



11th November 2023

Submission by Baptist World Aid Australia and endorsed by Act for Peace, members of the Church Agency Network (CAN).

To: Committee Secretariat, Foreign Affairs, Defence and Trade Committee

Department of the Senate, PO Box 6100, Parliament House, Canberra ACT 2600

Phone: +61 2 6277 3535 fadt.sen@aph.gov.au

Dear Committee Secretariat:

Thank you for receiving our submission on the efficacy of the Department of Foreign Affairs and Trade due diligence framework, with reference to:

1. Whether the due diligence framework used by the Department of Foreign Affairs and Trade is fit-for-purpose in determining the scope of stakeholders who can be engaged by the Government of Australia for the provision of aid to the citizens of Myanmar; and
2. Any related matters.

In this submission, “any related matters” refers to the potential to include a proposal for a special circumstance framework to exist alongside or within the current framework, available to be utilised when circumstances can be officially identified and designated as “**Contested Environments**,” (according to agreed criteria) such as we believe Myanmar to be.

Baptist World Aid Australia (Transform Aid International) and Act for Peace are members of the Church Agency Network (CAN), a consortium of faith-based aid and development agencies, founded in 2004 that includes: Caritas Australia, Australian Lutheran World Service, Act for Peace, Adventist Development and Relief Agency, Anglican Board of Mission, Anglican Overseas Aid, Baptist World Aid Australia/Transform Aid International and Uniting World.

Members of the CAN collaborate both in Australia and overseas in aid and development work to be more effective in responding to emergencies and empowering communities to overcome injustice and poverty.

Background and current context

The following realities in Myanmar, both pre-coup and current, serve as our motivation to make a submission to this enquiry:

Pre-Coup

Whilst the February 2021 coup d'état marks the most recent change in administrative authority in Myanmar, for a prolonged period beforehand, the citizens of Myanmar had already suffered through an extended humanitarian crisis, due to:

- Regional, long-term conflicts between the military junta (also called Tatmadaw; their administration being the Special Advisory Committee – S.A.C. herein) and various ethnic armed groups.
- The longstanding persecution of the Rohingya, causing more than 300,000 civilians to be displaced throughout the country.
- Despite challenging security and logistical issues, international NGO's and agencies of the United Nations and their local partners (including faith-based organisations) were previously able to meet basic humanitarian needs throughout most geographical areas of Myanmar.

Post Coup

- Shortly after the coup, the SAC began using brutal violence, torture, sexual violence, air strikes, arson, and mass imprisonment against its own citizens: the loss of civilian life from the conflict was numbered at 6337 just over one year ago, thousands more who took part in peaceful political protests following the coup have suffered beatings and arbitrarily imprisoned, and frequently labelled "terrorists" by the SAC.
- As the SAC moved to bring Myanmar back under its control, conflict erupted throughout the country between the SAC and the newly formed People's Defence Forces (PDFs) and the civil disobedience movement (CDM) and many of the long-standing Ethnic Revolutionary Organisations (EROs).
- A number of these groups are aligned with or at least coordinating with the National Unity Government (N.U.G - recognised as the official Government of Myanmar by the European Parliament and other countries).
- The impact of the escalation in conflict was exacerbated in the extreme by the event of Cyclone Mocha on 14 May 2023, after which the amount of internally displaced people grew to over 1.3 million and has now grown to approximately 1.7 million since the coup began. According to the head of UN relief Martin Griffiths, a third of the population are now in need of humanitarian assistance.
- The dire state of the country's economy, and the welfare of its citizens has been further impacted by the Covid 19 pandemic, soaring inflation, and an increased cost of living pressure that, whilst affecting the global economy, has had a particularly devastating effect on developing countries such as Myanmar. As such, humanitarian assistance across all sectors - shelter, nutrition, health, education, protection, food security – remain desperately needed and growing.

Proposal Specific Background

The efficacy of Australia's humanitarian assistance to Myanmar greatly depends on Australia's ability to deliver aid in an impartial manner, specifically, being able to provide aid in proportion to people's needs throughout Myanmar.

Currently, the SAC is severely restricting aid in areas it no longer controls, where humanitarian needs are arguably the greatest due to increased conflict, displacement, and the deliberate deprivation of access to resources. Accordingly, it is now more important than ever that Australia recalibrates its aid program to ensure proportionality, particularly as Myanmar's Armed Forces gradually lose control of its territory to the newly formed People's Defence Forces, the Civil Disobedience Movement and Ethnic Revolutionary Organisations who have shown remarkable resilience in their struggle against the SAC and their failed military coup.

Since the 2011 democratic reforms in Myanmar, Australia has increasingly relied on supporting a small number of large-scale programs delivered through UN agencies, pooled funds/programs and large INGOs working through more traditional OCHA-led humanitarian coordination structures. Since the coup, however, most of these agencies have met with severe restrictions in working outside of areas of SAC control and are being forced to choose between working in SAC controlled areas and non-SAC controlled areas.

