

MYANMAR CIVIC SPACE ASSESSMENT



Overview and Preliminary Key Findings

I. Introduction

In February 2021, the Myanmar military¹ committed a coup d'état, demolishing established relationships, collaborative mechanisms, and trust built between government and civil society. In the process, it also destroyed possibilities of further improving civic space,² greatly obstructing the ability of CSOs to contribute to the social and economic development, equity and harmony of stakeholders in Myanmar.

Amidst the ongoing atrocities and violation of rights of citizens and communities, local civil society organizations (CSOs)³ agreed to conduct an assessment of the narrowing civic space and present summary findings to key stakeholders, along with recommendations for improving the existence, operational space, and capacity of the CSOs in Myanmar. With support from the International Center for Not-for-Profit Law (ICNL),⁴ local CSOs carried out an assessment of civic space in Myanmar from December 2021 to April 2022. Leading this initiative was a local partner with decades of experience in community and high-level advocacy, research, and service delivery in different sectors, including national and community-level advocacy for legal reforms from a human rights perspective. For security reasons, the lead CSO and other partners carrying out this assessment have chosen to remain anonymous.

1 Junta, Military Council or *Sa-ka-sa* in Myanmar initials, State Administrative Council (SAC), military government, *Tatmadaw* (meaning royal army in Myanmar), and other names are used to describe the military that attempted the coup d'état in Myanmar. The United Nations Country Team (UNCT) in Myanmar, in line with concerns of the UN Secretary General, has developed an engagement guidance for all its programmes, agencies and funds in the country with regards to program implementation, communication and interaction with the individuals, groups, and forces that committed the coup d'état along with the bureaucratic machinery it took over by force and controlled. The guidance suggests the usage of the term 'de facto authorities' for many descriptions covering military, army, security forces, authorities, ministries, officials, appointees, etc. in an attempt to avoid legitimizing these entities and individuals while having to identify them. This report will also use the term de facto authorities as well as 'military' or 'junta' to describe the actor that seized state power and administrative machinery by use of force in February 2021.

2 Civic space: Defined by the OECD as "the set of legal, policy, institutional, and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise, and participate in public life," civic space needs to be protected and promoted if countries and societies are to work towards good governance, inclusive growth, effective and efficient open government policies, and stakeholder participation initiatives, <https://www.oecd.org/gov/open-government/civic-space.htm>.

3 Civil society organization (CSO), non-governmental organization (NGO), private volunteer organization (PVO), Pa-raa-hi-ta organization: although the usage of these terms can be seen as similar or with some differences in detailed characteristics, this report will generally use the term CSO.

4 <https://www.icnl.org/our-work/myanmar>

The objective of the study was to assess the current situation in Myanmar affecting civil society and civic freedoms, focusing on freedom of association after the coup d'état. Through collection and analysis of data on the threats and status of CSOs in different geographical regions, the study offers recommendations for relevant audiences regarding how to address civic space challenges. This rapid assessment is the start of a longer-term project to assess civic space and the operational environment for CSOs in Myanmar, focusing on association and the ability to mobilize resources and provide development-related services to Myanmar residents.

The following is a short summary of the initial assessment, along with recommendations for next steps.

2. Methodology of the Assessment

The assessment looks primarily at the challenges and threats experienced by CSOs after the coup, both registered and non-registered, and how this has affected their day-to-day operations and project implementation.

Like other studies, there are limitations, especially given the Myanmar context post-coup. The situation has created many risks for people in Myanmar, and particularly members of civil society groups, including with regards to communicating about the current situation. Those risks restricted the ability of teams conducting the assessment to contact and obtain participation of more organizations in different sectors and geographic regions. The assessment nevertheless managed to contact a representative number of civil society representatives, obtaining their consent and prioritizing their security and confidentiality needs. That said, the assessment may not portray some of the worst violations, incidents of harassment and restrictions, due to security risks for both the individuals and organizations involved. However, to provide additional data support, participants involved in this assessment were allowed to present the case of their own organization as well as others with whom they are familiar in the region or sector.

