrime with human rights protections.

Key Points for Implementation

- **Establish clear standards for organizations collecting, storing, or sharing user data.** This includes standards around data privacy or privacy policies being made publically available, prior informed consent and grievance mechanisms for users, and baseline security standards.
- **Promote awareness** of the importance of cyber security for users and build digital literacy through clear and concise communication. Widely disseminate basic best practices for users in partnership with the **Myanmar Computer Emergency Response Team(MMCERT)**.

- **Do not criminalise the use of encryption tools** by individuals. Encryption is essential, not just for security of transactions but also the safety of human rights defenders. Blanket prohibitions on encryption, and therefore anonymity of communications, are not necessary and proportionate responses in line with international human rights standards.
 - Consider eventually establishing a **National Data Protection Authority** that would be in charge of the protection of data and privacy and that can handle complaints from users.
- 6. Demonstrate a commitment to free and open communication through a modern Freedom of Information Law and build meaningful transparency systems across Government.**

The Government has made a welcome commitment to join the Open Government Partnership and to modernise its approach to governance through its e-Government Master Plan. It will be important to embed protections around the right to privacy into e-governance services so that they are trusted and can become a driver for ICT services and innovation.

Key Points for Implementation

- **Adopt a modern Freedom of Information Law**, as part of other steps towards **transparency** (e.g., commitments to join the Open Government Partnership by 2016, candidacy for Extractives Industries Transparency Initiative, and conducting more transparent licensing processes). If the **Constitution** is to be amended, include constitutional guarantees of public access to information held by the government.
- Ensure that **privacy/data protection requirements** and safeguards are embedded into e-governance and open data initiatives.
- Commit to access to information requirements that are **aligned with the Open Government Partnership Principles**: the publication of all government-held information (which is broader than information only on government activities); proactive and reactive releases of information; mechanisms to strengthen the right to information; and open access to government information.
- Commit to implementing **core open data principles**, including across on-going national e-governance projects, such as the Common Citizen Service Data Portal to be developed by MCIT and the World Bank
- Consult publically with civil society and business to **identify high-value data** that catalyses innovation, enhances social policy, and promotes public and private sector accountability.

7. Accelerate the implementation of Myanmar's universal service commitment

Until recently, Myanmar was at the bottom of the global league table for internet and mobile phone penetration. While penetration rates are increasing rapidly, change will continue to be a feature in the country for many years in order to reach all of Myanmar's population, particularly in rural areas. The government tentatively committed to a universal service agreement with the telecommunications operators, but given Myanmar's recent membership in the Alliance for Affordable Internet (AFAI), the initial universal service agreement is being revisited. All parties can play a role in accelerating the roll out

of services using innovative solutions so that a wider percentage of the population benefits from accessing ICT services.

Key Points for Implementation

- Move forward on implementation of Chapter XV of the 2013 *Telecommunications Law* to **expand service to underserved areas** of the country through the establishment of universal service targets, a Universal Service Fund, universal service obligations on licensees⁵⁷⁶ and universal service plans to accelerate access to services for rural populations.
 - Hold **public consultations** with local civil society organizations to understand requested priority areas for the development of telecommunications service (both mobile and fixed line broadband service) beyond the current planned network rollout and use this information as an input into universal service plans.
 - To accelerate universal access, allocate Universal Service Funds to support **community-based telecommunications networks** as a broader strategy and provide wireless spectrum concessions to remote rural communities where telecommunications service is currently inaccessible. This will help promote the development of low-cost community-based telecommunications networks for last mile or last inch connectivity that leverages free open source software.
 - Clarify how the Universal Service Fund will support Myanmar's membership in the Alliance for Affordable Internet, which is focused on realizing **entry-level broadband priced at less than 5% of monthly income**, particularly in rural communities.
 - **Publicly disclose the current national rollout requirements** for operators, compared with their current progress.
 - Build on lessons learned in the World Bank supported programme of **extending connectivity to rural areas**.⁵⁷⁷
8. **Improve education of users and potential workers in the sector and send clear signals about respectful use of ICT's.**

To realise the range of transformative positive impacts via ICT growth and development in Myanmar, the Government must ensure that all Myanmar's population can participate in Myanmar's growing information society. Those services must be used respectfully so that violence and discrimination happening offline is not magnified and intensified. This requires strong signals from opinion-formers, including Government.

Key Points for Implementation

- **ICT's must be "localized"** for Myanmar users, meaning technologies and content, including data and text, are adapted to support the wide range of Myanmar languages – beyond just the majority Burmese language. The Government should commit to supporting the development of hardware, software, education materials, user manuals, amongst others, in all the main languages of Myanmar.
- **Support awareness raising campaigns and training around basic education of online safety and behaviour, including child safety issues.** Engagement with ICT

⁵⁷⁶ The Posts and Telecommunications Department indicated that preliminary guidelines for a universal service fund are being re-visited. Preliminary guidelines called for each operator to contribute 2% of annual revenue to a universal service fund managed by the Ministry of Communication and Information Technology, beginning after three years of successfully meeting network rollout targets.

⁵⁷⁷ World Bank, Myanmar - [Telecommunications Sector Reform Project – Project Appraisal Document](#) (2013).

services is still a completely new experience for the majority of Myanmar people. There is a need for efforts from government, business and civil society to provide awareness and training on protection against threats.

- **Send clear public signals from the highest level of government and all political parties** that “hate speech” is unacceptable. The Myanmar Government should support efforts aimed at “counter speech”, where users challenge “hate speech” by, for example, exposing false rumours and encouraging peaceful expression, particularly online where hate speech spreads quickly and has been used to incite violence.
- Prioritise **public education sector reforms** that include a modernizing ICT curricula and developing free online educational resources. This will better serve the needs of employers in the long-term by building a more highly skilled national workforce.

