



CENTRE FOR LAW
AND DEMOCRACY

Myanmar

August
2023

Analysis of the Organisation Registration Law

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Table of Contents

<i>Executive Summary</i>	ii
<i>Introduction</i>	1
1. Background	2
1.1. History of Other Laws Governing Civil Society in Myanmar	2
1.2. Relevant International Human Rights Law and Standards	3
2. Mandatory Registration	5
2.1. Requirements under the NGO Law.....	5
2.2. Assessment against International Standards.....	7
3. Regulatory Entities Responsible for Implementation	8
3.1. The Ministry of Home Affairs and the General Administration Department.....	8
3.2. NGO Registration Boards.....	10
3.3. Assessment against International Standards.....	11
4. Registration and Renewal Procedures	13
4.1. Requirements under the NGO Law.....	13
4.1.1. Domestic Organisations	13
4.1.2. International Organisations	15
4.2. Assessment against International Standards.....	16
5. Sanctions and Cancellation of Certificates	18
5.1. Administrative Sanctions	19
5.2. Criminal Sanctions.....	20
5.3. Assessment against International Standards.....	21
6. Reporting Requirements, Oversight and Inspection Powers	23
6.1. Requirements under the NGO Law.....	23
6.2. Assessment against International Standards.....	25
7. Restrictions on Activities and Advocacy	27
7.1. Requirements under the NGO Law.....	27
7.2. Assessment against International Standards.....	28
8. Conclusion and Recommendations	29



Executive Summary

Myanmar’s State Administration Council, which has claimed law-making authority since the military seized power in the 2021 coup, issued an Organisation Registration Law (NGO Law) in October 2022. This Law poses a serious threat to basic civil society operations, with potentially deadly consequences given the acute humanitarian needs in Myanmar. It eliminates the more progressive features of the 2014 NGO Law and instead institutes new rules that will constrain the work of NGOs and enable military surveillance.

This Analysis assesses the 2022 NGO Law based on international human rights standards. Human rights law protects the right to freedom of association, including the right to form groups with others for various purposes. It also protects freedom of expression, including in association with others. States can only restrict these rights in accordance with a three-part test which requires restrictions to be clearly provided for in a law, to protect a legitimate interest and to be a necessary to protect that interest.

Mandatory NGO Registration

The NGO Law makes it a crime to establish or operate an organisation without registration without defining clearly which groups must register, while also providing that government-created organisations are not required to register. Groups which “directly or indirectly” operate in the political, economic or religious spheres are prohibited from registering.

According to international law, mandatory NGO registration is never appropriate. The right to associate includes the right to associate informally with others. Mandating registration also makes it much easier to harass NGOs.

Implementing Authorities

The main implementing authorities are the Ministry of Home Affairs (MOHA), the General Administration Department (GAD) and NGO registration boards. Under Myanmar’s Constitution, MOHA is a military-led ministry the head of which was replaced on the day of the coup. Since the coup, steps have been taken to reinforce military control over GAD. While GAD has historically been associated with intelligence-gathering, it now has a more powerful role in the registration boards, new inspection powers and receives quarterly reports from NGOs.



The NGO Law reconstitutes the NGO registration boards created by the 2014 NGO Law but, once again, since the coup military control over them has been increased. Among other things, the NGO law provides for far less diversity on these boards, consolidating GAD's influence and removing the NGO representatives which served on more local-level boards. And because the Law does not specify a total number of board members, boards can be stacked with military-friendly representatives.

According to international law, NGO registration bodies should be independent, neutral, transparent and not subject to excessive government control or discretion and certainly not subject to military influence. They should also include civil society members. The newly constituted NGO boards fail to meet these standards and are vulnerable to military interference and oversight, given the role of GAD.

Registration and Renewal Procedures

Domestic NGOs, to register, must submit a range of information, including their intended activities, a listing of cash and assets, their activities and a recommendation from the relevant sector ministry. Under the NGO Law:

- NGOs should receive a temporary certificate in 21 days but, unlike under the 2014 NGO Law, there is no longer a clear deadline for the board to make a final decision.
- NGO boards must scrutinise the application before making a final decision and they are supposed to assign a government department to conduct pre-screening.
- Registration boards can refuse to register groups which may affect sovereignty, rule of law, security or national unity and also have other grounds for denying registration.
- Registration fees are increased as compared to the 2014 NGO Law.
- Registration certificates must be renewed every five years and, unlike under the 2014 NGO Law, there is no presumption that renewal will be granted.

Additional requirements apply to international NGOs:

- They must have an executive committee with 40% Myanmar nationals.
- They must provide additional letters of recommendation from other ministries, their sources of funding, permission from the relevant local administration and a draft MOU.

According to international law, registration procedures should not be overly intrusive, complex, expensive, ambiguous or lengthy. Registration renewal should not be required. If registration boards can deny registration, it should only be on limited grounds and subject to the three-part test for restrictions on freedom of association. In contrast, the NGO Law substantially complicates NGO registration and easily enables boards to deny registration.

Sanctions and Cancellation of Certificates

The registration boards can impose administrative sanctions on NGOs including a warning, a temporary restriction on activities, a temporary suspension or the cancellation of the certificate of registration. These sanctions can be imposed for failing to comply with a long list of duties including:

- Providing false information when applying for a certificate.
- Pursuing unapproved activities or changing certain operations without approval.
- Using the NGO's name to interfere in government functions.
- Failing to submit required reports.
- Refusing to allow government inspections and inquiries.
- Not having the capacity to implement their stated objectives and activities.
- Failing to comply with the NGO Law, its regulations or other laws.

Registration boards may also cancel certificates if NGOs interfere in politics or internal State affairs or commit a crime, or if international NGOs conspire to harm sovereignty or security.

The NGO Law also creates several new crimes:

- Establishing and operating an unregistered NGO (fine or three years' imprisonment).
- Operating with a cancelled or expired certificate (fine or two years' imprisonment).
- Membership in, "encouraging" or carrying out activities for an unregistered NGO (fine or two years' imprisonment).
- Other crimes result in penalties for individual NGO workers, including:
 - Illegal money management or using the NGO's name to benefit a political party or religion or for any benefit beyond "social activities" (which cannot be political, economic or religious) (three years' imprisonment and/or a fine).
 - Contacting or supporting associations declared to be unlawful or engaged in armed struggle or terrorist acts, or directly or indirectly harming sovereignty, law and order, security or national unity (five years' and/or a fine). The NGO itself will also have its registration cancelled and assets confiscated.

According to international law, only very serious infractions, following an order by a judge or at least with prompt judicial review, should result in suspension or dissolution of an NGO. NGOs should also be given a warning and an opportunity to correct their behaviour before a sanction is imposed. The NGO Law lacks procedural safeguards and its expansive list of infractions does not comply with the three-part test for restrictions on freedom of association.

Imposing criminal sanctions for failing to comply with NGO rules, and in particular imprisonment for operating without registration, is disproportionate. Some crimes are worded so broadly that they could problematically encompass acts like providing humanitarian aid in regions where armed groups are working or issuing commentary deemed to be overly political. These criminal sanctions for ordinary NGO work could constrain civil society activities and does not comply with international human rights law.



Reporting Requirements, Oversight and Inspection Powers

NGOs must submit an activities report every three months to the township GAD administrator. They must also submit an annual financial report which, for national or regional NGOs, must be reviewed by a certified accountant.

Some oversight processes for NGOs in the NGO Law are not clear and also lack clear procedures such that it is not even clear whether they represent distinct procedures, such as:

- Registration boards are supposed to assign a government department to screen NGOs at registration and review complaints about an organisation.
- The government entity that issues a recommendation letter for the NGO or signs a MOU is supposed to report to the registration board on whether an NGO is complying with the rules, triggering a review of NGOs activities by the registration board.

The registration board, government department assigned to the NGO and GAD may all inspect an NGO, review documents and make inquiries of the NGO. NGOs must also obtain approval for basic operational decisions like changing their name, address, executive member or objectives and activities.

Under international law, reporting requirements should not be burdensome. Quarterly activity reports are unnecessary and do not serve a legitimate regulatory purpose. Full audits, which are expensive, should only be required of larger organisations. Authorities should not have broad and undefined monitoring powers over NGOs. An inspection should only occur with advanced notice and be based on reasonable grounds to suspect illegal activity, while any search and seizure should be judicially authorised. The NGO Law lacks such procedural safeguards. It also fails to guarantee NGOs independence over their affairs, requiring NGOs to seek government approval for basic operational decisions.

Restrictions on Activities and Advocacy

NGOs cannot engage in political, religious or economic activities, even “indirectly” and are instead limited to “social activities” which are approved at registration or obtain approval for changes to those activities. NGOs also cannot operate outside the scope of their registration (so that NGOs registered in one region cannot operate in another without registering at the national level). The only exception is for natural disasters, after obtaining special permission from local administration. Special permission is also required to work in travel restricted areas.

Under international law, as part of freedom of expression, NGOs have the right to participate in public policy debates and to speak on all kinds of topics. Restricting NGOs only to “social activities” is inconsistent with human rights standards. States should not try to align NGO activities with their own agenda, such as by requiring approval of planned activities.

Introduction¹

On 28 October 2022, Myanmar’s State Administration Council (SAC), a military creation acting as a governing body since the February 2021 coup in Myanmar, issued a new Organisation Registration Law (NGO Law).² The NGO Law imposes registration requirements and otherwise regulates non-governmental organisations (NGOs) operating in Myanmar. While some rumours of a new NGO law preceded this announcement, the NGO Law was enacted without any apparent discussion or consultation with civil society.

The NGO Law, which came into effect in late December 2022, will have a serious harmful impact on civil society in Myanmar, which has already suffered sustained attacks since the 2021 coup. As described in this Analysis, it renders the work of many NGOs unlawful unless they comply with burdensome registration and monitoring requirements, and introduces the threat of administrative and criminal sanctions for non-compliance.

