

BARRIERS TO FUNDING ACCESS AFTER MYANMAR'S FATF BLACKLISTING

1. Background: Counterterrorism and Regulatory Developments

The Myanmar military has systematically exploited counter-terrorism frameworks to suppress political opposition and dissidents. Among other measures, the State Administration Council (SAC), the governing body established by the military, has undermined legal protections for human rights by implementing moratoriums on relevant constitutional provisions and removing the warrant requirement for police arrests and searches from the Law on Citizens' Freedom and Security. Additionally, the SAC has increased criminal penalties in counterterrorism regulations.

The military regularly labels political opposition and other entities as “terrorists” in an attempt to justify atrocities committed by its forces. Often, these efforts are supported by forced confessions obtained through torture, detention, and threats to life. Community-based organizations (CBOs), civil society groups, networks, individuals, and independent media that the military perceives as disruptive to its rule have been targeted, persecuted, and suppressed using these tactics.

On October 21, the Financial Action Task Force (FATF) blacklisted Myanmar due to significant strategic deficiencies in its efforts to combat money laundering and terrorist financing. Myanmar's failure to implement its action plan by October 2022, and its lack of significant progress in addressing the strategic deficiencies identified in the 2018 Mutual Evaluation Report, were the primary reasons behind FATF's decision to blacklist Myanmar.

While complying with FATF recommendations and implementing digital oversight systems can be carried out in a rights-respecting manner by democratic, legitimate governments, in Myanmar, such initiatives are regularly abused by the junta to suppress the opposition and civil society. Financial institutions, including private banks, are coerced by the military to monitor, report, freeze, confiscate, and hand over the accounts of individuals and civil society organizations accused of involvement in activities labeled as terrorism by the military. This process is plagued by nonsensical reasoning and widespread opportunities for bribery both among officials and within financial institutions. As a result, maintaining bank accounts and transferring funds face numerous barriers and complications.

On October 28, 2022, one week after it was blacklisted by FATF, the State Administration Council enacted the Organization Registration Law (ORL) through Notification No. 46/2022, in accordance with Section 419 of the Constitution of the Republic of the Union of Myanmar. This new law, known as the Myanmar Registration of Associations Law, replaces the previous Association Registration Law of 2014 and imposes additional requirements on non-governmental organizations (NGOs).

The ORL introduces criminal penalties for organizations that fail to comply with its provisions, with potential punishment of up to five years of imprisonment. It strictly prohibits organizations from operating without a valid registration certificate, continuing to operate after the expiration of their registration certificate, or supporting terrorist organizations. Violations of these prohibitions can result in imprisonment for a period ranging from two to five years, a fine ranging from MMK 500,000 to MMK 5,000,000 (USD 237 to USD 2,374), or both.

These new regulations are expected to have a significant impact on civil society organizations (CSOs), particularly those involved in human rights, gender and women's rights, and civic rights. The restrictions imposed by the ORL may additionally hinder CSOs from receiving funding from international organizations.

2. Scope of the Assessment

This assessment focused on the challenges and barriers faced by CSOs in accessing funding and managing the flow of funds from international aid after the release of the ORL law and FATF's blacklisting. It utilized a qualitative method and primarily involved conducting semi-structured interviews with key informants from CSOs and networks that work with international donors.

3. Limitations of the Assessment

Given the post-coup context in Myanmar, there are several limitations to the study. The situation has created numerous risks for individuals in the country, particularly members of civil society groups. These risks have restricted the ability of



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the assessment team to contact and involve a larger number of registered organizations across various sectors and geographic regions. Nonetheless, the assessment was able to conduct key informant interviews with representatives from four CSO/women networks.

4. Target Respondents

The respondents in this assessment are from CSO networks, including some organizations with expired registrations and others with valid registrations. Many of these organizations chose not to renew their registration due to issues related to the non-engagement mechanism. However, several organizations decided to extend their registration because they continue to provide essential services to those in need.

A total of four CSO networks were included in the assessment, with each network comprising 35 to 120 CSO organizations. Additionally, two CSO organizations operating at the national level were included. It is important to note that the respondents were interviewed only after providing informed consent, and precautions were taken to ensure their safety to the best extent possible.

5. Geographical Coverage

Representatives from the networks and organizations in this assessment conduct their activities across a majority of states and regions in Myanmar. They utilize their network organizations, community-based organizations (CBOs), and volunteers to extend their reach and impact. The broad coverage of the networks contacted in this study allows for a more comprehensive understanding of the challenges and barriers faced by CSOs throughout various parts of the country.

6. Data Collectors

The data collectors involved in this assessment are local NGOs that possess extensive knowledge and experience in conducting assessments and gathering information. They have established strong relationships with the community and are capable of ensuring their own security as well as the safety of the respondents.