9. Strengthen requirements around responsible business conduct in the ICT sector, including requiring businesses to provide operational-level grievance mechanisms.

The Government should clearly signal its expectations to companies (foreign or local) that it expects responsible investment that works for the long-term interests of Myanmar and all its people. That expectation can be expressed in the law (see Recommendations 2 and 3 above), through permitting and licensing and by ensuring that companies make themselves accountable to the population. Myanmar’s judicial system reforms will take many years. In the interim, and even in the longer term, it is important that effective alternatives to formal legal proceedings are available to ensure that access to remedy is readily available to those adversely impacted by business activities.

Key Points for Implementation

- **Set out the Government’s expectation** that businesses investing and doing business in Myanmar, whether through enterprise registration or through a permit from the MIC, will engage in **responsible business conduct**. This could take the form of public **guidance** from the Directorate of Investment and Companies Administration (DICA) to all companies, Myanmar and foreign, which are active in Myanmar
- Include two contractual requirements relating to responsible business in the **Myanmar Investment Commission (MIC) permit, namely:**
 - An annual report on how the company has conducted business responsibly;
 - A requirement for all companies in receipt of MIC permits to establish mechanisms to receive and constructively address concerns and complaints, from workers, communities and civil society, consistent with the eight criteria for grievance mechanisms in the UN Guiding Principles on Business and Human Rights.

Part 6.2

Recommendations to ICT Companies

Build on the Corporate Responsibility to Respect Human Rights in the ICT Sector

The section below is addressed to all companies – Myanmar and foreign – in the ICT value chain. The recommendations build on the steps expected under the UN Guiding Principles on Business and Human Rights, which is a core framework for this SWIA.⁵⁷⁸

Further Specific Recommendations for Companies in the SWIA

The recommendations below reflect a set of cross-cutting and overarching actions to ensure responsible business conduct in Myanmar's ICT sector. In addition to these broader recommendations, each of the preceding Parts of the Report includes a section on "**Key Human Rights Implications for the ICT Sector**" that provides additional and more specific points ICT companies should consider, which cover:

- | | |
|--|--|
| 4.1 Land | 4.7 Hate Speech |
| 4.2 Labour | 4.8 Privacy |
| 4.3 Groups at Risk | 4.9 Cyber-Security |
| 4.4 Stakeholder Engagement and
Grievance Mechanisms | 4.10 Surveillance and Lawful
Interception |
| 4.5 Conflict and Security | 5. Cumulative Impacts |
| 4.6 Freedom of Expression & Opinion | |

1. Understand local operating contexts and histories.

*Myanmar is emerging from decades of internal armed conflict, authoritarian rule and economic isolation, and will remain a high-risk country with weak governance for some time. Companies should conduct enhanced due diligence for operations in Myanmar to ensure that they fully understand and respond to the operating context.*⁵⁷⁹

Key Points for Implementation:

- **Understand the bigger picture.** While the government and parliament are working on reforming some of the laws and the administration of justice, it is a long-term task. Nor is there any guarantee that the reformed legal framework will be aligned with

⁵⁷⁸ Further general (non-Myanmar) specific guidance is available from European Commission, "[ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)" (2013).

⁵⁷⁹ Institute for Human Rights and Business, "[From Red Flags to Green Flags: The Corporate Responsibility to Respect Human Rights in High-Risk Countries](#)" (2011).

international standards. Ending a widespread culture of corruption and the privileged position of certain companies will take even longer.

- **Understand the history.** The limited ICT infrastructure and services that existed in Myanmar prior to the 2011 reforms were government-controlled and used for surveillance. While the rapid uptake of new ICT services shows clear interest from the Myanmar population in getting connected, the sector may nonetheless be affected by distrust in the Government.
- **Use conflict-sensitive practices.** The telecommunications network and other parts of the ICT value chain are and will increasingly be operating in all parts of the country, which may inevitably involve operating in post-conflict and even active armed conflict locations. If ICT companies must interact with the Myanmar military and armed groups, they should seek to understand who they are dealing with and limit the interaction as much as possible. ICT companies should be sensitive to the perceptions of the sector among the leadership and populations in ethnic minority areas of being seen as an instrument of the government or the military and a potential source of loss of control and culture. The failure to provide services or content in local languages, or even show willing to work towards such options, may reinforce such perceptions. (See Part 4.10 on Conflict)
- **Support wide digital literacy.** Companies should play an active role in developing and supporting initiatives to educate their own users and the wider public about online safety. Companies should also not assume that their users understand how their services work. They should make information available about risks and choices in a clear, transparent and accessible manner in a range of local languages.

2. Apply international standards of responsible business conduct in the absence of developed national legal frameworks.

This SWIA has highlighted the current gaps in the Myanmar's evolving policy and legal framework. Due to the rapid pace of change, and lack of capacity and experience among legislators and Government ministries, there is no guarantee that, once adopted, Myanmar laws will fully reflect the international standards. Nor will they be guaranteed to protect workers, users, communities and the businesses themselves from the risks highlighted in the "Key Human Rights Implications for the ICT Sector" sections within the Operational-Level Impacts (Part 4). In addition to providing companies certainty at a time when the national legal landscape is in flux, using international standards also provides confidence to local and international stakeholders.