OCHA reporting against its own humanitarian plans have consistently shown that aid is being disproportionately skewed toward urban areas, Rakhine state and Ayeywaddy, where comparatively there is little conflict and displacement. Left unaddressed, our concern is that international aid, including Australia's humanitarian assistance, will be indirectly being instrumentalised by the SAC as an unintentional benefit to one side of the conflict. While DFAT is keenly aware of avoiding support for SAC and is taking considerable steps to address the situation, a key part of ensuring the efficacy of future Australian aid to Myanmar rests on DFAT's ability to work in a more strategic and flexible manner, including greater flexibility on due diligence requirements.

Describing these circumstances sequentially provides a means of explaining how one relates to, and has a detrimental flow on effect, to the next:

A) Choice of partners for aid distribution

Countries such as Australia that make large, emergency aid commitments to countries such as Myanmar tend to execute these commitments via partnerships with large organisations such as the United Nations and other large INGO's; this is with good intention and reason, not least being that well-resourced organisations are trusted to be able to meet accountability standards of donor countries, such as the due diligence framework utilised by DFAT.

However, one of **the central arguments of this submission is that in Myanmar in particular**, (and potentially elsewhere) this usual practice of distribution is proving counter-productive, because,

B) Many of the larger UN and INGO aid providers delivering through more traditional OCHA-coordinated humanitarian architecture in-country are being forced to choose between delivering in SAC-controlled/condoned areas or areas outside of SAC control.

Large scale operations that large INGOs undertake require infrastructure capable of accommodating the accompanying logistics that go with such programs. I.e., this being in cities with airports, major roadways, capacity for storage, etc. In Myanmar, these points of distribution are highly visible and accessible by the S.A.C. and as such, easily able to be brought under SAC control, through for example registration, control of visas and threatening humanitarian workers.

C) Reported data substantiates the circumstances described above:

- Last year's mid-year report from the Humanitarian Response Plan (HRP) in Myanmar shows that 81% of food aid beneficiaries during the first half of 2022 were in urban areas of Yangon and Rakhine State, and only 16% of the HRP's beneficiaries were internally displaced or stateless persons.
- In the first half of 2023, OCHA's Humanitarian Response Plan's semi-annual report reported that OCHA and the formal humanitarian architecture had expanded their reach outside of Yangon and Rakhine state, but of the USD 181 million spent, 39% of beneficiaries were in Yangon, Rakhine state and Ayeywady Delta, where there is comparatively little conflict and displacement.

This data demonstrates the need for **a proportional and flexible aid response through diversified non-traditional delivery mechanisms, particularly** as Myanmar's Armed Forces continue to lose ground around the country – including in Shan state which has now cut SAC access to China – as well as the SAC continuing to use its leverage to restrict aid in areas outside of its control, a key challenge for Australia will be how to provide humanitarian assistance in a manner that is impartial and proportionate to humanitarian needs.

- D) Given this context, if Australian aid is to reach those in most need – arguably those in non-SAC controlled areas who are disproportionately affected by the conflict and where the majority of displaced people are – Australia will have to support both in-country aid through more formal humanitarian architecture and through cross-border aid, while also working with local networks and organisations to access areas where there hasn't previously been significant conflict and displacement, and as a result have not yet been able to develop more sophisticated informal aid delivery channels. This requires supporting non-traditional partners and different types of organisations and networks, which in turn may variously require a more flexible approach to meeting DFAT's due diligence requirements, a greater appetite for risk, and increased DFAT capacity to develop and manage a wider variety of strategic partnerships and delivery mechanisms.

Other options: smaller actors, local networks

The Senate's invitation for submissions such as this one considers the question as to whether DFAT's due diligence framework, and the methodology of aid delivery it lends itself to, is fit for purpose in a context such as Myanmar. Our contention would be that it is not, and that other viable options exist that have greater capacity for proportional distribution demonstrating greater efficacy.

Particularly in contexts such as Myanmar, where there exists an extraordinarily diverse number of ethnic groups, networks of civil society organisations (such as various religious groups) are small,

geographically particular, and locally led: however, within these networks is the knowledge, flexibility, and capacity to meet wide-spread need, particularly in rural areas, should these networks be resourced to do so.

Under current arrangements, most of these smaller actors and locally led networks would be themselves unable to directly meet due diligence requirements without support, and many are not aligned with an NGO registered as part of the ANCP that might provide them with the capacity to do so; a model such as that which follows, however, could potentially navigate these circumstances in order to achieve a more proportionate and effective delivery of aid to Myanmar.

Summary

Large, predominantly rural regions of Myanmar and their widely dispersed populations are in desperate need of aid that is either being blocked or diverted by the SAC and not getting to the people in the places where there is most need.

As such, an alternative model is proposed in what follows that seeks to navigate the reality of these circumstances in Myanmar specifically (but also potentially in other contexts also) through the provision of an alternative modality that has the capacity to be adopted when circumstances require a unique approach.

Proposition:

A context specific, fit-for-purpose framework applied proportionately

Should a humanitarian principal of proportionality be applied as the primary lens of application with reference to the delivery of aid into Myanmar, what is suggested is the establishment of a particular designation - that being a **"Contested Environment,"** that holds the capacity for aid to be distributed utilizing a varied, or adjusted framework within the due diligence that is DFAT's status quo when required.