The methodology involved both quantitative and qualitative methods, and relied on semi-structured interviews with key



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informants and focus group discussions. Basic quantitative tools were used to give a sense of the scale of impact among different sectors and geographic locations. Focal persons were selected from networks based on their involvement in the Association Registration Law process or their experience or networks with local CSOs in respective regions.

3. Background

Myanmar civil society has struggled under restrictive governance regimes in the past. The operational space and government acceptance of CSOs in Myanmar has been suboptimal from the first military takeover of the state in 1962. During this era, civil society was regularly monitored on suspicion of acting against the authorities, if permitted to organize without being coopted. When the military seized state power again in 1988, this attitude found expression in the 1988 Association Law, which eliminated the possibility of forming a CSO outside the military's control.

With the temporary yet visible political transformation in Myanmar after 2012, there appeared some opening for civil society to contribute to the process of amending the legal framework around CSOs and associations, particularly as related to registration. After decades of oppression, being coopted or under suspicion, CSOs in Myanmar saw an opportunity to contribute to the legal reform process. In 2013, a variety of local groups were involved in providing inputs into the draft bill for the Association Registration Law (ARL). As a result of these efforts, CSOs were able to reform the legal framework with significant success. The ARL became law in July 2014. According to data from the General Administration Department (GAD), by December 2020 the Union-level Association Registration Board had registered over 1,500 local associations—a significant increase from less than 100 in the registry in 2013, before the Association Registration Law was enacted.

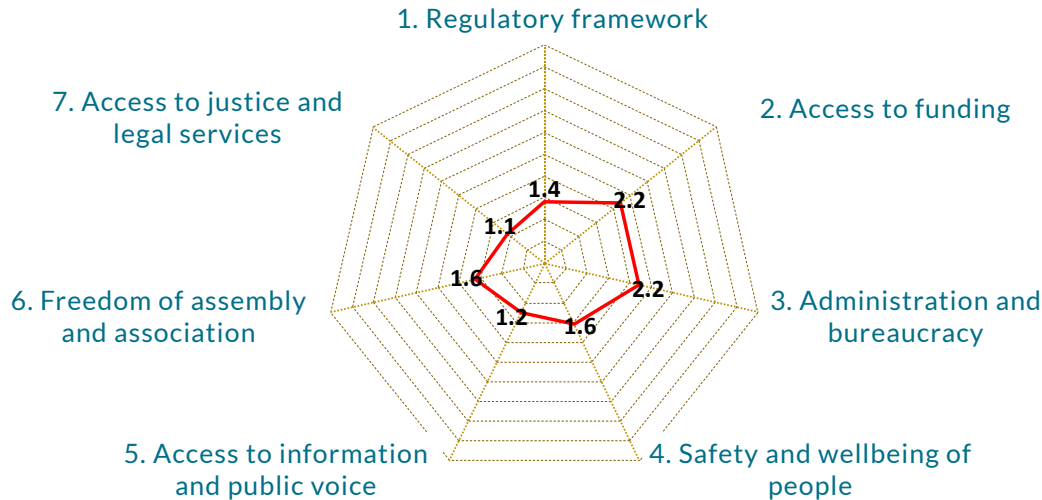
Pushback from GAD and other government departments in implementation, and in particular in the development of restrictive by-laws of the ARL, reinstated barriers to the establishment and operations of non-profit associations. As a result, civic space in Myanmar experienced ongoing challenges during this time period, raising the need for additional reform.

Nevertheless, there was significant progress overall after the promulgation of the ARL 2014. The interim period from 2014 through January 2021 remains the most enabling time period for private volunteer organizations in the history of Myanmar until it was cut off by the military's latest coup attempt.

4. Main Observations and Lessons Learned

OVERALL AVERAGE SCORE

(1 = closed, 5 = open)



GENERAL ENVIRONMENT

Since the military seized power from an elected assembly and administration on 1 February 2021, the situation for civil society has reached one of the worst points in Myanmar’s history. The fierce attempt of the military to cling to power has led to harsh oppression and atrocities committed against individuals, groups and organizations assumed to be affiliated with or supporting the opposition, or who have otherwise resisted the military’s rule.