Key Points for Implementation

- **Apply international standards on responsible business conduct** to operations in and with business partners in Myanmar. This commitment could be as part of the company's policy commitment (see Recommendation 3 below).
- ## 3. Adopt a policy commitment to responsible business conduct, including a commitment to respecting human rights, and ensure the policy is embedded across the company and communicated widely to stakeholders.

The global ICT sector has become an active participant in ongoing discussions about internet governance, and the role of governments and the private sector in respecting human rights within the ICT sphere. Some of the larger ICT companies belong to

international initiatives,⁵⁸⁰ participate in the various international discussions on human rights⁵⁸¹ and have specific human rights policies. They provide some models for how companies operating in Myanmar, especially newly emerging Myanmar companies, can begin to address these challenges in the complex Myanmar operating environment.

Key Points for Implementation:

- **Adopt a policy statement that commits the company to respecting all internationally recognised human rights.** Such a public policy commitment is important because it signals that top management consider respect for human rights as a minimum standard to conduct business with legitimacy. In a break from the past, a small number of Myanmar companies have begun to adopt human rights commitments and even report on implementation.⁵⁸² Such commitments signal to local stakeholders a break with the past, and to international business partners an awareness of, and commitment to, operating in accordance with international standards.
 - **Ensure the human rights policy commitment clearly explains how it applies** to company workers (employees and other workers) and business partners, and how it is relevant to the human rights risks of the sector.
 - **Ensure that other operational policies and processes** are consistent with the human rights commitment:
 - All ICT companies handle sensitive personal information, whether it relates to their own workers, business partners or customers and users. Companies in the ICT value chain should have clear and accessible **privacy policies** that explain the company's policy on protection and its use or sale of customer's data. They should provide an explanation of the company's policy on responding to requests for personal information, whether from government, from other companies or from individuals or groups.
 - For ICT companies that interact directly with users or customers, the company's Terms of Service, "user community" guidelines or similar documents, should explain the use of the company's services in clear and accessible language, including in Burmese
 - Given the current lack of data protection standards in Myanmar, companies should look to international standards for appropriate models for protect user data, as there are no national laws to refer to.
 - **Focus on simply and clearly communicating risks** to users, including regarding its terms of service, privacy policy, amongst others. This may include taking a more proactive approach towards communicating with users by integrating graphic icons that are visible when a user engages with online content.
4. **Take account of local complexities and legacies when assessing the impacts both operations and business partners may have, and integrate and act on these findings.**

⁵⁸⁰ For example, the [Global Network Initiative](#), a multi-stakeholder group of companies, civil society organizations (including human rights and press freedom groups), investors and academics participating in a collaborative approach to protect and advance freedom of expression and privacy in the ICT sector.

⁵⁸¹ See for example, the [Freedom Online Coalition](#), the [Global Conference on Cyberspace](#), [The OECD Global Forum for Responsible Business Conduct](#), the [Stockholm Internet Forum](#), [RightsCon](#)

⁵⁸² MCRB, [Pwint Thit Sa/Transparency in Myanmar Enterprises report](#) (2014)

The ICT sector is evolving rapidly in Myanmar, alongside the other rapid changes in society, in a headlong rush to develop and make up for the many years of isolation. Because the situation is changing so rapidly, and because the Government has embarked on an active programme of legislative reform for the sector, ICT sector companies should consistently scan their operating environments to understand the human rights risks that may be created by government actions, or by their own operations, or those of their business partners.

Key Points for Implementation

- **Carry out on-going assessments** during the course of operations to understand the national, regional and local contexts and changes to those contexts. The assessment should explicitly consider the risks and impacts the company could pose to people and their human rights, and risks of contributing to or being directly linked to government or business partners' actions that violate human rights.
- Ensure assessments include **consideration of the considerable gaps in the existing legal framework** identified in Recommendations 2 and 3 to the Myanmar Government (and throughout this SWIA Report), and seek to fill those gaps by operating to international standards.
- Ensure assessments focus in particular on the **thematic risks** identified throughout this SWIA in each of sub-chapters, for example:
 - concerns around the incomplete land and labour legal frameworks;
 - the pervasive presence of child labour, the lack of protection for groups at risk, particularly ethnic and religious minorities;
 - the many risks to freedom of expression and privacy created by the vague legal framework and continued government violations; and
 - the assessments should also focus on how business partners are handling these high risk issues. For example, the field research highlighted the - at times - particularly harsh working conditions for those digging fibre trenches to lay cable, as well as some dangerous working conditions at both tower sites. The operators or companies responsible for the infrastructure should ensure that working conditions do not involve benefiting from bonded labour or other exploitative conditions and instead provide decent work under safe working conditions.
- **Integrate conflict issues** into assessments when operating in areas of latent, existing and potential armed conflict – at all phases of operations – including through consultations with key stakeholders in conflict-affected areas.
- **Implement prevention and mitigation actions that reflect the local context**, and take early steps to act on them. These may include:
 - insisting on a consultative process for land acquisition;
 - reviewing the use of, and working conditions for, temporary workers;
 - ensuring that all workers (directly employed and in the value chain) have valid documentation on their employment status;
 - taking all necessary measures to ensure there is no benefit from any form of child or forced labour, including bonded labour, within operations or through sub-contractors;
 - ensuring that the company and its business partners have procedures in place to protect data privacy;
 - take down hate speech posted or transmitted via company services.
- Ensure risk assessments include **existing and potential business relationships**, going beyond just ensuring that business partners are not, nor have been, on the US sanctions list. Given the past involvement of some businesses in government or military related human rights abuses, careful due diligence is necessary including

around the company's commitment to responsible business practice, transparency and international standards. MCRB's Pwint Thit Sa/TiME project is intended to encourage increased transparency by Myanmar businesses by rating them based on information they publish on the internet in the areas of anti-corruption, organizational transparency, and human rights, health, safety and the environment.⁵⁸³

5. Track responses to risks and impacts and communicate externally on the effectiveness of responses.

Given the rapidly changing situation in Myanmar, tracking performance will be important to understand whether adjustments need to be made to operating procedures by the company or in dealing with its business partners, especially contractors and sub-contractors, including around working conditions. Larger, international ICT companies are starting to report on the requests they receive from governments and copyright holders to disclose information. Some of those companies are already reporting on requests they receive from the Myanmar Government.