The new restrictions will impact all sectors of civil society, with potentially deadly consequences. Humanitarian needs in Myanmar today are acute. Half of the population is living in poverty and almost one out of three people is expected to need humanitarian assistance in 2023. Another 1.4 million people are forecast to become internally displaced in 2023, more than the 1.3 million existing displaced persons.³ Many crucial State services are not operating – the public health system is in “near total collapse” – meaning that civil society is providing vital support.⁴

The NGO Law will also engender additional harassment of any organisations deemed to be politically active, critical of the military or supportive of opposition movements. It may result in greater restrictions on ethnic civil society groups or those operating in regions with active armed conflict. The NGO Law represents a further closing of space for non-violent political opposition and debate in Myanmar, limiting avenues for peaceful expressions of opposition.

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² State Administration Council Law No. 46/2022. This Analysis relies on the translation published in segments in the Global New Light of Myanmar from 29 October 2022 to 5 November 2022 (GNLM Translation). CLD has consolidated this translation into a single document available at: <https://www.law-democracy.org/live/wp-content/uploads/2023/06/Myanmar-Organization-Registration-Law-consolidated-English-version.pdf>. Because this translation appears to contain several errors or hard-to-understand phrases, CLD has also referred to an alternate translation available at <https://bit.ly/3jJIJy3> (Lincoln Translation). Discrepancies in the translations are noted in footnotes throughout this Analysis.

³ UN Office for the Coordination of Humanitarian Affairs, p. 92, https://reliefweb.int/attachments/f0cc9858-071b-4583-bcfe-e2dc2c288f7b/mmr_humanitarian_needs_overview_2023%20final.pdf; Reliefweb, “Myanmar Humanitarian Update No. 26”, 2 February 2023, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-26-2-february-2023>.

⁴ *Ibid.*, p. 22.

From a human rights perspective, it worsens an already hostile environment for the exercise of fundamental rights, including freedom of association, expression and political participation.

This Analysis discusses the main features of the NGO Law, including how it alters the legal landscape for NGOs operating in Myanmar. It assesses the NGO Law against international human rights law standards, demonstrating that it does not align with standards governing freedom of association and other fundamental human rights.

We also note that the SAC's power to promulgate laws is legally doubtful.⁵ This Analysis treats the 2022 NGO Law as governing law, because in the current reality it will be enforced as the law. However, this is not meant to imply that the SAC is legitimate as a law-making body.

1. Background

1.1. History of Other Laws Governing Civil Society in Myanmar

Following the 1988 military coup, the newly-created State Law and Order Restoration Council adopted Law 6/88, the Law relating to Forming of Organisations. The 1988 Law required any organisation, defined very broadly, to apply for permission to form. It also imposed criminal penalties for those who operated, joined or aided an illegal organisation or one that disrupted law and order or peace and tranquillity.⁶ Subsequent years witnessed severe restrictions pursuant to this law. For example, many local groups which sought to respond to humanitarian needs after Cyclone Nargis were denied registration and prominent Generation 88 student activists were imprisoned on charges of operating an illegal organisation after the 2007 Saffron revolution.⁷

Myanmar enacted a new Law Relating to Registration of Associations in 2014.⁸ After civil society groups condemned an initial draft, a series of discussions between legislators and civil society resulted in a relatively progressive law being adopted.⁹ Under the 2014 NGO Law, registration was voluntary and no criminal (or other) penalties were imposed. Elements

⁵ For a discussion of this see CLD, *Myanmar, Analysis: Amendments to the Penal Code by the State Administration Council*, May 2021, p. 2, <https://bit.ly/3DQ8PWN>.

⁶ Sections 3, 5-7, <https://bit.ly/3REZ0Rn>.

⁷ OMCT, *Urgent Interventions: Sentencing of Members of the 88 Generation Students Group*, 19 November 2008, <https://bit.ly/316NVoy>; Asian Human Rights Commission, *Burma: Thirteen People Wrongly Convicted Over Alleged Illegal Organization*, 14 January 2009, <https://bit.ly/3x6thiA>; and Human Rights Watch, *"I Want to Help My Own People": State Control and Civil Society in Burma after Cyclone Nargis*, 28 April 2010, <https://bit.ly/3IgS5uN>.

⁸ Law No. 31/2014, 18 July 2014, <https://bit.ly/3REN425>.

⁹ Paul Vrieze, "Civil Society and MP Draft 'Progressive' Association Registration Law", 21 October 2013, *The Irrawaddy*, <https://bit.ly/40CQWVm>; and International Crisis Group, "Myanmar: Storm Clouds on the Horizon", *Asia Report N. 238*, 12 November 2012, p. 15, <https://bit.ly/3l1fXUT>.

of the 2014 NGO Law did not align with international standards since they contained unnecessarily burdensome requirements but, given Myanmar’s history, it represented a major positive legal development. The 2014 NGO Law remained in force until its repeal by the 2022 NGO Law.

Myanmar also still retains the colonial Unlawful Associations Act. This 1908 Law prohibits “unlawful associations”, defined as those which encourage or aid persons to commit violence, or any organisation declared unlawful by the President. The President has the discretion to outlaw any organisation simply by notice in the official legal gazette.¹⁰ People who join, manage, assist, attend meetings of or solicit donations for such associations may face prison sentences of up to five years.¹¹

Because authorities have unconstrained power to label organisations as unlawful, and given imprecision in the definition of crimes, the Unlawful Associations Act is prone to abuse against ordinary people who are not engaged in violent activity or to harass civil society operating in ethnic areas for alleged ties to ethnic armed groups. The military also has a long history of using the Unlawful Associations Act to target journalists, charity workers and activists, and has brought numerous charges under this Act since the 2021 coup.¹²

1.2. Relevant International Human Rights Law and Standards

International human rights law protects the right to freedom of association. Everyone has the right to associate with other people, including to create groups to pursue common goals or to advocate on matters of public interest. The right protects the ability of people to form organisations and for such organisations to carry out activities.¹³ Organisations should also be able, if they wish, to register with the State in order to obtain legal status.¹⁴

Other fundamental human rights are also impacted by undue restrictions on civil society. The freedom of organisations to publish statements and reports or otherwise advocate and speak freely on matters of public interest is an exercise of the right to freedom of expression,

¹⁰ Unlawful Associations Act, India Act XIV, 1908, sections 15-16, <https://bit.ly/3JRi5Oy>.

¹¹ *Ibid.*, section 17.

¹² See, for example, Human Rights Watch, *Myanmar: Elected Lawmaker Group Declared Illegal*, 25 March 2021, <https://bit.ly/3HKNj70>; Burma News International, “Junta charges four Maungdaw Men under Unlawful Associations Act”, 20 October 2022, <https://bit.ly/3la5SKe>; Committee to Protect Journalists, “Myanmar Sentences Former BBC Media Action Reporter to 3 Years in Prison”, 16 September 2022, <https://bit.ly/3YwgHF1>; and Nyein Swe, “Kachin Religious Leader Charged under Unlawful Association Law”, 3 January 2023, Myanmar Now, <https://bit.ly/40EN8Tt>.

¹³ Human Rights Committee, *Kungurov v. Uzbekistan*, Communication No. 1478/2006, 15 September 2011, para. 8.2, undocs.org/CCPR/C/102/D/1478/2006.

¹⁴ African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, adopted at the 60th Ordinary Session, 8-22 May 2017, para. 12, <https://bit.ly/3HIMxaO>; and European Court of Human Rights, *Sidiropoulos and Others v. Greece*, Application No. 26695/95, 10 July 1998, para. 40, <https://hudoc.echr.coe.int/fre?i=001-58205>.

which may be exercised collectively as well as individually.¹⁵ Similarly, the right to participate in public affairs incorporates a right of civil society organisations to undertake advocacy and to engage with their government, while various rights of ethnic, religious and linguistic minorities depend on such minorities being able to form and operate groups which celebrate their culture, religion and language.¹⁶

Governments should create an enabling environment for the protection of these rights. Any restriction on freedom of association must comply with a strict three-part test established by human rights law. According to this test, any restriction must:

- Be prescribed by law: Restrictions must be provided by law and not imposed arbitrarily. The law must be sufficiently precise to guide a person's conduct. Overly vague or unclear restrictions are not legitimate under international human rights law.
- Have a legitimate aim: Restrictions must aim to protect national security or public safety, public order, public health or morals or the rights and freedoms of others.
- Be necessary: Restrictions should be necessary to protect the legitimate aim. This requirement also requires restrictions to be proportionate to the aim pursued.¹⁷

Restrictions on freedom of expression must comply with a similar three-part test, except the list of legitimate aims includes the reputations of others and does not include public safety.¹⁸

The primary human rights treaty protecting the right to freedom of association is the *International Covenant on Civil and Political Rights* (ICCPR). Myanmar has not ratified the ICCPR and accordingly is not legally bound by its provisions.¹⁹ However, it has ratified other human rights treaties, some of which protect freedom of association. For example, the *Convention on the Rights of Persons with Disabilities* obliges States to promote the participation of persons with disabilities in public affairs, including by “forming and joining organizations of persons with disabilities”.²⁰ The *Convention on the Rights of the Child* protects the rights of the child to associate, along with an identical test for restrictions as that contained in the ICCPR.²¹

¹⁵ *International Covenant on Civil and Political Rights* (ICCPR), UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, Article 19.

¹⁶ ICCPR, note 15, Articles 25 and 27.

¹⁷ The three-part test is found in the ICCPR, note 15, Article 22(2). See also Human Rights Committee, General Comment No. 31 on the nature of the general legal obligation imposed on State Parties to the Covenant, 29 March 2004, para. 6, <https://undocs.org/CCPR/C/21/Rev.1/Add.13>; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, para. 17, undocs.org/A/HRC/20/27.

¹⁸ ICCPR, note 15, Article 19(3).