7. Data Collection Method

The data collection method employed in this assessment was one-on-one key informant interviews conducted either through phone calls or in-person, depending on the convenience of the data collectors and respondents. Predefined questionnaires were utilized to guide the interviews and ensure consistency in the data collected.

8. Confidentiality and Security

Maintaining confidentiality and ensuring the security of both the data collectors and the respondents was of utmost importance. Prior to each interview, the respondents were clearly briefed on data protection measures and the confidentiality of their personal and organizational identities. They were made aware of the purpose of the study and their voluntary participation in it, with a guarantee that their information would be treated with strict confidentiality.

9. Impact of the Organization Registration Law and FATF's Blacklisting of Myanmar

9.1 WHAT BARRIERS TO FUNDING DO CSOs FACE AFTER ENACTMENT OF THE ORL?

CSOs, particularly those working in the fields of human rights and women's rights, have experienced immediate and significant impacts on their operations, financial flows, and donor relationships as a result of the military coup. Many CSOs working in these areas have chosen not to engage with the State Administration Council (SAC). The fragile banking system within Myanmar, which has been a challenge since February 2021, has further complicated financial transactions for CSOs. Many CSOs have refrained from using their foreign currency bank accounts since the coup.

The administrative penalties outlined in the ORL 2022, which can be imposed on organizations that fail to comply with its obligations, have added additional hurdles for CSOs. CSOs that have decided not to renew their registration face particular obstacles in terms of transferring funds to their offices, partners, and volunteers in various states and regions. These challenges have hindered the effective flow of funds and support to CSOs and their activities.

Under the ORL, Sections 33-35 specifically target unregistered organizations and impose criminal penalties for their establishment, operation, participation, and promotion. The law states that nobody shall engage in such activities without registration. Non-profit organizations without valid registration are unable to operate organizational bank accounts, particularly for receiving international fund transfers. As a result, they have had to find alternative methods to receive and disburse funds for their on-the-ground implementation. However, even organizations with valid registration face challenges as they require approval from the respective ministry for each foreign currency transaction when receiving funds from international donors.

Additionally, the new law mandates that registered NGOs submit a quarterly report and an annual audit report prepared by certified public accountants to the registration body within 60 days after the calendar year. In practice, registered organizations also need to submit detailed work plans and budgets to the respective ministry to obtain approval

for receiving funding in a foreign currency. However, many organizations have not received approval from ministries even after submitting all the required documents.

Both registered and unregistered organizations face similar difficulties in receiving funding from international donors in foreign currency. However, organizations with valid registration may at least receive funding in Myanmar currency (kyats) if their international donors are able to transfer funds in the local currency.

Respondents expressed concerns about the transfer of funds within the country, particularly using personal accounts, following the implementation of the ORL. The rushed attempts to digitize databases and systems, including national ID cards, registered mobile SIM cards, and linked bank accounts, by the State Administration Council (SAC) appear more as efforts to establish a digital dictatorship rather than improve existing identity systems.

Respondents have witnessed the arrest of prominent members of civil society after cash withdrawals from ATM machines, while others have had their bank accounts frozen. Other consequences for actions being seen as violating SAC laws include abduction, torture, and even murder. This has created a sense of insecurity among CSOs regarding their implementation work, as digital communication and bank transfers can leave traces, increasing the risk of being targeted by the de facto authorities.

Receiving and disbursing funds pose significant challenges, particularly for rights-based organizations, due to restrictions imposed by the new ORL. Larger organizations with more visibility, particularly those engaged in service delivery, will find it difficult to operate without valid registration, as punishments under the new law are severe. With the current restrictions on CSOs and the closing of civic space, NGOs and CSOs involved in humanitarian and socio-economic development work have already experienced setbacks, and the situation is likely to worsen in the future.



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9.2 WHAT CONCERNS DO YOU HAVE RELATED TO THE FATF BLACKLISTING, AND POTENTIAL ADDITIONAL BARRIERS AROUND ACCESSING FOREIGN FUNDS?

According to respondents, the FATF blacklisting has not yet led to significant barriers for CSOs to access foreign funds in neighboring countries. However, when opening bank accounts in those countries, Myanmar citizens may now encounter additional requirements. For instance, sometimes banks ask Myanmar nationals about the sources of funding when receiving significant amounts of money into their personal accounts for project expenses.

Some donors prefer that funds be received in the CSO's organizational account located outside of Myanmar, which requires paying a transfer fee to the third-party organization receiving funds on a beneficiary's behalf. To address this, some CSOs have opened joint accounts in different banks to receive funds for different projects. However, there are more concerns about this process of fund transfer, following the FATF's blacklisting. CSOs are worried that simply being a Myanmar national receiving funds through a personal or joint account in another country will pose risks and draw additional scrutiny as a result of the blacklisting.

Many donors also have institutional regulations that prevent them from directly transferring funds to personal accounts and instead require that funds be deposited into organizational accounts. CSOs face challenges in finding safe practices for fund transfers, as standard aid distribution processes can inadvertently expose recipients to military surveillance, arrest, and violence.