Key Points for Implementation:

- **Track responses to the risks identified and acted on** (see Recommendation 4) and communicate to stakeholders about the actions the company takes. Consider how workers, communities, users, customers and others potentially affected by company operations can be involved in monitoring.
 - For example, hold regular workshops/meetings with key stakeholders to discuss the implementation of human rights due diligence and elicit feedback and recommendations for continued improvement.
 - Myanmar labour law requires an employer with more than 30 workers to form a Workplace Coordinating Committee (2 representatives of workers, 2 representatives of employer) whether or not there is labour organisation (e.g. union) in the enterprise. This kind of joint committee provides the outlet for mutually beneficial joint monitoring of working conditions by workers and the enterprise.
 - Proactively **report on the requests received from the Myanmar Government** (at all levels) for lawful interception, communications data, content removal and website blocking, and requests for network shutdowns, in order to stimulate further transparency around what the government is asking companies to do and how companies are responding.
 - For companies in the value chain that provide services to the public, **make it easier for Myanmar users to communicate** by providing services in local languages and offering services that come pre-loaded with Myanmar fonts.
- ## 6. Engage with potentially affected stakeholders, particularly workers, communities, customers and users, to build understanding and demonstrate transparency and accountability.

⁵⁸³ MCRB, [Pwint Thit Sa/Transparency in Myanmar Enterprises report](#) (2014). The 2015 report will cover around [100 large Myanmar companies](#). Each company will be rated based on the information on these issues provided on the company's official website or social media pages [on the basis of 35 questions](#) relating to anti-corruption, organizational transparency, and human rights, health, safety and the environment. See also: <http://business-humanrights.org/en/myanmar-foreign-investment-tracking-project> for information about the transparency of foreign companies investing in Myanmar.

Communication and engagement cut across many recommendations toward improved human rights practices by companies, and are integral to their success. Sincere, on-going two-way engagement with workers, workers' representatives, users and communities is one of the most valuable things a company can do to prevent and mitigate risk, particularly in the Myanmar context where there has historically been a lack of trust of companies by communities and others.

Key Points for Implementation:

- Proactively undertake and invest in **ongoing and meaningful engagement** with workers, workers representatives, users and communities throughout the project lifecycle, including at early stages of activities and key operational moments where risks change.
- Consider whether **those whom the company seeks to engage could be put at risk** from participating
- Provide basic information to **users and customers about how to stay safe online** by protecting personal data, and support digital literacy growth for users, including the need to manage their “digital footprint” across devices and services.
- Proactively **provide information in a variety of formats** and understandable local language(s) on key issues that are of concern to the Myanmar public, such as the health and safety impacts of mobile phones and cell towers.
- **Online consultation and communication** is nascent in Myanmar, but webchats could be a form of communication with stakeholders who are increasingly expecting to access responses from companies via their Facebook pages..

7. Put in place mechanisms that can address concerns and grievances quickly and effectively.

There are few outlets in Myanmar for effective resolution of grievances either through judicial or non-judicial measures. This makes company-based alternatives all the more important to ensure issues are identified early and quickly addressed before they escalate. One of the most systematic ways for a company to remediate impacts is through an operational-level grievance mechanism that is accessible directly to individuals and communities who may be adversely affected by the business and which can act as an early warning system about concerns. As with other dimensions of the corporate responsibility to respect human rights, the expectation that companies provide a remedy for harm they are involved in applies to all companies, foreign and Myanmar⁵⁸⁴.

- **Set up an accessible and local information point** for all issues concerning larger projects, and in particular network infrastructure. This could simply mean putting contact phone numbers on infrastructure if local villagers want to raise concerns about the equipment; it could also be a network of locally based liaison officers, or community volunteers with a two-way connection to the company.
- **Develop a mechanism (or mechanisms) that provides accessible and effective processes for users, workers or communities to address concerns directly** about a company or its business partners. Accessibility will need to be considered carefully in light of the services the company offers, local languages, availability of ICT services, or whether “toll free” services are available to call so that users do not have to pay. Some of the larger Myanmar based companies are just beginning to

⁵⁸⁴ MCRB's, [Pwint Thit Sa/Transparency in Myanmar Enterprises](#) surveys companies for whether they have operational grievance mechanisms.

address the need for establishing grievance mechanisms for workers, communities and civil society.⁵⁸⁵

- **Design any operational grievance mechanism with community input** and consistent with the effectiveness criteria under the UN Guiding Principles on Business and Human Rights. It should guarantee that there will be no retaliation against complainants inside and outside the company, and that complainants are free to choose whether to use the company's mechanism or opt for remediation processes by state or third-party institutions.
- **Engage in dialogue with workers.** As noted above, employers with more than 30 workers, must under Myanmar Law form a Workplace Coordinating Committee (2 representatives of workers, 2 representatives of employer) whether or not there is labour organisation (e.g. union) in the enterprise. This will be an important avenue for opening dialogue with workers. Companies must commit to prevent retaliation against workers raising complaints.
- **For ISPs and "Over the Tops":** Develop community standards about the kind of content permitted on the site and mechanisms for users to report about content they find disturbing (such as a "Report Concerns" button or link on the website). Undertake basic user education campaigns to ensure such mechanisms are known and effective.