¹⁹ For the status of Myanmar's ratification of the major human rights treaties, see <https://indicators.ohchr.org/>.

²⁰ UN General Assembly Resolution 61/106, 13 December 2006, entered into force 3 May 2008, Article 29(b)(ii).

²¹ UN General Assembly Resolution 44/25, 20 November 1989, entered into force 2 September 1990, Article 15. See also *Convention on the Elimination of Discrimination against Women*, UN General Assembly Resolution 34/180, 18 December 1979, entered into force 2 September 1981, Article 7(c), addressing the right of women to participate in NGOs which are concerned with the public and political life of the country.

The right to cultural life under the *International Covenant on Economic, Social and Cultural Rights* also includes a right to associate in cultural organisations.²² The Committee on Economic, Social and Cultural Rights has noted that any restrictions on the right to cultural life should take into account whether that restriction can legitimately be imposed on other fundamental rights, such as freedom of expression and association.²³

Freedom of association, as well as other fundamental rights described above, are also protected under the *Universal Declaration of Human Rights*, the foundational document of modern human rights law.²⁴ Other influential international standards and statements also affirm freedom of association and related rights. The UN General Assembly *Declaration on Human Rights Defenders*, for example, affirms to the right to “form, join and participate in” NGOs and other groups.²⁵

For the purposes of this Analysis, human rights law presents important internationally-accepted standards, regardless of whether they are technically binding on Myanmar. For this reason, this Analysis refers to relevant standards under the ICCPR as well as under other major international human rights treaties. As is illustrated below, numerous restrictions on fundamental rights in the NGO Law do not align with these standards.

2. Mandatory Registration

2.1. Requirements under the NGO Law

The NGO Law requires organisations to register officially by obtaining a registration certificate. Registration certificates are granted by registration boards established at national, subnational and local levels. The basic registration system is similar in nature to the one in the 2014 NGO Law, with a crucial difference: whereas that system was voluntary, registration is now mandatory.

According to the NGO Law, no one shall establish and operate an organisation without a registration certificate.²⁶ Violating this prohibition may result in up to three years’

²² UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976, Article 15(1); see generally Committee on Economic, Social and Cultural Rights, General Comment No. 21, 21 December 2009, undocs.org/E/C.12/GC/21.

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 21, 21 December 2009, para. 19, undocs.org/E/C.12/GC/21.

²⁴ UN General Assembly Resolution 217A(III), 10 December 1948.

²⁵ UN General Assembly Resolution 3/144, 8 March 1999, Article 5, undocs.org/A/RES/53/144.

²⁶ NGO Law, section 33. The GNLM version is not clear, stating: “Anyone shall not be allowed to form the organization for movements.” This reads like a prohibition on organisations related to the civil disobedience movement or other movements. In comparison, the Lincoln translation states: “Nobody shall establish and operate an association without a registration certificate”, an entirely different meaning. The second one is the correct translation of the Burmese version available on the Myanmar Legal Information System (<https://bit.ly/3JRnjd4>), as confirmed to

imprisonment or a fine of MMK 1 million (approximately USD 470).²⁷ Similarly, operating an association after a certificate's expiration or cancellation, or joining an unregistered organisation, may result in a fine of MMK 500,000 (approximately USD 235). Failure to pay the fine results in two years' imprisonment.²⁸

It is not clear what kinds of informal groups would qualify as an "organisation" which is required to register. The definition of "organisation" in the NGO Law is circular, defining this as an organisation which is registered under the NGO Law.²⁹ In practice, without a non-self-referential definition for an "organisation", the ambiguity could enable abusive criminal prosecutions against people who were involved in virtually any kind of informal group.

The NGO Law expressly excludes some organisations from registration. These are mostly organisations regulated under other laws, like political parties, but also includes organisations created by national or regional/state government entities, including government-organised NGOs (or "GONGOs").

Registration also does not apply to organisations which directly or indirectly focus on political, economic or religious matters.³⁰ If read expansively, this would preclude the registration of advocacy organisations, development organisations which were involved in economic empowerment initiatives and religiously-affiliated groups and aid organisations. Unless such groups can register under another legal regime, they might be left in a legal limbo, unable to obtain formal legal status. Arguably this provision also exempts them from mandatory registration and the accompanying sanctions for non-registration, but the ambiguity over the scope of this category of groups may deter them from operating informally.

Mandatory registration applies equally to international and domestic organisations. It is not very clear what constitutes "operating" in Myanmar, creating ambiguity for international organisations with a limited direct presence in the country, such as those acting primarily as funders or in a more limited coordination or advisory role. As a default, it seems likely that any organisation with a physical presence in Myanmar would be expected to register, but legally this is not very clear.

CLD by a Burmese speaker. This suggests the GNLM version is incorrect and this Analysis proceeds on that assumption.

²⁷ NGO Law, section 40.

²⁸ NGO Law, sections 34, 35 and 41.

²⁹ An "organisation" is defined to include a local or an international organisation. Both of these are then defined to include only organisations which are registered under the NGO Law. Sections 2(b)-(d).

³⁰ NGO Law, section 26(a). A qualifier in this provision refers to organisations operating in these sectors "in accordance with the law in force". This could be read to refer to those that are registered under other existing laws, such as commercial entities or political parties. Given that registered organisations must pursue "social activities", defined to exclude activities directly or indirectly related to political, economic or religious matters, effectively these organisations likely cannot register.

The NGO Law requires any unregistered organisation to register within 60 days of the Law's enactment (meaning by the end of 2022) in order to continue operations.³¹ Such a short deadline means that many organisations are likely already technically operating illegally. The Law preserves the certificates of organisations registered under the 2014 Law until they expire.³² However, since certificates under the 2014 Law only last for five years, many have already expired or will soon.

2.2. Assessment against International Standards

The ability of NGOs to register legally, meaning as formal legal entities which are independent of their individual members or staff, is often crucial for NGOs to conduct basic operations, such as raising funds. States should therefore provide a pathway for them to obtain legal status. Such registration should, however, be voluntarily rather than mandatory.

The right to freedom of association is a fundamental human right, belonging to everyone. On numerous occasions, United Nations experts and standard-setting documents have condemned mandatory registration regimes and affirmed that the right to association includes the right to associate informally with others.³³ As stated by the UN Special Rapporteur for Human Rights Defenders: "The insistence by certain Governments that all groups must register, however small or informal they may be, reflects the intention to control their activities and filter those groups that are critical of government policies".³⁴

The UN Special Rapporteur for assembly and association has observed that mandatory registration requirements can disproportionately impact certain ethnic, minority or disadvantaged groups.³⁵ NGOs in remote regions or which use minority languages may face practical challenges to registration, for example. The NGO Law's apparent exclusion of religious groups could also disproportionately impact religious minorities and religiously-affiliated NGOs, a serious concern given past ethnic and religious discrimination in Myanmar.

Criminal penalties for participating in an unregistered group are a particularly grave human rights concern.³⁶ Normally, imprisonment should be reserved for the most serious kinds of

³¹ Section 55.

³² Section 56.

³³ 2012 Report of the Special Rapporteur on assembly and association, note 17, para. 56; UN High Commissioner for Human Rights, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned*, 11 April 2016, para. 84(c), undocs.org/A/HRC/32/20; *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 11; OSCE and Venice Commission of the Council of Europe, *Guidelines on Freedom of Association*, 2015, para. 48, <https://bit.ly/3DSUNnA>; and UN OHCHR, "Cambodia's Draft NGO Law Must be Fully in Line with International Law – UN Experts", 14 October 2011, <https://bit.ly/3RJwaiP>.

³⁴ Report of the Special Rapporteur on human rights defenders, 4 August 2009, para. 60, undocs.org/A/64/226.

³⁵ Report of the Special Rapporteur on assembly and association, 14 April 2014, para. 53, undocs.org/A/HRC/26/29.

³⁶ 2009 Report of the Special Rapporteur on human rights defenders, note 34, paras. 65 and 104; and 2012 Report of the Special Rapporteur on assembly and association, note 17, para. 56.

infractions. As a response to a failure to register, it is disproportionately severe and does not align with the proportionality requirement of the three-part test for any restrictions on freedom of association under human rights law.

3. Regulatory Entities Responsible for Implementation

3.1. The Ministry of Home Affairs and the General Administration Department

Myanmar's post-coup reality is a military government led by the junta's State Administrative Council. Civilian structures, including relevant ministries, have been subjected to military control when the military appointed its allies to ministerial positions the day of the coup.³⁷ In this context NGO regulation is invariably subject to military control. However, the NGO Law creates a specific regulatory structure which would likely enable greater military oversight of NGOs in the longer-term, even should an ostensibly civilian government be restored. This is evidenced by the structure of the NGO registration boards, discussed in the next section, as well as the bodies which are responsible for implementing the NGO Law.

Responsibility for implementing the NGO Law is divided between the Ministry of Home Affairs (MOHA) and the General Administration Department (GAD). The former is empowered to issue regulations, with the approval of the Union Government, while the latter can issue notifications, orders, directives and procedures. GAD also has a significant role in the registration boards, has inspection powers over NGOs and receives NGO quarterly activity reports, as describe later in this Analysis.

Under the 2008 Constitution, the Ministry of Home Affairs is one of three military-led ministries. Its minister and deputy minister are selected from military personnel nominated by the Commander-in-Chief of Defence Services, who may remain active military members during their tenure.³⁸ The current minister, a former head of military intelligence with close ties to Min Aung Hlaing, was re-appointed as head of MOHA on the day of the coup and, since March 2021, has concurrently served as a member of the State Administrative Council.³⁹

GAD is an influential central administrative structure in Myanmar, with representation extending down to a very local level. It provides a range of basic public service functions,

³⁷ Office of Commander-in-Chief of Defence Services, Order No. 6/2021, 1 February 2021, <https://bit.ly/3HLJChl>.