As expected, this has created a generally negative environment around civic space, with a continuing decline in the welfare of the sector. The military has violently cracked down on CSOs and initiatives providing essential services for communities. Security forces have specifically targeted CSOs providing emergency care and ambulance support for protesters injured by the crackdown. De facto authorities are suspicious of any CSOs with names containing terms like “federalism” or “action,” and arbitrarily arrest and raid any organization of which they are suspicious. The military has used intimidation and brutal force to repress peaceful protests as well as any expressions of dissent against the coup.

Most CSOs experienced severe restrictions implemented directly or indirectly by the military and their security forces after the coup. These included prohibitions on receiving or transferring funds and carrying out any transactions, as well as bans on gatherings of more than five people (justified by COVID-19 regulations used to prevent events and require permission from de facto authorities for any CSO activities).

Surveillance of CSOs is regularly carried out by security forces or their informants and

members of political parties under their control. Moreover, many CSOs had to face the difficult choice of operating under the radar or shutting down. It was observed that some organizations have been able to sustain activities by adopting a low profile, or adapting activities to avoid notice, leading to reduced effectiveness and inefficient use of resources, which are scarce in the current crisis. Conversely, CSOs operating in areas controlled by ethnic organizations can exist and implement activities with significantly more freedom.

AMENDMENT OF LAWS AND REGISTRATION/ REPORTING REGIME

The junta amended, without proper mandate or legitimate authority, laws related to CSOs. These included revocation of key sections in the Pyidaungsu Hluttaw Law No. 5/2017, “Protection of citizens’ personal freedom and security” – and activation of a constitutional provision suspending the rights of citizens under the guise of a state of emergency which in reality was caused by the coup itself.

Amidst these operational challenges for CSOs, the GAD and Association Registration Boards at all levels halted new registrations and renewal applications for CSOs, stating that the ARL was under revision. (The GAD, which the National League for Democracy (NLD)-led government placed under a civilian ministry, was placed under the oversight of the military-controlled Ministry of Home Affairs (MoHA) after the coup.) Many CSOs’ registrations expired in December 2021, during the ongoing moratorium on renewals. Without a valid registration, CSOs cannot access or operate organizational bank accounts, which are needed for receiving international fund transfers. Local organizations without active registration report being oppressed more than those with active registration. In some regions, GAD has asked many domestic CSOs whether or not their registration has expired, and if they intend to continue operations. INGOs (international non-governmental organizations) are asked these questions as well, along with questions about whether they are still operating and present in Myanmar. The local levels of administration seem to be under order to closely monitor CSOs; they display a very low level of trust and high suspicion that these organization will act against the de facto authorities.



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Regular submission of workplans is now required by de facto authorities. Although de facto authorities do not generally reject submissions, most organizations appear to either censor their activities or omit information that they deem the military will not like. De facto authorities require that CSOs submit a full agenda and items to be covered for any trainings, one of the most common CSO activities. Should there be any components to which de facto authorities object, these must be removed for the training to proceed.

Local partners involved in this assessment learned that coup leaders planned to amend the ARL, or draft a much more restrictive, far-ranging bill restricting and controlling any foreign entities, including non-profit, multilateral or commercial actors. Although the enactment of the draft bill was delayed for some time, de facto authorities were purportedly implementing many of its features, including targeting CSOs for being unregistered. At the end of October 2022, de facto authorities finally passed a restrictive new law, requiring registration from all CSOs and enforcing criminal penalties for a wide range of violations.

Many donor agencies have reacted inflexibly to the changes in Myanmar, inadvertently punishing CSOs by insisting on requirements such as registration with MoHA under the military, and organizational bank accounts to access their funds as opposed to a joint account by the executives (see below *Financial* section). While the challenges posed by the military coup and subsequent oppression were formidable, the inflexibility of some donors has raised questions about whether certain aid agencies are serious in their criticism of the military and their support of humanitarian assistance.

