



Myanmar
Submission to the Human Rights Council at the 37th
Session of the Universal Periodic Review
Summary

Myanmar is a signatory to the Universal Declaration of Human Rights ('UDHR') but it has not ratified the International Covenant on Civil and Political Rights ('ICCPR'). Article 12 of the UDHR provides that *"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"*. The Constitution of the Republic of the Union of Myanmar under Section 357 reads: *"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"*.

Of particular concern is the lack of **legal frameworks to protect the right to privacy**, through effective regulation of **data processing** and **lawful surveillance**.¹ At the same time, Myanmar is proposing to introduce two data intensive systems: a **national digital ID scheme** and **biometric SIM registration**². Identity systems impact a broad range of rights other than privacy: rights to dignity, liberty and movement, equality, non-discrimination, and rights of the child.³ In light of the current human rights situation in Myanmar, introducing these systems without adequate privacy safeguards and reform of the current citizenship framework risk exposing already persecuted minorities to further discrimination, exclusion and surveillance.⁴

Concerns of such systems being adopted in a legal void and without effective safeguards in place to protect people and their fundamental rights were highlighted by the UN High Commissioner for Human Rights who noted in its 2018 annual report to the UN General Assembly that *"the creation of mass databases of biometric data raises significant human rights concerns"*.⁵

The obligations on States was further emphasised in the UN General Assembly resolution on the right to privacy in the digital age: *"Noting the increase in the collection of sensitive biometric information from individuals, and stressing that States must respect their human rights obligations and that business enterprises should respect the right to privacy and other human rights when collecting, processing, sharing and storing biometric information by, inter alia, considering the adoption of data protection policies and safeguards."*⁶

¹ See Privacy International's submission to the 23rd Session of the Universal Periodic Review, *The Right to Privacy In Myanmar* https://privacyinternational.org/sites/default/files/2017-12/Myanmar_PI_UPR%20Stakeholdersubmission.pdf

² See <https://privacyinternational.org/news-analysis/3303/myanmar-dangerous-plans-biometric-sim-card-registration-must-be-scraped>

³ See: Privacy International, *A Guide to Litigating Identity Systems: Impacts on Rights other than Privacy*, Nov 2020 https://privacyinternational.org/sites/default/files/2020-09/PI_A%20Guide%20to%20Litigating%20Identity%20Systems_Impact%20on%20Other%20Human%20Rights.pdf

⁴ Similar risks have prompted various legal challenges of national identity systems before national courts. See: Privacy International, *A Guide to Litigating Identity Systems*, November 2020, <https://privacyinternational.org/learning-resources/guide-litigating-identity-systems>

⁵ UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age*, 3 August 2018, UN Doc. A/HRC/39/29, para 14

⁶ UN General Assembly Resolution 73/179, 17 December 2018

A national digital ID scheme in Myanmar raises serious concerns for human rights, due to the close relationship between the current citizenship framework in Myanmar, the provision of identity documents, and the commission of serious human rights violations.⁷

Recommendation:

- Proposals for a national digital ID and biometric SIM registration should be paused until necessary safeguards are in place and legal framework established to protect people, their data and their fundamental rights.
- Ensure sufficient legal frameworks are in place to effectively regulate the processing of personal data before any data is collected as part of such systems.
- A timeline for introducing legislation to cover data protection, surveillance, non-discrimination should be made public, and these laws should be adopted prior to the deployment of the national digital ID and biometric SIM registration.

⁷ See the Joint Submission to the Human Rights Council at the 37th Session of the Universal Periodic Review by SMILEMyanmar, The Seagull: Human Rights, Peace and Development, Free Rohingya Coalition (FRC), Burmese Rohingya Organisation UK (BROUK), the International State Crime Initiative (ISCI) and The Institute on Statelessness and Inclusion (ISI)
https://files.institutesi.org/UPR37_Myanmar.pdf

The Report by the UN Special Rapporteur on Contemporary Forms of Racism to the 75th Session of the General Assembly, *Racial and xenophobic discrimination, emerging digital technologies in border and immigration enforcement* 10th November 2020 A/75/590, p13

United States Mission to the United Nations, *Joint statement after UN Security Council consultations on Myanmar*, 11 September 2020 <https://usun.usmission.gov/joint-statement-after-un-security-council-consultations-on-myanmar/>