³⁸ Myanmar Constitution, 2008, Articles 232(b) and (j) and 234(b) and (f), <https://bit.ly/3JVBS9b>.

³⁹ Htet Myet Min Tun, Moe Thuzar and Michael Montesano, "An Attempt to Lead Myanmar Back to the Future? Data on the State Administration Council Regime's Union Ministers", 2021, ISEAS-Yusof Ishak Institute, <https://bit.ly/3jDG7Sn>; and Htet Naing Zaw, "Who is Myanmar's New Home Affairs Minister?", 10 February 2020, The Irrawaddy, <https://bit.ly/3jLa56L>.

such as in relation to property matters, tax collection and birth registration.⁴⁰ In recent years, GAD has increasingly played a role in local development projects and in coordinating with international donors, as well as the voluntary NGO registration system under the 2014 NGO Law.⁴¹

GAD also has strong military links and has long performed security, public order and intelligence-gathering functions. Historically, it provided a vehicle for local level military control and surveillance.⁴² The military maintained a strong degree of control over GAD even under civilian government, with senior leadership and a substantial number of staff having military ties.⁴³ Although, prior to the coup, GAD had been somewhat decentralised and integrated with subnational governments, efforts to reduce military influence and convert GAD into a democratically-accountable institution were still in their infancy.⁴⁴

Since the coup, military control of GAD has again been re-entrenched. Just over a year before the coup, the government had attempted to transform GAD into a civilian-led department by relocating it from its long-standing home within MOHA.⁴⁵ Following the coup, the junta reversed this change and returned GAD to the control of the military-run MOHA.⁴⁶ The military has taken other steps to ensure loyalty within GAD, such as by installing pro-military allies in local positions, stoking old fears about GAD staff serving as informers.⁴⁷

The role of MOHA and GAD in NGO regulation is not new, as both played similar roles under the 2014 Law, but the military's control over both entities since the coup creates a substantially different environment. GAD's role is also substantially enhanced, such as via new inspection powers. GAD now has the power to issue notifications, orders, directives and procedures under the NGO Law, and plays a much more powerful role in the NGO registration boards, as discussed in the following section.

⁴⁰ Richard Batcheler, *et al.*, *State and Region Governments in Myanmar*, October 2018, Asia Foundation, p. 58, <https://bit.ly/3RLK9oq>. See also Lachlan McDonald, "Making the Most of GAD Reforms", 11 June 2020, Frontier, <https://bit.ly/3RJLyeR>.

⁴¹ Kyi Pyar Chit Saw and Matthew Arnold, *Administering the State in Myanmar*, Policy Dialogue Brief Series No. 6, March 2015, The Asia Foundation, p. 9, <https://bit.ly/3DSB1Z8>; and Batcheler, *et al.*, note 40, p. 119 and annex k.

⁴² Frontier, "Communities Defy Junta's Attempts to Rule Wards and Villages", 14 May 2021, <https://bit.ly/3DRSukF>; Kyi Pyar Chit Saw and Matthew Arnold, note 41, p. 2; and Human Rights Watch, "Burma's Military Milestone", 30 March 2015, <https://bit.ly/40BjiPH>.

⁴³ In 2020, a source indicated that "almost all" senior leadership, a majority of gazetted positions and 30 percent of all staff had military ties. Lachlan McDonald, note 40.

⁴⁴ Batcheler, *et al.*, note 40, p. 63. See also Nan Lwin, "Powerful and Expansive – Infographic Explainer of the General Administration Department", 28 December 2018, The Irrawaddy, <https://bit.ly/3RF4oE5>.

⁴⁵ Matthew B. Arnold, "Why GAD Reform Matters to Myanmar", 24 August 2019, East Asia Forum, <https://bit.ly/3HJ23mX>.

⁴⁶ State Administration Council Order No. 119/2021, 5 May 2021, <https://bit.ly/3JM3xzz>.

⁴⁷ This has most notably occurred through replacing the previously elected ward and village administrators, but appointments of military supporters are likely occurring at higher levels as well. Han Thit, "Myanmar Junta Replaces Yangon Administrators with Hardline Supporters", 21 December 2022, Myanmar Now, <https://bit.ly/3YwIN47>; and Frontier, "Communities Defy Junta's Attempts to Rule Wards and Villages", 14 April 2021, <https://bit.ly/3HMAxFn>.

3.2. NGO Registration Boards

The NGO Law establishes registration boards at the Union, Region/State, Union Territory (Naypyitaw), Self-Administered Division/Zone, District and Township levels. This structure is identical to the boards created by the 2014 NGO Law. However, the new Law alters the composition of these registration boards, removing NGO representatives from more local boards and introducing ambiguity which would easily allow for “stacking” boards with pro-military allies.

The following chart summarises, for each registration board, the entity responsible for appointing the board and its members. At all levels, the Law only names the Chairman and Secretary, while an unspecified number of other board members are simply listed as being representatives from relevant government organisations.

Board	Appointed By	Chair	Secretary	Other Members
Union (National)	Union Government	Minister, MOHA	Director General, GAD	Representatives from relevant government departments
Regional or State	Regional or State Government	Regional or State Government Minister	Director, Regional or State GAD	Representatives from relevant government departments
Union Territory (Naypyitaw)	Union Territory Governing Body	Member of Union Territory Governing Body	Director General, Union Territory GAD	Representatives from relevant government departments ⁴⁸
Self-Administered Division or Zone	Self-Administered Division/Zone Governing Body	Executive Committee Member, division/zone governing body	Deputy Director Secretary, division/zone GAD	Representatives from relevant government departments
District	District Administrator, District GAD	District Administrator, District GAD	Assistant Director, District GAD	Representatives from relevant government departments
Township	Township Administrator, Township GAD	Township Administrator, Township GAD	Deputy Township Administrator, Township GAD	Representatives from relevant government departments

⁴⁸ For the Naypyitaw Board and the self-administered division/zone boards, the GNLM translation simply says “concerned organisations”. We suspect this is a translation error as the Lincoln Translation refers to representatives from “relevant government departments or organisations” for all of the registration boards.



In comparison with the 2014 Law, the NGO Law creates ambiguity as to the composition of the boards. No total number of members is listed, so the composition of the boards could easily be altered via decree or by the appointing body. Section 5(g) allows the body responsible for appointing the boards to “reform the bodies as prescribed”, conferring even greater discretion on it.

The NGO Law also effectively eliminates non-military representation on the boards. The Union Registration Board created by the 2014 Law consisted entirely of government-affiliated representatives, but these were from a variety of ministries and members from civilian-led ministries dominated. Under the 2022 NGO Law, the only named members of the national board are from military-controlled entities.

For other registration boards, the NGO Law eliminates civil society representatives and reduces the diversity of government representatives. Under the 2014 Law, all boards except for the Union board had two NGO representatives, elected according to procedures decided by local organisations themselves. Specific positions were also guaranteed for representatives from a greater range of government entities, although admittedly with a strong law and order background (such as police representatives).⁴⁹ The new NGO Law eliminates this diversity.

At the district and township level, GAD influence is particularly acute. The NGO Law gives the GAD administrator complete discretion to appoint the board, which he or she also chairs, and all named members are GAD administrators. Because GAD administrators at the district and township level are appointed and are responsible to their GAD superiors,⁵⁰ local registration boards could easily serve as military informants or act on military instructions.

A practical concern is that these structures could easily facilitate corrupt behaviour, for example on the part of township and district administrators who have significant control over their boards. Petty bribery in exchange for basic administrative functions has been a common and increasing problem since the coup, including on the part of local GAD officials in relation to NGO activities.⁵¹

3.3. Assessment against International Standards

⁴⁹ 2014 NGO Law, sections 5 and 39.

⁵⁰ Before the coup, township and district administrators effectively had dual reporting lines to GAD as well as to regional or state governments. See Batcheler, *et al.*, note 40, p. 54. They have always been appointed as civil servants, in accordance with section 288 of the Constitution, unlike ward and village administrators which became elected positions in reforms undertaken before the coup.

⁵¹ ICNL, “Myanmar Civic Space Assessment: Overview and Preliminary Key Findings”, November 2022, <https://bit.ly/3I4H3bE>. See also Frontier, “Motivating the Minions”, 17 September 2022, on file with CLD.

Registration bodies should be independent, neutral and transparent.⁵² States should not permit “excessive government control and discretion over the registration process”.⁵³ In order to ensure the impartiality of such bodies, their members should be appointed in a manner that is transparent and is insulated from political control.⁵⁴ The registration bodies should include independent representatives of civil society and civil society should be consulted as part of the process of creating such bodies.⁵⁵

A case before the African Commission on Human and Peoples’ Rights illustrates these principles. The Nigerian Bar Association was regulated by a Body of Benchers consisting of 128 members. All except 31 of the 128 members were government nominees. The Commission found that because the Body of Benchers was “dominated by representatives of the government” and had “wide discretionary powers”, Nigeria had violated the right to freedom of association.⁵⁶

In Myanmar, the registration boards are not only given significant discretion and dominated by government representatives, but are also subject to substantial military influence. Military influence compromises the independence of registration boards and of civil society.⁵⁷ Military involvement also introduces concerns about an overly securitised regulation of civic space, with an abusive reliance on alleged terrorist or security threats to deny registration or otherwise limit the activities of NGOs.⁵⁸

Beyond concerns about military influence on the registration boards, at all levels, the registration boards do not reflect international standards on the impartiality and transparency of registration bodies. The elimination of NGO representatives and a wider range of government representatives from NGO registration boards severely undercuts their neutrality. In addition, the primary rules regarding the composition of registration boards should not be left to subordinate regulation or the discretion of the appointing body, but be located in the primary legislation. The former is not transparent and grants excessive powers to the government to control the appointment process.

