



The new Registration of Associations Law

The new Registration of Associations Law, ("**ARL**"), enacted on 28 October 2022, repeals the 2014 Registration of Associations Law ("**2014 ARL**"). Implementing legislation and directives issued under the 2014 ARL, for example the 2015 Rules Relating to the Registration of Associations, remain in force as far as they do not conflict with the ARL. The registration requirements under the ARL apply to two types of organizations: National non-governmental organizations ("**NOs**") and International non-governmental organizations ("**INGOs**").

Key Implications

Implications for work with registered NOs

Registered national organizations should be able to continue operating and partnering with donors. However, this will largely depend on how the different aspects of the ARL will be implemented and used, which will only be seen in the coming months. Specifically, it will depend for example on the acceptance/denial ratio of registration applications, which will be contingent on how the subjective and broad decision-making standards in the law will be used. Similarly, it will depend on the willingness, ability, and frequency of the military authorities to use the increased reporting burdens, administrative actions, and criminal penalties to hamper the work of registered NOs.

An argument for a positive prognosis is that many of the additional legal burdens the ARL introduces can be interpreted as the law merely formally catching up with practices military authorities had already introduced since the coup. For example, NOs already had and have to deal with increased documentation requests, inspections, and threats – military administrative

and punitive action was not contingent on a legal basis in the 2014 ARL or elsewhere. So far, NOs learnt to adapt and find ways to cope, which may continue. In addition, it remains doubtful that the military authorities, including at Township level, will be able to process the flood of information generated by the new registration and reporting requirements. Donors should also consider that their continued support and adequate funding is a pre-requisite for NOs to mitigate and deal with associated risks, especially if operational context becomes more difficult.

Implications for work with unregistered NOs

There are two key legal risks for cooperating with unregistered national organizations: the first is the risk of criminal prosecution for the staff working for unregistered organizations, the second is the risk for donors to commit a criminal offence themselves by “promoting” unregistered organizations. While the legal risk for donors is smaller than at times reported (see below, B. 5.), it still exists and may in particular affect national staff.

A lot will depend on implementation and use of the new offenses and penalties, as well as on the local implementation context and Township GAD practices. Currently, unlike type of activities, registration generally is not checked at the implementation (village/Township) level. If this changes, work for unregistered organizations will become very difficult, especially in SAC controlled areas.

There are possible options or justifications for donors to consider continuing or tweaking support to unregistered entities. A potential legal loophole is that the ARL defines NOs as “formed by five or more people”. Support may be considered to individuals, community groups or loose networks of up to four people. Another option is to partner with entities that are exempted from the ARL, such as (social) businesses or religious organizations. Where possible, funding may be routed through neighboring countries and to entities based in border areas with Myanmar reach. Donors may also consider hiring schemes for staff of partner organizations in the field.

Donors should also consider the effects and risks which ceasing support to unregistered organizations would have: this may pressure ongoing partners into registering, which could be dangerous for them. Of course, conflict areas and many vulnerable communities may become much harder or impossible to reach. It could also create the impression that donors give in to or even cooperate with the military authorities, which may lead to civil society backlash.

Implications for work with organizations “in limbo”

A likely scenario for the coming months is that many NOs will remain in registration limbo. Renewal of registration processes effectively have been on hold throughout 2022, because military authorities waited for the ARL enactment. There may also be many unregistered organizations who now aim to apply for the first time before the 60 days deadline passes on 27 December. At the same time, reporting frequency, information requirements, and number of involved administration levels increased with the ARL. All these factors contribute to a flood of information for the military administration, including for newly established bodies, which will likely not be able to manage this without significant delays. This means that organizations may not receive a decision on their registration applications for a long time. Another group of in limbo actors are the many individuals or entities who are uncertain whether their form of non-governmental work is subject to ARL registration or not (see below, B. 1.), and clarification requests may contribute to delays.

Anecdotal evidence since ARL enactment supports the delay scenario, with some Township GADs putting registration related work on hold, while awaiting further guidance from above, and other Township GADs requesting endorsement letters from village/ward administrators.

Following from above, a key question is if NOs can continue operating, and if donors can continue support, while NOs are awaiting registration decisions or while they are finding out if they are subject to registration requirements. According to the ARL, the registration board should issue a temporary registration certificate within 21 days from the application date, and only scrutinize the application after having issued the temporary certificate. While this temporary certificate would allow NOs to operate, it's uncertain whether registration boards will issue them in time. This could be particularly problematic as the ARL criminalizes continuing operation of an association after expiry of the registration certificate. Hence, NOs should be advised to request temporary registration certificates, and to document those requests, in order to protect or defend themselves against potential criminal charges.