8. Take collective action where appropriate to address human rights, social and environmental issues.

There is a value to companies in the ICT sector coming together to approach sensitive topics collectively and sharing lessons learned on applying international standards, including from other comparable countries. Collective action by companies can be more effective, less labour intensive for Government, and reduce exposure for individual companies. It can also promote a more level playing field and reduce the risk that "bad apples" will spoil the reputation of the sector. There are a number of areas where companies may find it relevant to act collectively in discussions with the Government and other stakeholders.

- Collectively engage with the Myanmar Government **on filling the gaps within ICT and cross-cutting laws** to ensure alignment with international standards (See Government Recommendations 2 and 3);
- Collectively approach the Government on **applying international human rights standards around peaceful protest**, which are increasingly taking place using ICTs.
- Promote **learning on human rights issues** between foreign and Myanmar companies through engagement and support the creation of a sector-wide ICT industry association that includes foreign and domestic companies to support a coherent and coordinated approach to collective engagement.
- Work with development partners to **adapt education and vocational training** programmes to build skills for the ICT sector, and programmes to support SMEs.
- Support the variety of efforts across the country to **promote peaceful freedom of expression**, to diminish hate speech, and to eliminate hate speech on ICT's.

9. Develop strategies for creating positive impacts at the local, regional and national level

⁵⁸⁵ On 27-28 January, MCRB held "[Multi-Stakeholder Workshop on Community Engagement in the Extractive Industries](#)" by over 100 representatives from government departments, oil, gas and mining companies, civil society organisations from across Myanmar as well as international NGOs and donor organisations.

- **Develop social investment programmes with, for and by communities and/or users** to ensure a focus “strategic CSR” and ensure engagement and transparency around such programmes, including an annual public report and budget.
- **Promote small business and entrepreneurship programmes** to improve the ability of local businesses to meet ICT operator and subcontractor needs.
- **As banking and mobile money facilities are rolled out**, develop clear and accessible descriptions of terms, restrictions and fees, as well as grievance mechanisms for unreliable services. Support the education of users and customers to develop basic skills in sound financial management.
- Given the very low level of employment for people living with disabilities or even access to services, **commit to providing ICT services that are accessible to the disabled and improve livelihoods for people living with disabilities** in the country.
- Work with the government and other stakeholders to **provide centralized access to language localization resources**.

Part 6.3

Recommendations to CSOs and Human Rights Defenders

1. Engage actively in commenting on and debating ICT policy, legal and regulatory framework changes.

Myanmar is in the process of developing or revising significant parts of the policy framework (such as the Master Plans cited in Government Recommendation 1), the laws and important regulations (such as under the 2013 Telecommunications Act) (see Government Recommendations 2 and 3). The staff and consultants working on these areas will be technical experts but potentially unfamiliar with the impacts on human rights of their policy advice. Active civil society participation in commenting on these changes will be important in ensuring that the final regulatory structure is appropriately balanced to provide for an efficient and effective ICT sector that guarantees protection of data and privacy and contains appropriate human rights safeguards.

2. Hold companies to account on responsible business conduct, including around human rights.

There is an active, global discussion worldwide on the responsibility to respect human rights by companies in the ICT sector.⁵⁸⁶ Some of these discussions focus on company conduct and others focus on the increasingly complex interplay between companies and governments, in terms of the appropriate limits to government power to request or directly access private data held by companies. Some of the initiatives in the area are multi-stakeholder, with companies and civil society (and sometimes also with government) working on solutions together. Many of these resources have been cited throughout this SWIA Report (see the boxes on International Standards and Guidance, as well as Myanmar Linked Initiatives, at the end of each chapter in Parts 4 and 5). They provide guidance on what can be expected of companies in the ICT value chain that can be used by CSOs to engage in informed discussions with companies operating in Myanmar.

3. Encourage companies and government to engage in multi-stakeholder discussion on human rights, social and environmental issues within the ICT sector.

There is no existing multi-stakeholder initiative in Myanmar that will bring together companies, government and civil society into a common framework for discussion on ICT issues. The ICT Sector Working Group⁵⁸⁷ involves only government and international donors. The US Embassy has initiated the US ICT Council for Myanmar with support from the Myanmar Computer Federation. Under the Open Government Partnership, the government must consult civil society on its action plan. However OGP does not cover all the issues relevant to building appropriate safeguards into the ICT sector. At this stage,

⁵⁸⁶ See for example the [Business and Human Rights Resources Centre website on information technology](#) and developments concerning companies in the sector:

⁵⁸⁷ See "[sector working groups dashboard](#)"

there are still opportunities to shape the long-term direction of the sector, learning lessons from elsewhere. Developing a multi-stakeholder discussion on the ICT sector could help further focus government commitment in implementing a people-centred approach, in line with growing international developments on a balanced approach to internet governance.⁵⁸⁸ The Myanmar Centre for Responsible Business (MCRB) stands ready to support such dialogues.

4. Initiate and support efforts to educate the Myanmar public about safe and peaceful behaviour online, including counter-speech.

There is a clear role for civil society in helping to educate users on the dangers and opportunities of accessing ICTs in Myanmar. Given the wide range of languages in the country, it would be particularly useful for civil society to make available information in Burmese and other languages, including clear and accessible explanations, training, awareness raising campaigns, amongst other approaches. There is also a clear role for civil society in responding to and countering “hate speech”, and providing concrete examples where online communities can support efforts around peaceful expression.