The respondents expressed concerns that the FATF blacklisting could make it more challenging to open or maintain bank accounts and access financial services for international transactions. Many banks and financial institutions may choose to avoid servicing accounts linked to Myanmar or impose additional paperwork requirements due to the "enhanced due diligence" required for a country on the FATF blacklist. This also hinders the ability to provide evidence of nonprofit organization status without valid registration.

CSOs without valid registration have primarily relied on informal financial services, such as business-to-business cash transfers, mobile financial modalities, and informal systems like hundis. These alternative systems are often the quickest and most efficient means of reaching communities in need, especially in conflict-affected areas or where formal banking options are limited. However, accessing these alternative systems is becoming more difficult as the Central Bank of Myanmar has tightened its Know Your Customer (KYC) process for such mechanisms.

Furthermore, local CSOs that receive financial support from international organizations face challenges in terms of rigid funding resources, a lack of contingency reserves, and limited flexibility in expenditure. Finding safe passages and mechanisms to transfer financial support and other resources to beneficiaries remains a complex challenge.

10. Main Observations

10.1 UNJUSTIFIABLE RESTRICTIONS

The FATF blacklisting could lead to unjustifiable restrictions on various aid modalities and unnecessarily limit the existing space for humanitarian and civil society activities. The FATF's blacklisting report has encouraged the SAC to enact new legislation such as the ORL, which further restricts CSO funding mechanisms. This aligns with the FATF's own analysis of the unintended consequences that arise from the implementation of its standards, including de-risking, financial exclusion, the unwarranted targeting of non-profit organizations (NGOs), and the curtailment of human rights.

One example of these consequences is that the blacklisting not only impacts the nonprofit sector, as mentioned in the FATF's report, but it also prevents CSOs from providing evidence of their nonprofit organization status without valid registration. This highlights the challenges faced by CSOs in demonstrating their legitimacy and compliance with regulations under the current circumstances.

10.2 JEOPARDIZING HUMANITARIAN AID

The blacklisting of Myanmar by the FATF will exacerbate the already limited access that vulnerable individuals have to crucial humanitarian aid and funds, further jeopardizing their lives and well-being. Additionally, it will have a profound impact on the already shrinking civil society space in the country.

In response to the blacklisting, the SAC's enforcement of the ORL will impose additional requirements on registered CSOs. This includes the obligation for CSOs to declare their funding sources to the appropriate ministry and general administrative department. This increased scrutiny and administrative burden on CSOs will likely further restrict their operations and ability to carry out important work in serving the needs of the population.



Main Observations on the Impact of FATF Blacklisting

- Could lead to unjustifiable restrictions on various aid modalities and unnecessarily limit the existing space for humanitarian and civil society activities.
- Will exacerbate vulnerable individuals' already limited access to crucial humanitarian aid and funds.
- Will impact CSOs' ability to receive funding through informal channels, such as money transfers and other foreign transactions.
- Will create difficulties for NGOs in paying their employees and suppliers, hindering their ability to carry out relief and support activities within the country.
- Could amplify safety and security risks faced by the nonprofit sector.

10.3 BLOCKING INFORMAL FUNDING CHANNELS

The blacklisting will also impact CSOs' ability to receive funding through informal channels, including money transfers, humanitarian fund transfers, and other foreign transactions related to humanitarian assistance. This will create obstacles in accessing the necessary funds for humanitarian activities, further exacerbating the challenges faced by vulnerable populations.

10.4 DIFFICULTY PAYING EMPLOYEES AND SUPPLIERS

CSOs have already encountered significant challenges in receiving foreign funding, as it is currently not possible to receive funds in their foreign currency accounts. With the blacklisting and the ORL, NGOs will face extreme difficulties in paying their employees and suppliers, hindering their ability to carry out relief and support activities within the country. This will particularly impact CSOs working on rights-based programs, making it more challenging for them to facilitate cash transfers and manage funding flows through informal channels. The blacklisting is likely to further shrink Myanmar's civil society space by intensifying scrutiny on legitimate NGO operations and funding sources. It will impose unfair and unnecessary administrative and operational burdens on NGOs, obstructing the daily delivery of humanitarian and other essential services to those in need.

10.5 AMPLIFIED SECURITY RISKS

The FATF report is likely to be utilized by the SAC as an additional justification to over-regulate both registered and unregistered CSOs. The blacklisting itself could amplify the safety and security risks faced by the nonprofit sector and its personnel as they strive to provide assistance to vulnerable communities. This is particularly concerning given the reliance on both formal and informal funding mechanisms, which operate within an insecure and overly surveilled environment. The increased scrutiny and restrictions imposed as a result of the blacklisting could further hinder the vital work of CSOs and impede their ability to effectively support those in need.