⁵² OSCE and Venice Commission, note 33, para. 33; UN High Commissioner for Human Rights, note 33, para. 16; and *Guidelines on Freedom of Association and Assembly in Africa*, note 14, paras. 21-22.

⁵³ 2009 Report of the Special Rapporteur on human rights defenders, note 34, para. 70.

⁵⁴ *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 21.

⁵⁵ Report of the UN Special Rapporteur on human rights defenders, 10 August 2012, para. 45, undocs.org/A/67/292; and 2009 Report of the Special Rapporteur on human rights defenders, note 34, para. 116.

⁵⁶ *Civil Liberties Organisation (in respect of the Nigerian Bar Association) v. Nigeria*, Communication No. 101/93, 22 March 1995, para. 17, <https://www.achpr.org/sessions/descions?id=85> (African Commission on Human and Peoples’ Rights).

⁵⁷ UN Special Rapporteurs on freedom of expression, freedom of assembly and association, and human rights defenders, Joint Letter, 22 November 2016, p. 9, <https://bit.ly/3XilSaB> (commenting on the involvement of intelligence and security services in NGO regulation in Egypt).

⁵⁸ See, for example, Report of the UN Special Rapporteur for human rights while countering terrorism, 1 March 2019, para. 60, A/HRC/40/52.

4. Registration and Renewal Procedures

4.1. Requirements under the NGO Law

4.1.1. Domestic Organisations

Domestic organisations must register with the board which covers the geographic region in which they wish to operate, so those operating nationally must register with the Union Registration Board.⁵⁹ The application for registration must include a range of information listed in section 7 of the Law. This includes basic information such as the organisation’s name, address, president and secretary, as well as the number of members and number of executive committee members. While the Law does not require the citizenship of members to be listed, local NGOs are supposed to have at least five Myanmar citizen members, so it may also be necessary to provide this information.⁶⁰

The application must also describe the organisation’s articles of association, objectives and intended programme, a list of cash and assets and a commitment to comply with the law. It must also list the “social activities” to be carried out. The NGO Law has a specific definition of social activities, meaning non-profit activities for the common good which are not related to the political, economic or religious sectors,⁶¹ suggesting that organisations will need to show that their activities fall within the scope of this definition. The organisation must also submit a recommendation from the government entity which covers their intended area of activities (relevant sector body).

Once a registration board receives an application, it issues a temporary registration certificate within 21 days. The NGO Law defines “registration certificate” to include a temporary one, suggesting organisations with temporary certificates are equivalent to a registered organisation, except for the uncertainty arising from a potentially indefinite wait for a final certificate,⁶² since no deadline is specified for the registration boards to make a final decision.⁶³

Before issuing a final certificate, the registration boards are supposed to scrutinise the application according to prescribed rules.⁶⁴ However, registration boards are supposed to assign a government department to conduct pre-screening and to help the board come to a

⁵⁹ NGO Law, section 12(b).

⁶⁰ NGO Law, section 2(c).

⁶¹ NGO Law, section 2(g).

⁶² NGO Law, section 2(f). In accordance with section 51, however, organisations with temporary certificates are not required to give their assets to a designated government department if their certificates are revoked.

⁶³ NGO Law, section 8(d). Deadlines for providing certificates or notice of denial start from the time of the decision to provide or deny registration, not when the application was submitted, a change from the 2014 Law, leaving no time requirement for the decision itself.

⁶⁴ NGO Law, section 8(b).

decision in accordance with the law. This implies that additional screening measures may be imposed via regulation or possibly on an *ad hoc* basis by the assigned department. The NGO Law may intend this department to be GAD or the relevant sector department, but it does not specify this.⁶⁵

If the board decides to grant registration, it must issue the registration certificate within 30 days of that decision. The organisation must pay registration fees within a time period specified by the board. The payment receipt and temporary registration certificate must then be provided in order to obtain the final certificate. Failing to do so within the mandated time will result in revocation of the temporary certificate. Registration fees vary from MMK 30,000-300,000 (approximate USD 14-140), depending on which registration board issues the certificate.⁶⁶

If the registration board denies registration, it must inform the organisation within 15 or 30 days (depending on which board), giving reasons for the denial. It must also make a public announcement about the denial.⁶⁷ The organisation can resubmit an amended application within 30 days of receiving the reply. If the board again denies registration, the decision is final. The temporary certificate becomes void on the date of such a decision, if the organisation does not re-apply.⁶⁸

The degree of discretion granted to the registration board to deny or approve registration is not very clear. Section 8(c) states that registration should not be granted if it would affect State sovereignty, the rule of law, security or national unity. In the English translation, it is unclear whether this is a ground for denial or the only ground for denial.⁶⁹ Boards can also probably deny registration if they believe the organisation's activities do qualify as "social activities" or if application requirements are not met. Additional regulations could potentially add in requirements. Overall, the NGO Law is sufficiently vague that it will likely offer NGO boards substantial discretion in practice. On the other hand, the registration boards may be expected to defer to the recommendation of the government department assigned to screen applicant NGOs, although this is speculative and not stated clearly in the NGO Law.

Registration certificates last for five years.⁷⁰ Ninety days before the certificate expires, the organisation must apply for an extension. Should the organisation fail to meet the 90-day renewal deadline, it must pay a fine and then re-apply according to prescribed rules. If the organisation applies for renewal even later, after the certificate has expired, it must re-apply again as if applying for the first time.

⁶⁵ NGO Law, section 44.

⁶⁶ NGO Law, section 12(a).

⁶⁷ NGO Law, sections 11(a) and 49.

⁶⁸ NGO Law, section 11.

⁶⁹ The GNLM translation implies the latter while the Lincoln translation implies the former.

⁷⁰ NGO Law, section 47.

The precise renewal procedure is not articulated in the NGO Law, which merely says that the organisation shall apply “according to the prescribed rules”. However, the NGO Law does specify that the registration board should scrutinise the application in accordance with section 8(c), the provision permitting registration if doing so would not impact State sovereignty, security, the rule of law or national unity.⁷¹ The assigned government department is also supposed to play a screening role during renewal.⁷²

Once the renewal certificate is issued, the organisation must again pay a fee, ranging from MMK 10,000-100,000 (approximately USD 5-50). Failure to collect the certificate or provide proof of payment results in revocation of the decision to register. If the renewal is denied, a similar process applies as for initial applications, pursuant to which the organisation has 30 days to amend the application, after which the board makes a second and final decision.

The basic registration procedure under the NGO Law is similar to that under the 2014 Law, but its requirements substantially complicate the process. For example, under the 2014 Law there was no requirement to obtain a recommendation from the relevant sector government department. There were also clearer and shorter deadlines, a second decision to deny registration was not final, and registration fees were either lower or non-existent for those registering with more local boards. For domestic NGOs, renewal was guaranteed if annual reports had been submitted and there was no registration fee.

4.1.2. International Organisations

International organisations must register with the Union Registration Board. It seems likely that this would require them to establish some kind of Myanmar-focused entity, because they must have an executive committee with at least 40 percent Myanmar citizens and provide the name and contact information for the head of a Myanmar office (and any branch offices).⁷³ They must also submit a range of other information about their international organisation and structure, such as its articles of incorporation and proof of recognition in the country in which it is legally established.

Other information to be included in the application, which is detailed in section 17, could create some notable administrative hurdles for international NGOs. The application must include a draft Memorandum of Understanding, although with whom is not specified, which presumably must be negotiated prior to the application being made. As with national NGOs, international NGOs must obtain a recommendation from the relevant sector government department, but recommendations are also required from the Ministry of Investment and Foreign Economic Relations, and the Ministry of Immigration and Population, as is a letter asking for the opinion of the Ministry of Foreign Affairs. The international NGO must also

⁷¹ NGO Law, section 14(d).

⁷² NGO Law, section 44.

⁷³ NGO Law, sections 2(d) and 17(k).

get permission to conduct activities from the local administration in the area where it proposes to do this. Beyond listing its social activities, as is required for domestic NGOs, international NGOs must list their sources of funding for these activities.

Otherwise, both registration and renewal procedures for international NGOs are largely identical to those for national NGOs. Registration fees for both registration and renewal are higher, however, at MMK 500,000 and 300,000 respectively (approximately USD 235 and 140).⁷⁴

As with national NGOs, many of these more burdensome requirements for international NGOs are new. Under the 2014 Law, international NGOs did not need a draft memorandum of understanding or all of the formal recommendations required under the new NGO Law, for example. An executive committee with Myanmar membership was also not required.

4.2. Assessment against International Standards

Any procedure for organisations to obtain legal status, such as an NGO registration scheme, should be simple and accessible, with low or non-existent fees and short timelines for responding. “Burdensome, lengthy, arbitrary and expensive registration requirements” inappropriately limit the ability of organisations to exercise their right to freedom of association.⁷⁵

The registration requirements under the NGO Law do not meet these standards. Some of the documents which must be submitted at registration are burdensome to obtain or are unnecessarily intrusive, such as describing intended activities or obtaining a recommendation from the relevant sector government department. Fees may be burdensome for small organisations, especially those registered at district and township levels where fees were not previously required.

Timelines in the NGO Law do not ensure that registration will be “prompt and expeditious”, as required by international standards.⁷⁶ NGO registration laws should set short deadlines to respond to applications.⁷⁷ They should clarify the status of organisations while a decision is pending and enable organisations to begin operations in the interim.⁷⁸

The NGO Law’s deadline for issuing a temporary certificate (21 days) is not very unreasonable but is still somewhat lengthy. However, the lack of any deadline for a decision on the final certificate is troubling. NGOs operating with a temporary certificate face the threat of a future decision denying registration, limiting opportunities for long-term planning

⁷⁴ NGO Law, sections 19(a) and 22(d).

⁷⁵ 2009 Report of the Special Rapporteur on human rights defenders, note 34, para. 70.

⁷⁶ *Ibid.*, para. 110.