5. Increase media reporting on ICT sector.

Given the importance of the ICT sector to Myanmar, media outlets should step up informed reporting of the sector and its impacts to improve transparency, company and government accountability, and public understanding.

⁵⁸⁸ See for example the [Global Commission on Internet Governance](#) as one example.

Part 6.4

Recommendations to Development Partners & Home Governments

1. Support the strengthening of human rights and social and environmental considerations within policy, legal and regulatory framework improvements, especially those highlighted in Recommendations 2 and 3 to the Myanmar Government.

Key Points for Implementation:

- **Support the Government in the introduction of an effective framework for the ICT sector that includes appropriate safeguards.** A number of partners including the Asian Development Bank (ADB), the World Bank, and the European Union (EU) are working on parts of the ICT regulatory framework. Given the past history of the country, it will be important to support the Government through both appropriate technical advice and political messaging, to ensure that the regulatory frameworks being put in place appropriately safeguard human rights. The revised frameworks being supported with donor funding should not open the way to the Government falling back into habits of surveillance and potential repression, for example because the regulatory framework has been too broadly worded to allow wide latitude in interpreting and implementing the law. Development partners should ensure that the consultants hired by them or through the international financial institutions are providing appropriate advice on both technical matters as well as advising on the balance to be struck in regulatory frameworks to ensure human rights are safeguarded.
- Monitor whether the Government has developed its **regulations on lawful interception** in line with the specific safeguards (building on international law and good practice)..
- Support **rule of law changes** that should provide the kinds of **on-going checks and balances in the system** that will be necessary to ensure that the implementation of the ICT regulatory framework is appropriately framed (as above). For example, the Government has indicated that it will require judicial review of lawful interception requests made by the Government. That is an important step and in line with good practice, but it will be important to ensure that the judges receive appropriate training on their tasks and are part of a broader programme to strengthen the rule of law in Myanmar.
- Support programmes to **develop civil society capacity** to engage effectively with the Government on the extensive ICT reforms and with ICT companies (see the Recommendations to CSOs and Human Rights Defenders above).
- Support programmes to **develop media capacity** to report on ICT issues.
- **Encourage the international financial institutions (IFIs)** working on ICT sector reform in Myanmar to make information and expertise available in order to engage a wider portion of Myanmar civil society and the population in the work they are doing.

2. **Support implementation of the corporate responsibility to respect human rights by Myanmar and international companies.**

Key Points for Implementation

- **Home country governments should proactively express their expectations of companies domiciled in their country that are investing, or are looking to invest, in Myanmar.** This should include clear expectations that they should operate in line with the UN Guiding Principles on Business and Human Rights and, where relevant, the OECD Guidelines on Multinational Enterprises, including the requirements on disclosure. They should encourage companies to apply the IFC Performance Standards and WBG Environmental, Health and Safety Guidelines in the absence of Myanmar laws that provide for a higher standard.
 - **Consider adopting reporting requirements modelled on the US Reporting Requirements on Responsible Investment in Burma,** or other reporting requirements for companies on environmental, social and human rights impacts (such as in the EU), and encourage companies reporting specifically on Myanmar as a high-risk country for human rights.
 - **Support the Government of Myanmar in introducing standards for responsible business conduct** for companies operating in Myanmar (See Recommendation 9 to Government above).
3. **Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.**

Key Points for Implementation

- **Ensure that investment, free trade, and other international economic agreements are coherent** with each country's or inter-governmental organisations' (in the case of the European Union) international obligations, including its international human rights treaty obligations, and makes reference to the UN Guiding Principles on Business and Human Rights.
- **Ensure that each party to such agreements has preserved sufficient "policy space"** (freedom to make policy changes and choices after the agreement is formalised) for further changes to domestic policy that can improve environment, social and human rights protections. Governments should ensure that those agreements reinforce rather than restrict good governance and responsible business practices.

Part 6.5

Recommendations to Investors

1. Conduct due diligence on companies in their portfolios that are involved in the ICT sector in Myanmar.

*This should include **enhanced due diligence regarding their policies, systems, reporting and responses to specific human rights challenges in Myanmar.***

Investors should understand if the companies they invest in are creating risks to human rights and if so, the steps the companies are taking to prevent and mitigate those risks and remedy impacts.

2. Engage with investee companies involved in the ICT sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.

*This might involve **direct engagement or participation in shareholder actions.***

3. Urge companies doing business in the ICT sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.

The US Government's Reporting Requirements on Responsible Investment in Burma could be used as a framework for such disclosures.

Part 6.6

Recommendations to Users

1. Undertake basic steps to protect your privacy and security while using ICTs

■ When using social media

- Avoid publicly sharing personal information such as bank statements, address, email address, date of birth or mobile phone numbers on social media or mobile applications
- Use privacy settings to control what other users can see or access on your profile.

■ When using online services

- Use strong passwords, which:⁵⁸⁹
 - Are at least eight characters long
 - Do not contain your user name, real name, organization name, or a complete word
 - Are significantly different from previous passwords
 - Contain uppercase letters, lowercase letters, symbols and numbers
- Avoid using the same password for different services eg Facebook and Gmail. Keep these passwords safe and confidential.

■ When using email

- Avoid opening emails with file attachments from unknown senders.
- Use a different email address for online services than the email address used for personal email communication.

■ When browsing the Internet

- Use “private browsing” settings in Chrome, Firefox, Safari, or Internet Explorer. Private browsing prevents websites from remembering your login information and prevents your browser from logging websites you visit under your browsing history.