Implications for work with INGOs

As pressure on INGOs operating in Myanmar significantly increases (see below, B. 2.,4.,5.), cooperation with in-country INGOs becomes more difficult and riskier. One particular risk is that INGOs may immediately be dissolved if found to be directly or indirectly involved in interfering

with national sovereignty, security, law and order, or ethnic unity. In addition, if a registration certificate is revoked, remaining assets (potentially including donor funding) will be transferred to the military government.

Reaction from Civil Society

Trends on the ground

CSOs report that, in general, new registration boards have not been formed yet, and registration applications still cannot be submitted and/or are not processed. Military authorities want to await further guidance on the law and are, apart from stalling registration applications, also more hesitant to provide approvals for activities. They often refer decisions to the higher-level bodies. For example, one CSO wanted to conduct activities in three villages in Ayeyarwady Region. The Township GAD mentioned that they should get District level approval. However, District level authorities then suggested to get Union level (!) approval and meet the relevant Minister, which lead the CSO to cancel the village level trainings. The increased tendency of local administration to avoid decisions may reduce the previous flexibility and negotiation space which allowed implementation solutions and pockets at the local level. Questions about registration status have increased since ARL enactment, for example by judges or law officers. Some organizations also report a recent increase of questions about funding sources and seek guidance from donors for such situations.

CSOs opine that given the many gaps in the ARL, the authorities will struggle to implement the new procedures, until a new by-law will be published.

Registering vs. not registering

CSOs struggle to decide whether to (re-)register or not, as both options carry risks, which depend on how the ARL will be implemented and thus are difficult to assess. One issue is that the registration application now requires more personal information of members and functions. CSOs are also considering how their registration decisions will impact on, and lead to reactions of, their beneficiaries. Communities and CBOs CSOs work with will ask questions about their registration status and may lead to negative reactions due to perceived cooperation with the GAD. CSOs who

are currently registered have a bit more time to wait and see how the ARL will be implemented before deciding about applying for renewals.

CSOs see the strict legal delineation between social and religious activities as problematic, both for registration and implementation. The ARL prohibits registered organizations to conduct religious activities, presumably because religious organizations are supposed to register with the Ministry for Religion and Culture. However, in reality, there is often no strict separation between social and religious organizations and activities. For example, organizations with a religious background often also conduct humanitarian or development activities. Such organizations have to decide which registration channel to pursue and face legal risks in implementation.

Problems after registering

CSOs are also concerned about the new impediments introduced after registration. The reporting and approval burdens will increase the workload of CSOs significantly. They note that even if one is willing to comply with the ARL, it is hardly possible, given the detail demands combined with the broad terms, extensive competencies, and prohibitions in the law. For example, it is very difficult to, at the stage of registration, know and list all planned activities for years to come, while any deviation in future implementation would constitute a breach of the law. In addition, approval for activities after registration is still required, which may only put organizations on the radar of the authorities. As one representative summarized: "Getting permissions for whatever you are doing will limit what you can do". Finally, CSOs are also concerned that any breach of ARL prohibitions may lead to revocation of the registration certificate and the confiscation of assets by the military authorities (s. 51 in combination with s. 54).

Key Legal Changes and Provisions

Scope of the law

The registration requirement under the ARL applies to two types of organizations, NOs and INGOs. NOs are defined as formed by 5 or more citizens to carry out non-profit social activities. INGOs are defined as foreign country established organizations aiming to carry out non-profit social activities in Myanmar. For NOs and INGOs, social activities are defined as no-profit

“engagement for the common good [...] without interacting with political, economic, religious or faith sector” and include social and academic development activities.

Embassies, UN organizations, businesses, political, or religious organizations are not subject to registration under the ARL. However, certain offences and penalties the ARL introduces, particularly in relation to promoting unregistered associations, can be committed by “anyone” (see B. 5.).

Currently, uncertainty exists as to which of the many non-governmental forms of social and community support in Myanmar fall under the ARL registration requirements.

Registration requirements

Among other things, NOs need to provide the registration board with articles of association, information about president/secretary, member numbers, objectives, intended activities, a list of funds and assets, and a recommendation from the concerned government department.