⁷⁷ 2012 Report of the Special Rapporteur on assembly and association, note 17, para. 60.

⁷⁸ 2009 Report of the Special Rapporteur on human rights defenders, note 34, para. 66.

and potentially leading to self-censorship so as to avoid the risk of a negative decision. The precise status of NGOs with temporary certificates is not articulated clearly in the NGO Law, which could also create operational challenges for such NGOs, for example if banks or other institutions demand a final certificate.

NGO registration procedures should also be clear and precisely articulated. As noted by the UN Special Rapporteur on human rights defenders, overly vague legislation “easily lends itself to abuse and discretionary interpretation by registration officials.”⁷⁹ In contrast, elements of the registration procedure under the NGO Law are unclear, including the manner in which registration boards will review applications, renewal procedures and the degree of discretion afforded to registration boards.

Better practice is for States to have a prior notice or approval system, by which registration is automatically approved upon submission of the appropriate paperwork, instead of an authorisation regime.⁸⁰ If authorities have discretion to deny registration, this must be on limited, precise and clearly articulated legal grounds which comply with international human rights law.⁸¹ A denial of registration is “the most extreme measure” by which governments limit freedom of association, particularly when operating without registration can result in criminal sanctions, as is the case in Myanmar.⁸² Denials must therefore be in accordance with the three-part test for restrictions on freedom of association.

The NGO Law does not contain sufficient controls to ensure that denials are limited and in compliance with the three-part test. The most clearly articulated ground for denying registration is harm to State sovereignty, the rule of law, security or national unity. Not all of these reasons are legitimate aims under the three-part test and the provision is not defined clearly enough to ensure that it will be applied only as necessary and in a proportionate manner. The NGO Law also indicates that boards have other discretion to deny registration or that additional grounds could be introduced via regulation. This ambiguity is concerning and fails to meet the “prescribed by law” requirement in the three-part test.

Procedures permitting registration boards to deny registration should also be clearly articulated, require a written rationale explaining any decision to deny and offer opportunities for “effective and prompt” appeal.⁸³ The NGO Law leaves important aspects of the procedure for deciding on applications to regulation and includes an ill-defined screening process by the relevant sector government body. It also does not provide for an appeal, instead providing only one opportunity to re-apply with the same board, at which

⁷⁹ *Ibid.*, para. 71.

⁸⁰ 2012 Report of the Special Rapporteur on assembly and association, note 17, para. 58.

⁸¹ OSCE and Venice Commission, note 33, para. 154; *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 13; and Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 31 December 2011, para. 541(19), <https://bit.ly/40FWCxT>.

⁸² 2009 Report of the Special Rapporteur on human rights defenders, note 34, para. 67.

⁸³ *Ibid.*, para. 113.

point the decision is final. More positively, a written reason for a denial is required, but otherwise the denial procedures do not align with international standards.

A further problem with the NGO Law is the undefined role given to entities other than the registration board. Requiring organisations to obtain a recommendation from the relevant sector government department in order to apply effectively gives that department an unfettered power to veto registration, with no recourse to appeal or challenge the decision. Furthermore, the ambiguous screening process by an assigned government department has the potential to significantly delay registration and create intrusive surveillance of the activities of NGOs with a temporary certificate. None of this is in line with international standards which require independent, transparent, defined and non-arbitrary procedures.

Under international standards, once an NGO has obtained legal personality, it should not be required to regularly renew it.⁸⁴ Requiring organisations to re-register periodically provides regular opportunities for the government to interfere with or deny registration to NGOs. Under the 2014 NGO Law, there was a presumed right to have a certificate replaced after five years. The NGO Law's renewal procedure, in contrast, means that organisations will face a risk of losing legal status every five years. The lack of a defined renewal procedure increases the arbitrariness of this requirement.

Finally, the additional requirements imposed on international NGOs are not legitimate. The right to associate extends to everyone, not merely citizens, and should be guaranteed without discrimination.⁸⁵ The NGO Law's minimum citizenship requirements may therefore violate non-discrimination requirements.⁸⁶ In Myanmar, citizenship is legally and politically complex, with some ethnic groups denied full citizenship. These requirements may be particularly harmful to organisations affiliated with these groups, such as the Rohingya.

International standards recommend against systems which create separate registration rules for international and national organisations.⁸⁷ The numerous additional requirements for international NGO applications, especially the multiple required government recommendations, create significant and time-consuming barriers to registration for international NGOs.

5. Sanctions and Cancellation of Certificates

⁸⁴ *Ibid.*, para. 109; Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 41, <https://bit.ly/3HTBPYq>; and *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 17.

⁸⁵ ICCPR, Article 2(1); and ICESCR, Article 2(2).

⁸⁶ For a discussion of this issue, see Centre for Law and Democracy, *Myanmar: Human Rights Analysis of Biometric Digital ID Systems*, December 2020, https://www.law-democracy.org/live/wp-content/uploads/2020/12/Digital-ID-Note.Nov20.final_.pdf.

⁸⁷ 2009 Report of the Special Rapporteur on human rights defenders, note 34, paras. 126.

5.1. Administrative Sanctions

Registration boards are empowered to issue administration orders when an NGO fails to comply with certain provisions of the NGO Law. These may consist of a warning, a temporary restriction on the activities of the association, a temporary suspension of the registration certification or the cancellation of the registration certificate.⁸⁸

If NGOs interfere in the internal affairs of the State or politics, the registration board is supposed to cancel the registration certificate.⁸⁹ For international NGOs, the Union Registration Board is also empowered to “immediately nullify” the organisation for “directly or indirectly” participating in a conspiracy to harm State sovereignty, law and order, security or national unity.⁹⁰ Registration is also supposed to be nullified if an organisation is found to be guilty of a criminal offence.⁹¹

Otherwise, the NGO board can impose a range of administrative penalties if an NGO fails to comply with the duties enumerated in section 28 of the NGO Law. These duties require NGOs to avoid:

- Providing false information when applying for a certificate
- Using titles, emblems or designs which resemble government organisations, other legally established organisations, or which suggest that the organisation represents the whole State, ethnic group, all ethnic groups or an industry
- Modifying the registration certificate or transferring it to another organisation
- Obtaining a certificate without having the capacity to implement the stated objectives and activities
- Going beyond the objectives and activities approved by the registration board or the recommending relevant sector government entity
- Using the organisation’s name to “interfere in” the functions of government departments or mislead people to imply it has the authority to interfere in such functions
- Failing to submit the required annual financial reports and quarterly activity reports
- Refusing to allow inspection and inquiries (as described further below)
- Failing to obtain approval for changing or expanding its objectives and activities, or making other specified operational changes, such as an address change
- Providing emergency assistance in a natural disaster area or working in a travel restricted area without obtaining prior approval for this

⁸⁸ NGO Law, section 29.

⁸⁹ NGO Law, sections 28(q) and 29(b).

⁹⁰ NGO Law, section 25.

⁹¹ NGO Law, section 54. The available translations of the NGO Law says that upon conviction it is “assumed” or “deemed” that the registration board nullifies the certificate. It is not clear if this means the certificate is automatically cancelled or if the registration board is supposed to take action to nullify it.

- Engaging in activities that are illegal or cause danger or discrimination to the people or organisations the NGO is aiding
- Otherwise failing to comply with the NGO Law, regulations and rules issued under the NGO Law or any other laws

The NGO Law provides almost no detail on the procedures to be applied in imposing these sanctions. Registration boards appear to have the power to impose administrative orders as they see fit. If the registration board cancels an organisation’s registration, it releases a public statement and the assets held by the organisation must be given to a designated government entity.⁹² Otherwise, little further guidance is given, except to note that actions taken via administrative order do not preclude further civil or criminal actions against the organisation.⁹³

The NGO Law only provides for a limited appeal against administration sanctions. NGOs which object to an administrative order can appeal it to the next higher level registration board or, if the Union Registration Board made the decision, they can request that the Union Board review the decision. This must be done within 60 days. The second decision is then final. No other external appeal is mentioned in the NGO Law.

5.2. Criminal Sanctions

In addition to administrative sanctions imposed by registration boards, the NGO Law creates several new criminal offences. These are set out in the table below, along with the relevant section number of the NGO Law and the penalty to be imposed:

Sec.	Crime	Penalty
33	Establishing and operating an organisation without a registration certificate ⁹⁴	Fine (up to MMK 1 million or USD 470) or 3 years’ imprisonment
34	Operating an organisation after the expiration or cancellation of its registration	Fine (up to MMK 500,000 or USD 235) or 2 years’ imprisonment
35	Being a member in, encouraging, carrying out activities for or pretending to be a member of an unregistered organisation	Fine (up to MMK 500,000 or USD 235) or 2 years’ imprisonment

⁹² NGO Law, sections 49 and 51. Section 51 of the GNLM translation is unclear on this but the Lincoln translation indicates that assets are given to the government *except* if the organisation is dissolved in the way listed in provisions (a)-(c) (voluntarily or by order of a court).

⁹³ NGO Law, section 52.

⁹⁴ Subject to the caveat that the GNLM English version has substantially different wording, as described at note 26.