⁵⁸⁹ Microsoft, “[Tips for Creating a Strong Password](#)” also see Micah Lee, The Intercept, [Passwords you can Memorize- But That Even The NSA Can't Guess](#) (26 March 2015) for additional guidance on designing strong passwords.

Annex to the Recommendations

The Characteristics of a Rights-Respecting Lawful Interception Model

Purpose

At the time of this report, a key part of Myanmar's telecommunications framework on lawful interception (LI) had yet to be finalised. Regulators need to clarify the capabilities and the uses of communications surveillance technology used for lawful interception and define the limits of lawful communications surveillance.

In recent decades, both physical and communications surveillance was widely conducted in the absence of a legal framework or oversight. There is an opportunity to develop one with legal protections which respects human rights, as part of the wider 'people-centred' reforms, and to take a leadership position within the region. Such a lawful interception framework will build trust in the use of Myanmar's ICT services among users, service providers and other governments by being robust and aligned with international human rights standards.⁵⁹⁰

As outlined above, the only existing legal framework is Clause 75 of the 2013 Telecommunications Law, which allows interception but does not clearly articulate definitions or justifications.⁵⁹¹ The Government of Myanmar has asked the European Union for technical assistance in drafting implementing legislation. To assist this drafting process, MCRB has conducted preliminary research into what the characteristics of a human rights respecting model of lawful interception might look like in Myanmar. These findings are presented below and aim to provide useful information to the Government of Myanmar and other stakeholders involved in drafting this legislation, including the 2016 Parliament.

These recommendations⁵⁹² set out the principle considerations as the Government of Myanmar begins to develop an approach to regulation and legislation on communications surveillance covering 7 main issues:⁵⁹³

⁵⁹⁰ See for example: See for example the [Global Conference on Cyberspace 2015](#), the [Global Commission on Internet Governance](#)

⁵⁹¹ See unofficial English translation of the [Telecommunications Law](#) (2013)

⁵⁹² These recommendations draw on recent reports to the UN General Assembly and Human Rights Council, including the [Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/23/40](#) (June 2013); [The Right To Privacy in the Digital Age](#), UN Resolution 68/167 adopted 21st January 2014; [Report of the Office of the United Nations High Commissioner for Human Rights](#), presented to the Human Rights Council in September 2014 A/HRC/27/37 and the [Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#) to the UN General Assembly in September 2014 A/69/397

⁵⁹³ The issues addressed cover both lawful interception (real time access to communications) and access to historical data (which has a number of different terms in law in different jurisdictions including communications data and metadata,

The Characteristics of a Rights-Respecting Lawful Interception Model

1. Prerequisites
2. Authorisation Processes
3. Oversight
4. The notification of individuals
5. Remedy
6. Transparency
7. Provision for Framework Review

1. Prerequisites Before Lawful Interception Should be Considered

- Lawful interception should be undertaken only when other potential measures that could have been used to deal with the criminal or national security threat have been exhausted, for example other police measures that do not involve surveillance.
- Surveillance should be carried out only on targeted suspected individuals and organisations where there is prior suspicion that the targeted subject is suspected of a crime.⁵⁹⁴
- Misuse of intrusive capabilities should be a criminal offence and surveillance used outside the legal frameworks should be prohibited.
- The legal framework authorising lawful interception should be established through primary legislation and debated in the legislative branch, rather than being adopted as subsidiary regulations enacted by the executive. Public consultation and involvement of stakeholders is a vital part of the policy-making process because most of the processes under the legislation will be carried out behind closed doors, without the opportunity for public scrutiny. It is even more important therefore that the public has a say in establishing the framework.
 - i) The Government of Myanmar has committed to a public consultation of draft lawful interception regulations.⁵⁹⁵

2. Authorisation Processes

- Communications surveillance should be authorised by an independent and competent judicial authority prior to surveillance taking place. Some states have a process of executive sign-off rather than judicial authorization. But the prevailing view at the UN level and among civil society is that judicial authorization is preferable.
 - i) The Government of Myanmar has already committed to judicial authorisation.⁵⁹⁶
- Communications surveillance must be limited to that necessary to achieve a legitimate aim and use the means least likely to infringe rights; it must be both necessary and proportionate. An objective assessment of the necessity and proportionality of the contemplated surveillance should be a core part of the authorization process.
- The legal framework should set out which agencies among government bodies can request lawful interception (the requesting agencies).
- The legal framework should also set out the criteria and conditions on which the court will make the decision on whether to authorise the specific requested surveillance.

⁵⁹⁴ See: [UN General Assembly/A/69/397](#) 23rd September 2014

⁵⁹⁵ See the announcement on p5 of the [Public Consultation Issued by the Ministry of Communications and Information Technology of the Republic of the Union of Myanmar. Proposed Rules for Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering, and Competition](#) (November 4, 2013)

⁵⁹⁶ [Telenor Myanmar sustainability presentation](#) (August 19th 2014). See p8 of the transcript.

- Any authorization should be time-bound with a requirement to for the requesting agency to return to the authorising authority to request a renewal as that period of time expires; automatic renewals of surveillance requests should not be permitted.
- The legal framework should set out clear limits on the amount of time data collected can be stored and should require that data is destroyed once the period expires. In addition, it should require that any data illegally collected is immediately destroyed.