INGOs additionally need to document that 40% of its executive members are Myanmar nationals, which is a new burden compared to the 2014 ARL. They also need to provide a draft memorandum of understanding, and approvals from three ministries: the “line” ministry, Ministry of Investment and Foreign Economic Relations, and the Ministry of Immigration and Manpower. In addition, approval from the local administration at the activity implementation areas and a letter to MoFA requesting their opinion need to be submitted. INGOs also need to document the source of funding, while IOs only need to provide a list of money and assets they own.

The main substantive criterion for granting registration is if there is no reason to suspect any harm to national sovereignty, law and order, security and ethnic unity”. This is overly subjective and broad, providing full discretion to the registration board. In the current conflict context, any activity can easily be framed as “suspicious” of doing “any harm” to “national sovereignty, law and order, security and ethnic unity”. Full discretion and broad standards also increase corruption risks.

Registration process

Registration applications need to be submitted to the fitting Registration Board, which are newly established bodies at Union, Regional/State, District, and Township level, and are dominated by representatives of the Ministry of Home Affairs and the General Administration Department.

Existing registrations issued under the 2014 ARL remain valid until their expiry date. Unregistered associations, or organizations with expired registrations, are required to apply within 60 days since enactment of the new law, i.e. until 27 December 2022 latest. If rejected, the application can only be improved and resubmitted once. If rejected a second time, the decision is final, without appeal. It's not possible to reapply at another registration board level.

The timeline for renewal of registrations changed as follows: applications must be filed 90 days prior to the expiry date (previously 30 days). If it is later than 90 days, but prior to expiry date, the application will be processed, but an unspecified penalty fee must be paid. Submissions for renewal of existing registrations can only be submitted until expiry date. After that, applications for new registration must be filed.

In sum, contrary to the 2014 ARL, upon rejection, registration applications can now only be improved and resubmitted only once. There is no judicial review or further appeal. For organizations with registrations expiring in the end of this year, the 90 days period to submit renewal applications already passed. Although new laws should not have negative retroactive effects, organizations may still be forced to pay the penalty fee.

Duties and reporting for registered organizations

The ARL increases reporting duties for registered organizations, with new mandatory quarterly reports to Township level GAD and the relevant administration. In addition, annual reporting to the registration board and the responsible ministry is required with changed reporting timelines (60 days after the end of the calendar year). Furthermore, registered organizations need to tolerate inspections and respond to enquiries or requests for documentary evidence by the registration board or government departments.

Administrative action can now be taken against registered organizations. This includes warning, limiting activities for certain time, temporary suspension of registration certificate, and revocation of registration status. Only one "appeal" is possible against such decisions, namely to the higher-level registration body. Administrative action can be taken in addition to criminal/civil proceedings.

Offences and Penalties

The ARL introduces new criminal offences and penalties. It is important to clearly distinguish between two groups of offences, according to potential offenders. Sections 33-35 target

unregistered organizations, and the offender can be anyone ["nobody shall"]. They mainly criminalize establishing, operating, participating in, and promoting unregistered organizations.

Sections 36-39, however, target registered organizations, and only registered organizations can be the offender ["no registered association shall"]. They criminalize conducting political/religious activities, obtaining/transferring/using money or goods or assistance by illegal means, directly/indirectly contacting/supporting terrorist individuals/organizations/unlawful associations, and harming sovereignty, law and order, security, or ethnic unity.

Some confusion arose regarding s. 38 (directly/indirectly contacting/supporting terrorist individuals/organizations/unlawful associations). As mentioned, this offense can only be committed by registered organizations (NOs or INGOs), not by Embassies or the UN. In addition, "unlawful organizations" should not be confused with "unregistered organizations". Unlawful organizations are organizations declared unlawful by the military authorities based on the Unlawful Association Act, not merely unregistered associations based on the ARL.

In sum, apart from legal risks for partner organizations, the only legal risks for donors themselves stems from s. 35, stating that nobody shall "promote" (alternative translations: contribute/help) unregistered organizations. Although the purpose and wording of the section implies that it was not specifically designed or directed at donors, providing funding to unregistered organizations may constitute a criminal offence under the ARL.

The official translation of s. 35 states "Anyone shall not be allowed to join the organization which does not have the registration certificate as a member for carrying out the tasks, giving encouragement or pretending." Based on this, some commentators conclude that only "members" of unregistered organizations are targeted, and that this section thus cannot be applied to donors providing support or funds to unregistered organizations. However, the authorities will apply the Myanmar, not the English version. Based on the Myanmar version, it appears more probable that a translation "anyone who supports" unregistered organizations is closer to the intended meaning, and that donors providing funds to unregistered organizations may still fall under the scope of s. 35.