DISPARATE IMPACT AND TARGETING OF CERTAIN CIVIL SOCIETY SECTORS AND GEOGRAPHIC AREAS

The assessment additionally found that while the coup narrowed space for CSOs in general, specific subsets of the non-profit sector came disproportionately under attack. In particular, CSOs working on human rights, women's rights/gender equality, minority/indigenous ethnic rights, LGBTI, youth, labor rights, those advocating for political development, federalism, or resource mobilization, and those supporting protests and the Civil Disobedience Movement (CDM) since the coup experienced greater pressure and a higher threat level than other groups. For instance, rights-based CSOs or those focused on democracy and civil liberties, including the Assistance Association for Political Prisoners (AAPP) and other prominent advocacy groups such as Progressive Voice and Free Expression Myanmar (FEM), quickly opposed the coup and found themselves targeted by the military. Teams and major operations of the prominent groups had to be relocated abroad shortly thereafter, and many of these CSOs had to perform their activities under cover. Some had members and staff who were arrested and tortured by the military, while others had to flee for their own security, sometimes to other countries.

Additionally, any groups with actual or suspected affiliation with the National League for Democracy (NLD) party were viewed as the enemy. Attacks on such CSOs or other groups included not only the targeted individuals, but also their family members. Members of civil society and their family experienced threats and actual acts of murder, abduction, jailing, and sealing and confiscation of properties.

The junta continues to actively persecute members of CSOs, including those that assisted people whose lives were threatened by the COVID-19 pandemic or internally displaced people (IDP) fleeing conflicts or targeted attacks by junta forces. By August 31, 2021, at least 101 members of CSOs were in detention under the military, according to an AAPP report.

In addition to differences by sector, there have also been differences in treatment based on geographic location. The working group for the assessment received different hypotheses from participants and concluded others based on relevant data to explain these differences. Primarily, it is suspected that differences in treatment of civil society across different states and regions depended largely on the levels of resistance and conflict in a particular locality, and/or the presence of certain administrative officials with a long history of collaboration with CSOs under more conducive periods.

FINANCIAL OBSTACLES AND CORRUPTION

A banking crisis caused by multiple factors, including the deliberate harsh restrictive actions of the de facto authorities and the reactions of the market, has had a serious impact on the existence and operations of CSOs in Myanmar. Insufficient access to cash or even funds in bank accounts led to a liquidity crisis which undermined many CSO services. Many organizations had to resort to *hundi* informal cash channels for fund transfers, or pay agents and even the banks themselves informal percentage fees for cash withdrawals. Many CSO activities also had to be suspended because of cash shortages.

Additional restrictive actions were rolled out by the de facto authorities through many ordinances and instructions, including requirement of immediate exchange of United States dollars into local currency in bank accounts. De facto authorities also withdrew support for importation of supplies



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including medical equipment and pharmaceuticals purchased by CSOs or even the UN.

Arbitrary restrictions by the de facto authorities and the general environment of fear, impunity, and lack of rule of law have led to rising corruption, affecting not just CSOs but communities and citizens. Some examples include local GAD officials asking for Myanmar Kyat 300,000 for permission to conduct a community-based activity and demanding 20 percent of the supplies a CSO was distributing in a community. CSOs were often required to obtain permission to conduct activities from multiple levels of administrators. The military also reinstated a requirement that citizens register with local authorities and pay a guest registry fee if they were staying in a place that was not their registered residence. In another case, security forces asked for rice rations for themselves in exchange for approving a CSO nutrition support program for the impoverished population. There are many instances of the resurgence of corruption in Myanmar, affecting civil society and citizens, which needs to be closely monitored. Some respondents concede that in order to operate and ensure their own safety in the post-coup environment they have had to pay bribes, omit information, or deceive the de facto authorities through reporting.

5. Impact

It is evident that the coup and its aftermath have severely constricted civic space and the operational environment for CSOs in Myanmar. With the current restrictions on civil society, the humanitarian and socio-economic development work implemented by CSOs has suffered and been set back considerably. Based on the indicators and targets set out in the Sustainability Development Goals (SDG), it will take a significant amount of time for Myanmar to reach its development status pre-coup. It is likewise agreed by expert service providers, managers and advocates among CSOs that civic space achievements up to the time of coup have been reversed and will require significant effort to rebuild.

Although the situation remains extremely challenging, the working group is confident that there will be possibilities to learn from, adapt to, and overcome the challenges currently facing Myanmar civil society. CSOs have shown great resilience in this crisis, and continue to find ways to sustain operations and services despite daunting difficulties.