3. Oversight

- There is an on-going global debate about the best form of oversight, but increasingly there is interest in mixed models of oversight which incorporate administrative, judicial and parliamentary actors.
- Oversight must be vested in another body (or bodies) that is independent of the authority that originally authorized the surveillance.
- Oversight must be rigorous and not a rubber stamping exercise.
- Consideration should be given to permitting a confidential public interest advocate, for example an independent human rights expert, within the surveillance authorisation process to ensure that appropriate consideration is given to the human rights implications of the request. This is particularly important given the high degree of secrecy of authorisation processes that relate to national security.
- The oversight body must have access to all potentially relevant information to enable it to evaluate whether the State is carrying out its activities in a lawful way. This must include secret and classified information. Third parties, for example companies, should have the ability to bring relevant information to the oversight body.
- The oversight body must have the resources and expertise to be able to carry out effective oversight.
- Within the oversight regime there must be regular reporting to the public on whether the Government is carrying out its surveillance activities appropriately, in a way that helps the public understand whether the Government has followed the procedures.

4. Notification of Individuals under Surveillance

- It is understood that there will be times when individuals cannot be notified that they are under surveillance as to do this could jeopardise the surveillance itself.
- The legal framework should set out the circumstances under which there may be a delay in individuals being notified that they are under surveillance and the authorising body for this.
- At a minimum, users should be notified when their communications have been subject to surveillance when the surveillance is complete so that individuals have the possibility to seek a remedy for surveillance they consider illegal.

5. Remedy

- Individuals need to know whether they have been the subject of surveillance in order to have access to remedy by bringing a complaint.
- Any alleged violation must be promptly, thoroughly and impartially investigated.
- Where a violation is identified it must be possible to end it. For example, the body examining the potential abuse must be able to order the termination of the surveillance and the deletion of data by issuing binding orders.

6. Transparency

- The legal framework concerning communications surveillance must be publicly accessible and set out the nature, scope and time-frame of possible surveillance, the requirements that must be met for surveillance to be authorized, and which authorities are responsible for authorisation, carrying out and supervising the surveillance. The

process for remedy for individuals who have been the subject of inappropriate surveillance must be explained, as should the circumstances in which there can be sharing of information across borders between governments. There should be a clear explanation of each different type of surveillance that is possible. See below for some of the current issues that are being addressed in international and national debates relating to this.

- The publicly accessible information about surveillance set out in the law must be sufficiently clear and precise for individuals to be able to understand it and foresee how the law might be applied to them.
- To promote government accountability, the Government should produce as a minimum, the aggregate yearly figures on the specific number of requests for surveillance it has made, including the number accepted and rejected, details of the way in which it has been using its powers, and information broken down by specific legal authority for example, wiretaps, the number of requests to service providers, etc.

7. Provision for Periodic Review of the Lawful Interception Framework

- Given the speed at which technology develops, and the potential for communications surveillance to infringe rights, it is important that there is provision within the legislative or regulatory framework for periodic review of the law to ensure rights are protected.

Other Considerations to Take into Account in Drafting the Legal Framework

Consistency between the regulation, law and practice

- Embedding human rights principles into the regulation and laws that provide the framework for interception and surveillance is insufficient on its own.
- The agencies requesting surveillance must be required to consider the human rights implications in the requests that they make. This should include consideration of whether any less intrusive methods are possible, to ensure that the issue of proportionality is addressed.
- There should be training on the human rights implications and their obligations to consider them for all agencies who have the powers to make requests. Training the judiciary is also required.
- Accompanying the legal framework there should be a more detailed code of practice that sets out how the law is intended to work in practice.
- Where there is more than one law or regulation in place (e.g Telecoms Law, National Security Law, Tax, Drug Enforcement, Cybersecurity legislation etc) there must be consistency in the human rights safeguards in place and clarity provided on which law has primacy in which circumstances.

The role of companies providing service to users

- Service providers should not be compelled to modify their infrastructure to enable direct surveillance which eliminates the opportunity for judicial oversight.
- Any request to service providers for access to communications content or data should be provided in writing, explaining the legal basis for the request including the requesting government entity and the name, title and signature of the authorized official. Although it is preferred for requests to be provided in writing it is recognized that there are certain exceptions provided for by law, for example emergency situations and immediate risk to life where oral requests are acceptable, providing they are followed up in writing.
- Service providers should have the right to seek clarification or modification to a request which does not seem to follow domestic legal procedures (which in turn should incorporate the internationally accepted human rights protections)

Areas of Current International and National Debate on Lawful Interception

- Many countries require a higher degree of authorisation for access to communications content than they do to access communications data or metadata. Metadata / communications data can give more insight into a person's life than was historically the case with simple telephone call and duration information, for example, mobile location data. This has resulted in an active debate about whether this lower level of protection that is given to communications data or metadata is still appropriate. Some countries have recommended the consideration of a third category of data, in addition to communications content and metadata/communications data. This proposed third category would give greater protection to certain types of communications data considered more sensitive, such as websites visited and a user's location from a smartphone.
- The leaks from Edward Snowden regarding the surveillance activities of the US National Security Agency (NSA) and the UK Government Communications Headquarters (GCHQ) have put the spotlight onto "mass surveillance." There is no international agreement on what this term means in different jurisdictions. At a UN level there is serious concern about communications surveillance authorized on such a broad and indiscriminate basis. This runs counter to the core concept of the protection of privacy which requires justification to be made on a case-by-case basis.
- The issue of whether nationals of a particular country should enjoy higher protections than non-nationals is a current debate. The International Covenant on Civil and Political Rights (ICCPR) by its terms provides protection to all, without distinction based on nationality.
- Laws that authorise extra-territorial surveillance or the interception of communications in foreign jurisdictions are problematic, for example because of an individual's inability to know if they are subject to surveillance and therefore potentially seek redress.