36	Using the name of the organisation for the benefit of a political party or a religion or for any benefit beyond the social activities or activities benefitting its members	NGO officer who committed offence: 3 years' imprisonment and/or a fine ⁹⁵
37	Taking, transferring, using or providing money or other assistance in an illegal manner, or concealing or obstructing justice related to such activities	NGO officer who committed offence: 3 years' imprisonment and/or a fine
38	Directly or indirectly contacting or supporting unlawful associations or their members, or individuals and organisations engaged in armed struggle against the State or declared by the State to commit terrorist acts	NGO officer who committed offence: fine of up to MMK 5 million (USD 2,400) and/or 5 years' imprisonment Organisation: registration cancelled and money and assets confiscated
39	Directly or indirectly harming the sovereignty, law and order, security or national unity of the State	NGO officer who committed offence: fine of up to MMK 5 million (USD 2,400) and/or 5 years' imprisonment Organisation: registration cancelled and money and assets confiscated

NGO officers are defined in the NGO Law to include the chair; secretary or executive member of a domestic NGO; head, office manager or executive member of an international organisation, or any other member assigned authority to take action for the organisation.⁹⁶

5.3. Assessment against International Standards

NGOs should not face dissolution or loss of legal status based on minor administrative infractions. Suspending or dissolving an organisation is a severe restriction on freedom of association which should be imposed only in compliance with international human rights law and where there is a “clear and imminent danger resulting in a flagrant violation of national law”.⁹⁷ Such a sanction should be imposed only by an impartial and independent

⁹⁵ The GNLM translation omits the number of years' imprisonment for this and the next offence. Also, for this offence and the subsequent ones, the GNLM translation merely says “official” of the NGO rather than specifying the official who committed the offence. This summary draws upon the Lincoln translation as it appears that this is an omission in the GNLM translation.

⁹⁶ NGO Law, section 2(h).

⁹⁷ 2012 Report of the Special Rapporteur on assembly and association, note 17, para. 75.



court rather than by an administrative body.⁹⁸ At a minimum, if a registration body can dissolve an NGO, this decision must be subject to prompt judicial review.⁹⁹

In Myanmar, cancelling a certificate is the equivalent of dissolving the organisation, because registration is mandatory. Registration boards can cancel certificates for a wide-ranging list of often vague and poorly defined reasons, including for several minor administrative errors or for failing to comply with technical requirements of the NGO Law. No procedures are set out, meaning that NGOs may not even have an opportunity to defend themselves against allegations, and only a very limited appeal procedure is available to another or the same registration board. None of this complies with international freedom of association standards.

International standards also provide that administrative sanctions should only be imposed after NGOs are given advance warning and an opportunity to correct the violation.¹⁰⁰ Civil society organisations are sometimes small and staffed by volunteers. Unintentional compliance failures will inevitably occur. The NGO Law does not provide sufficient opportunity for the correction of minor or unintentional infractions. Although registration boards may issue a warning, which could function as an opportunity to correct non-compliance, they are not required to issue a warning before imposing a more severe sanction.

Criminal sanctions should not be imposed simply for a failure to comply with substantive rules in a law which governs NGOs.¹⁰¹ Serious misconduct, such as crimes related to fraud or money laundering, can be addressed by other laws. Some of the criminal sanctions in the NGO Law duplicate existing crimes, such as using money in an illegal manner. Having overlapping criminal offences is not good practice according to basic principles of criminal law and in this case represents overcriminalisation of those who are exercising their right to freedom of association. Imprisonment as a penalty for a failure to register or for operating past the period of registration is also a grossly disproportionate penalty and a serious violation of freedom of association, as discussed in the section on mandatory registration above.

Imposing criminal penalties on officers or members of NGOs, and not merely on the NGO, also raises concerns. NGO laws should generally shield individual staff or members from liability for acts of the organisation. Individuals may face criminal liability for their own actions but, as noted in the last paragraph, this should not include special NGO crimes. The NGO Law imposes criminal penalties on members and staff for mere membership in an unregistered NGO, regardless of whether they have any direct responsibility for the failure to register or are even aware of its unregistered status. It also creates new crimes which are

⁹⁸ *Ibid.*, para. 100; and *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 58.

⁹⁹ Report of the UN Special Rapporteur on human rights defenders, 4 August 2009, paras. 84 and 114, undocs.org/A/64/226; Inter-American Commission on Human Rights, note 81, para. 541(20).

¹⁰⁰ 2009 Report of the Special Rapporteur on human rights defenders, note 99, para. 118.

¹⁰¹ *Ibid.*, para. 118.

uniquely applicable to NGO officers.¹⁰² The risk of such individual penalties could substantially deter persons from joining or working for NGOs.

Beyond the procedural problems with the sanctions imposed under the NGO Law, the grounds they are based upon do not comply with the three-part test for restrictions on freedom of association or freedom of expression. For example, many of the duties imposed on NGOs are worded in ambiguous terms which are insufficiently precise to meet the “prescribed by law” requirement. The criminal prohibitions do not have sufficiently specific intent requirements or do not precisely delineate the prohibited acts. Without discussing the problems with all of the prohibitions, the following are particularly notable:

- Even indirectly contacting or supporting unlawful associations and armed groups is criminalised. This provision risks criminalising the work of humanitarian organisations which provide aid in regions where armed groups are operating, especially because there is no requirement that the organisation intends to support a violent or terrorist cause. It could also create problems for NGOs which engage in research or promote peace-making, or any NGO which is in contact with opposition groups or entities declared to be unlawful by the military.
- The crime of direct or indirect harm to State sovereignty, security, law and order and national unity is too imprecise. While States can restrict freedom of association and expression on grounds of national security, in order to meet the “necessity” requirement of the three-part test, there must be a sufficiently direct causal connection between the activity and a defined national security harm. National unity is also not a legitimate aim for restricting these rights.
- The criminal prohibition on using the name of the organisation for political, religious and economic activities (which are not deemed to be “social activities”), as well as many of the administrative sanctions relating to interference in government affairs or engaging in politics, are illegitimate restrictions on the right to participate in public affairs and the ability to speak freely about and associate in relation to matters of public importance.
- Administrative sanctions can also be imposed for causing harm. This concept is too vague to ensure that it is not applied in a manner which violates the three-part test.

6. Reporting Requirements, Oversight and Inspection Powers

6.1. Requirements under the NGO Law

¹⁰² See note 95.

Once registered, NGOs must submit a report on their activities once every three months to the relevant township GAD administrator.¹⁰³ No details are given on what should be included in these reports. The requirement would seemingly oblige even international NGOs and NGOs operating nationally to submit their reports at the township level, possibly in all of the 330 Myanmar townships in which they operate, but it is not clear what constitutes a “relevant” township.¹⁰⁴

Registered organisations must also submit an annual financial report. For those registered with the national, regional/state or Naypyitaw boards, this report must be reviewed by a certified accountant; more local NGOs only need to have an accountant or audit panel of the executive committee review the report. Copies of this report must be sent to the relevant sector government entity which recommended that the NGO be registered.¹⁰⁵

Beyond regular reporting requirements, the NGO Law provides for other ongoing oversight of registered organisations. Registration boards are supposed to assign a “relevant department” which, beyond screening an NGO at registration and renewal, also reviews any complaints about the organisation.¹⁰⁶ As noted in the registration section, it is not clear whether this is meant to be GAD, the recommending relevant sector government department or another entity. If the assigned government department deems a complaint to be justified, it reports to the registration board, which can then take an administration action or action according to another law. If it finds the complaint not to be justified, it keeps a record of the complaint and reports back to the registration board.¹⁰⁷

The government entity which issued the recommendation letter or signed the memorandum of understanding, which as noted may be the same government entity but this is not entirely clear, is also supposed to report to the relevant registration board if it finds that the NGO is not complying with the rules.¹⁰⁸ This triggers a process whereby the registration board reviews the activities of the NGO and determines whether an administrative action is appropriate. The registration board also coordinates with relevant government departments if the actions of the NGO warrant an action under another law.¹⁰⁹

Neither of these review processes are delineated very clearly in the NGO Law and indeed it is not even clear whether or not they represent two distinct processes. Ultimately, the NGO Law seems to envision oversight responsibility being vested in the registration board, the relevant sector government entity and also (possibly) GAD or another assigned department.

¹⁰³ NGO Law, section 28(1).

¹⁰⁴ Myanmar Information Management Unit, MIMU Township Profiles, <https://bit.ly/3IaorqW>.

¹⁰⁵ NGO Law, section 28(g).

¹⁰⁶ NGO Law, section 44.

¹⁰⁷ NGO Law, sections 44-45.

¹⁰⁸ NGO Law, section 50.

¹⁰⁹ NGO Law, section 32.

This is clear from the powers granted to these entities under the NGO Law. The relevant registration board, government entity assigned to an organisation and GAD all may inspect an organisation, review documents and make enquiries of it. NGOs which fail to permit such inspections may face administrative sanctions.¹¹⁰ These inspection powers appear to be generally available, rather than linked to a specific administrative proceeding.

NGOs must also obtain approval for several basic operational decisions. If a registered organisation dissolves, changes its name or address, opens a branch office within Myanmar or changes an executive member, it must seek approval for this change from its registration board within seven days of the decision.¹¹¹ No procedures are delineated for the registration board to approve this change, apparently leaving this to the discretion of the registration board. NGOs must similarly obtain approval to change their objectives or activities, a highly intrusive requirement discussed in greater depth in section 7 of this Analysis.

6.2. Assessment against International Standards

States should avoid “frequent, onerous and bureaucratic reporting requirements” which “unduly obstruct” the work of NGOs.¹¹² Any reporting and audit requirements should not be so burdensome that they fetter the ability of organisations to function and carry out their activities.¹¹³

The NGO Law, by contrast, requires quarterly activity reports. This is unnecessarily frequent and does not serve a legitimate regulatory purpose. The fact that they must be submitted to GAD township administrators instead of the registration board also adds unnecessary complexity; States should not require reporting to multiple government bodies.¹¹⁴

A requirement to submit annual financial statements can be consistent with human rights standards but requiring a full audit by a registered accountant is a potentially prohibitively onerous requirement for smaller organisations. The NGO Law has more relaxed requirements for organisations registered at the district and township level, which will cover many small NGOs, but those registered at other boards may still struggle with this requirement. Preferably, full audits should only be required of organisations of a certain size.

Authorities should not be able to engage in extensive oversight and monitoring of NGOs absent specific justification for this. Broad discretion to monitor the activities of organisations

¹¹⁰ NGO Law, sections 28(h) and 46.

¹¹¹ NGO Law, section 28(j).