Within such a framework it is envisaged that, when circumstances require (such as it could be argued is the case currently in Myanmar) an investment might be able to be made in humanitarian assistance through locally-led humanitarian networks and civil society organisations and, again in Myanmar in particular, this investment might be able to be made in non-S.A.C. controlled areas that have suffered disproportionately the effects of conflict, human rights abuses, forced displacement and the denial of basic aid.

Our proposal is that the creation of a particular designation - **"Contested Environments"** – might name a particular modality that, whilst essentially serving as an exception to the rule, might hold a unique capacity to be applied when complex dynamics regarding the holding of authority in disputed territories make proportional aid distribution problematic.

It is granted that whilst such an approach may bring about some increase in the level of risk than that which DFAT is currently familiar, we believe that a collaborative approach exercised as follows would see that risk largely absorbed and thus mitigated through the oversight of established organisations envisaged as mediators for local actors in such circumstances.

Speaking on our own behalf, **like all Church Agency Network organisations, we are already DFAT accredited and have established a demonstrated ability to meet compliance and risk standards,** and the capacity to hold those standards with downstream partners in Myanmar, regarding safeguarding policies and practices, counter terror checks, etc.

“Contested Environments” – A Proposed Process

A potential process, envisaged to be worked through on a case-by-case basis, would draw on various tried and tested collaborations that organisations such as ours have already applied in AHP responses; these involve identifying the roles and responsibilities required, and accessing the technical support available in any given setting that draws on the collective strengths of each organisation.

- 1) Creation of criteria for establishing that an environment is designated a **“Contested Environment.”** The criteria for this designation could be established between DFAT and ACFID members in consultation.
- 2) Under such a framework, there might be for example:
 - A greater appetite for failure
 - Greater flexibility on due diligence requirements, such as:
 - a. waiving requirements for registration,
 - b. tolerating the use of informal funds transfers,
 - c. remote monitoring arrangements,
 - d. reduced paper trails etc.
 - Longer time frames to meet due diligence requirements, for example:
 - a. calibrated technical support to meet compliance requirements, coupled with
 - b. increased expectations of meeting requirements.
 - Flexible forms of support for emerging/developing local response networks
 - Small grants programs managed by partners with minimal due diligence requirements that can provide flexible support to locally led response networks, CSOs and FBOs to meet overhead costs such as transport, equipment, travel and meetings, training, and/or other network/organisational needs.
- 3) In such circumstances, DFAT could assemble a dedicated unit, utilising its existing internal surge arrangements and recruiting in additional experts from the sector when required, to develop specific operational guidance for DFAT, and provide practical, fit-for purpose support in developing channels for the delivery of aid in contested areas.
- 4) With reference to Myanmar, it is possible to envisage the formation of a collaborative response team from CANDO, many of whose agencies have a long history of working in country and in cross-border areas, to work in partnership with DFAT as this modality is implemented. As such, pre-supposing Myanmar to officially be designated a **"Contested Environment"** the team formed in Australia might consist of:
 - A Project Manager - with strong partnership, project management and financial management skills.
 - A Monitoring, Evaluation and Learning Specialist (MEL)
 - A Conflict Advisor - a country expert in highly politicized contexts.

The benefits of such a collaboration as described might have the capacity to provide both DFAT and in-country partners with a single point of contact for a given response (Project Manager) with the Conflict Advisor and MEL specialist able to mitigate a level of risk only acceptable for **Contested Environments**; it is possible that streamlined reporting expectations for such designations, and lower overheads coming from working with smaller local actors could potentially create the potential for increased efficiency in the delivery of aid in areas when and where there is most urgent need

The designation of a **Contested Environment** would also call for the creation of a collaborative team in-country; again, applied to Myanmar, this could come from a mirrored collaboration of local NGOs with local representation, and the capacity to take the lead on internal coordination and distribution. Such a team might also mirror the Australian team, in terms of its required positions.

Both teams' focus would be to work with local partners in-context, to build consensus regarding the most appropriate approach to be taken in terms of proportionality, compliance, and accountability; a capacity assessment of potential implementing partners would be necessary to ensure that donor requirements are met to a level that would, like risk, be satisfactory for designated **Contested Environments**.

Finally, a **Contested Environment** designation might also allow for a small scale, or ongoing funding mechanism, where local partners could potentially submit funding applications to the designated **Contested Environment Team** appointed by or working in partnership with DFAT in the interest of both distributing aid proportionately, whilst also not adding to the administrative capacity of DFAT itself.

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Baptist World Aid Australia, and Act for Peace thank the Committee Secretariat for their consideration of this submission; if requested, we would be pleased to speak further to the details of this proposal or appear in person to do so.

Yours sincerely,

Mike Bartlett,

Advocacy Policy Manager, Baptist World Aid Australia (author) with

James Thomson, Senior Policy and Protection Advisor, Act for Peace.