¹¹² Report of the UN Special Rapporteur on assembly and association, 24 April 2013, para. 38, undocs.org/A/HRC/23/39.

¹¹³ Human Rights Council Resolution 22/6, para. 9(a); and *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 35.

¹¹⁴ *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 36(a).



“poses a grave risk to the continued existence of organisations that engage in activities perceived to be threatening to the State”.¹¹⁵

The highly ambiguous procedures in the NGO Law for responding to complaints against NGOs, and the general review of an NGO which they can trigger, both substantially restrict freedom of association. Neither procedure has any protective safeguards, for example, to ensure that investigations are only undertaken when there is evidence of misconduct or prevent overreach by investigating authorities. They also fail to provide NGOs with proper notice of the fact that they are under investigation or with an opportunity to respond or to correct any lapses in compliance. Instead, the NGO Law appears to authorise essentially *ad hoc* monitoring upon the receipt of a complaint or at the discretion of the relevant sector government entity.

The inspection powers granted to the registration boards, GAD and other government bodies also represent illegitimate restrictions on the freedom of association of registered NGOs. Inspections of accounts or activities should only occur if there are “reasonable grounds to suspect that serious breaches of the law have occurred or are imminent.”¹¹⁶ Inspection procedures must not be arbitrary and should only occur after advance notice is given to the NGO, while searches and seizures should be only be undertaking following judicial authorisation.¹¹⁷ The NGO Law offers no such procedural protections. Investigations can apparently be conducted at any time and without any suspicion of illegal activity.

Similarly, organisations should be self-governing, without State interference in their internal affairs. They should not have to obtain permission to make changes to their internal management or structure, for example.¹¹⁸ At most, NGOs should be required to inform authorities following such changes rather than to obtain advance permission. The NGO Law’s requirements in this area are particularly onerous, imposing a duty to obtain permission for even an address change, where it is clear that a simple notification procedure would suffice. External interference with internal management of an NGO should only occur in “extremely exceptional circumstances” and not as a routine matter:

Intervention should only be permissible in order to bring an end to a serious breach of legal requirements, such as in cases where either the association concerned has failed to address this breach, or where there is a need to prevent an imminent breach of said requirements because of the serious consequences that would otherwise follow.¹¹⁹

¹¹⁵ 2014 Report of the Special Rapporteur on assembly and association, note 35, para. 58.

¹¹⁶ Committee of Ministers of the Council of Europe, note 84, para. 68.

¹¹⁷ *Ibid.*, paras. 68-69.

¹¹⁸ *Guidelines on Freedom of Association and Assembly in Africa*, note 14, para. 36; OSCE and Venice Commission, note 33, para. 169; and 2009 Report of the Special Rapporteur on human rights defenders, note 99, para. 121.

¹¹⁹ OSCE and Venice Commission, note 33, para. 177.

7. Restrictions on Activities and Advocacy

7.1. Requirements under the NGO Law

The NGO Law restricts the ability of registered organisations to engage in political, religious or economic activities. Organisations that “directly or indirectly” participate in such activities cannot register, while registered organisations are expected to engage only in “social activities”, which are specifically defined so as to exclude direct or indirect involvement in these sectors.¹²⁰ Using an organisation’s name in support of a political party or a religion, or for any benefit beyond the social activities, is also criminally sanctionable with up to three years’ imprisonment.¹²¹ In contrast, the 2014 NGO Law did not restrict activities in these areas, merely indicating that organisations were outside the scope of the Law if they “only” engaged in religious or economic activities.¹²²

Registered NGOs also have duties to avoid certain types of activities, with a failure to do so potentially attracting either administrative or criminal sanctions. As described earlier, much of the sanctionable conduct is defined in vague terms which invites abuse, potentially criminalising peaceful and legitimate activities, including contacting or providing aid to people who are thought to be affiliated with armed groups, engaging in political commentary or criticism, or otherwise pursuing activities deemed by the government to be harmful to the State.

Beyond these specific restrictions, the NGO Law limits NGOs to carrying out pre-approved activities. NGOs must describe their objectives and intended activities when they register. They are then prohibited from going beyond the activities approved by the registration board, which are in turn based on the recommendation of the relevant sector government entity.¹²³ Similarly, an NGO which wishes to change its objectives or activities must obtain a new recommendation from the relevant sector government entity and approval from the registration board.¹²⁴ Hopefully, registration boards will only require a highly general description of an organisation’s activities, allowing for more specific activities to be planned within an approved category, but this will be at the discretion of the relevant authorities.

The NGO Law also imposes geographic restrictions on the activities of organisations. As noted in the registration section, NGOs are only supposed to operate in the area overseen by their registration board. An exception exists if the State declares a natural disaster area, but

¹²⁰ NGO Law, section 2(g). The GNLM translation refers to activities which aim to promote the “interests of the majority”. We understand this as a poor translation (the Lincoln translation instead refers to the “common good”) but if the translation is accurate, this would also imply a troublesome exclusion of groups representing the interests of minorities.

¹²¹ NGO Law, section 36.

¹²² 2014 NGO Law, section 19(a).

¹²³ NGO Law, section 28(e).

¹²⁴ NGO Law, section 28(i).

permission must still be obtained from the relevant local administration. To obtain permission, the organisation must provide information on the funds and goods to be donated and the activities that will be carried out.¹²⁵ Organisations also must obtain special permission to work in travel restricted areas from the relevant local administration and from security forces.¹²⁶ This provision merely encodes in the NGO Law a longstanding reality: military and civilian authorities have regularly imposed travel restrictions on conflict-affected regions of Myanmar, including severe restrictions on humanitarian aid, both before and after the coup.¹²⁷

7.2. Assessment against International Standards

Taken together, the restrictions on activities in the NGO Law are substantial, effectively foreclosing political advocacy, limiting engagement in political or economic matters, and imposing geographic limitations particularly in areas of conflict or national disaster. The requirement to obtain approval for changes, combined with the oversight described earlier, also mean that NGOs are likely to limit their activities to those considered to be acceptable by registration boards and other authorities.

Excluding certain spheres of activities from those permitted to NGOs is inconsistent with international human rights standards. NGOs should have the right to “participate in public policy debates, including debates about and criticism of existing or proposed State policies or actions.”¹²⁸ While it is legitimate to create separate regimes for the registration of political parties and religious organisations, and to prohibit entities registered as NGOs from acting as surrogates for those sorts of organisations, the prohibitions in the NGO Law go very far beyond that and limit the ability of NGOs to engage in anything deemed by military dominated bodies to represent political or religious activity. The right to freedom of expression, exercised in association with others, means that NGOs should be free to speak on all manner of topics. This freedom can only be restricted in a precise manner, in accordance with the three-part test under international law. A general requirement to engage only in “social activities” or to pursue only activities which are approved by a registration body, conflicts with the exercise of these rights.

Overall, the NGO Law attempts to define a list of permissible and impermissible activities for NGOs, which is not a valid approach under international human rights law:

¹²⁵ NGO Law, sections 27(h) and 28(k).

¹²⁶ NGO Law, section 28(m).

¹²⁷ See, for example, International Crisis Group, *Fire and Ice: Conflict and Drugs in Myanmar’s Shan State*, 8 January 2019, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/299-fire-and-ice-conflict-and-drugs-myanmars-shan-state>; and Development Media Group, *Regime imposes travel restrictions on nongovernmental organisations in Arakan State*, 18 July 2022, <https://bit.ly/3IdsYsA>.

¹²⁸ 2009 Report of the Special Rapporteur on human rights defenders, note 99, para. 122.

NGO framework laws containing lists of permitted or prohibited activities for civil society organizations are extremely problematic, as the often rather vague formulations of such provisions lend themselves to discretionary interpretation by the relevant government organs and may be used to curtail activities of civil society organizations that are critical of government policies or practice.¹²⁹

Organisations should also not be expected to align their activities with government policies.¹³⁰ Some features of the NGO Law indicate just such an expectation from the military regime. For example, the requirements to obtain a recommendation from the relevant sector government entity, list activities at registration and submit activity reports to GAD Township offices, all suggest an expectation that NGOs will align their work with government priorities and programmes. Governments should approach civil society in a spirit of cooperation rather than control, but the NGO Law takes the opposite approach, attempting to force NGOs into compliance with the military's own vision for the country.

8. Conclusion and Recommendations

The NGO Law represents yet another authoritarian development by the military regime governing Myanmar. In multiple ways, it undermines the right to freedom of association, as well as other fundamental human rights. Many features conflict with standards articulated in international human rights law, such as the mandatory registration requirement, overly burdensome application procedure, intrusive oversight and inspection powers, restrictions on allowable NGO activities, extensive grounds on which NGOs may lose their authorisation to operate and overly broad criminal sanctions.

The military regime has also afforded itself substantial powers to alter the procedures in the NGO Law or its implementation, often in arbitrary and non-transparent ways. Many aspects of the Law are insufficiently detailed. Examples include the lack of clear procedures for oversight and inspection, the undefined membership of the registration boards and the ability of registration boards to change the procedures for reviewing registration applications.

NGOs in Myanmar now face significant legal uncertainty and additional grounds for surveillance and harassment. While this is not a new reality for Myanmar civil society, NGOs will need to make hard decisions about whether to attempt to comply with the new legal regime. Some may decide that it is safer to risk sanctions for operating as unregistered organisations instead of subjecting themselves to the new legal regime. Others may decide that they need to stop operations altogether and disband.

¹²⁹ *Ibid.*, para. 79.

¹³⁰ Report of the UN Special Rapporteur on assembly and association, 26 July 2018, para. 30, undocs.org/A/HRC/38/34.

The international community, including donors and those providing humanitarian and development aid in Myanmar, face significant challenges in adapting their work in Myanmar to the new legal regime. Dialogue and proactive planning, in conjunction with local civil society, will be necessary to determine the risks posed by the NGO Law and adjust operations accordingly.

