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9 November 2023

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

**Myanmar Campaign Network submission to the Foreign Affairs, Defence and Trade References Committee
inquiry on the efficacy of the Department of Foreign Affairs and Trade due diligence framework**

The Myanmar Campaign Network (MCN) welcomes the opportunity to make a submission to the Foreign Affairs, Defence and Trade Committee inquiry on the efficacy of the Department of Foreign Affairs and Trade due diligence framework with particular reference to:

- a. whether the due-diligence framework used by 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
- b. any related matters.

MCN is an Australian national coalition comprising human rights organisations, international aid non-government organisations (INGOs), Myanmar diaspora organisations, trade unions and faith-based organisations, working to support the reinstatement of democratic civilian rule in Myanmar.

MCN Recommendations

Recommendation 1: MCN recommends that the Australian aid program in Myanmar makes concerted efforts to coordinate with the legitimate Government of Myanmar, the National Unity Government.

Recommendation 2: MCN recommends that the Australian aid program in Myanmar continue to implement policies of non-engagement with the junta, to avoid legitimising the junta through either direct or indirect links.

Recommendation 3: MCN recommends providing aid and development funding to the NUG, Ethnic Administrations and local Civil Society Organisations (CSOs), particularly local/lived experience groups. These CSOs are best placed to deliver support to communities in need as they have the access, local knowledge, and trust of the communities they are serving.

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Recommendation 4: MCN recommends DFAT continue to support and consider opportunities to enable increased flexibility of reporting and accountability mechanisms, tailored to suit each organisation, taking into account the prevailing security environment.

Recommendation 5: In recognition that the greatest barrier to effective delivery of aid to the citizens of Myanmar is the military junta, MCN strongly recommends targeted sanctions on the following high-value targets, covering whole networks of companies, their directors, and shareholders, in coordination with Australia's democratic allies: state-owned enterprises, the banking sector and cronies, arms manufacture and procurement, the aviation supply chain, junta leadership and the Union Election Commission.

Background

The Myanmar military's campaign of terror since the 2021 illegal coup has resulted in the loss of over 4,000 thousands of lives and the unjust detention of over 25,000 people, of which over 19,600 remain detained.¹

As the Myanmar military controls only 15-20% of the country and cannot win on the ground, they are increasingly relying on airstrikes and heavy artillery to attack civilians.² Military airstrikes have increased by 300% in the past year compared to 2021, causing loss of life and infrastructure damage.³ There are widespread reports of torture and conflict-related sexual violence. This humanitarian and human rights crisis has led to mass displacement, with 1.9 million people internally displaced and over 100,000 refugees fleeing to neighbouring countries.⁴

This brutality is reflective of the protracted violence and repression that the Myanmar military have inflicted on civilians for the past 70 years, particularly in ethnic areas.

The Myanmar military is the root cause of the humanitarian and human rights crisis happening in Myanmar, and the most significant barrier to safe and effective aid delivery.

Whilst acknowledging that this is not directly tied to the DFAT due diligence framework, MCN believes the most important actions the Australian Government can take to improve aid delivery is to continue to implement policies of non-engagement with the junta. By taking further action to restrict the junta's access to resources and legitimacy, their capacity to commit atrocities will be limited.

¹ The Assistance Association of Political Prisoners (Burma). Available at: <https://aappb.org/>

² Special Advisory Council - Myanmar, *Briefing Paper: Effective Control In Myanmar*. Available at: <https://specialadvisorycouncil.org/2022/09/briefing-effective-control-myanmar/>

³ Sifton, John 2023, *UN Expert Reports on Myanmar's 'Raging Fire of Brutality'*, Human Rights Watch website. Available at: <https://www.hrw.org/news/2023/10/24/un-expert-reports-myanmars-raging-fire-brutality>, accessed 9 November 2023.

⁴ UNHCR, Operational Data Portal - Myanmar Situation. Available at: <https://data.unhcr.org/en/situations/myanmar>

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Legitimate democratic interim institutions and the 12 Step Roadmap to Federal Democracy

Shortly after the coup, three legitimate interim institutions emerged: the Committee Representing Pyidaungsu Hluttaw (CRPH), which was mandated by 80 percent of the elected MPs to act on behalf of the legitimate legislature (the Union Parliament), the National Unity Government (NUG), and the National Unity Consultative Council (NUCC).

These interim institutions have developed a Federal Democracy Charter (FDC) based on federal and democratic principles, and human rights including minority rights, equality, and self-determination, in preparation for a new federal constitution to be adopted by a Constituent Assembly.^{5 6}

The Federal Democracy Charter outlines a clear 12 Step Roadmap to Federal Democracy, including a strategy to end dictatorship, to abrogate the 2008 Constitution and to establish a federal democratic union.

MCN has called on the Australian Government to formally recognise and support the NUG as the legitimate democratic interim government of the Myanmar people.

MCN recommends that the Australian aid program in Myanmar makes concerted efforts to coordinate with the NUG. The NUG are well placed to make representative decisions about Myanmar's development trajectory and supporting their policies with recognition of their legitimacy and funding resources builds their strength to meet the needs of the people and act effectively as a government.

Supporting Phased Planning

The Federal Democracy Charter's 12 Step Roadmap to Federal Democracy identifies three phases, the interim, transitional, and finally federal democratic constitutionalism. As such, Myanmar Campaign Network supports the NUG's recommendation of phased planning to manage the particular concerns of each phase.

The current interim period faces humanitarian needs that need to be urgently addressed such as food and shelter for Internally Displaced Persons, and medicine, including vaccines. The education and health sector face a cross-cutting issue in the need for secure communication, as the junta controls and restricts communication. Additionally there is a need for capacity building towards democratisation.

The transitional phase will require physical and mental rehabilitation for the reintegration of those participating in the People's Defensive War as well as treating those with disabilities and humanitarian demining. As the Myanmar military has been destroying health and education infrastructure there will be a need to rebuild such infrastructure. As both the COVID-19 and the coup has significantly impeded education there will be a need for early childhood care and development (ECCD), vocational training and open university. Continued capacity building in democratisation is necessary to advance the practise of federal principles

⁵ NUCC, Federal Democracy Charter Part I. Available at: <https://nucc-federal.org/wp-content/uploads/2022/06/FDC-Part-1-En-01042022.pdf>

⁶ NUCC, Federal Democracy Charter Part II. Available at: <https://nucc-federal.org/wp-content/uploads/2022/06/FDC-Part-2-En-01042022.pdf>

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Other needs

In addressing the other needs for Myanmar there is a critical necessity for untied, flexible funding that can support the comprehensive efforts across the Myanmar and Thai Myanmar border. Funding should be directed to peacebuilding and nation-building initiatives, as well as vocational training. Women's organisations, in particular, need sustained financial backing to continue their pivotal work; many have built substantial capacity but now face funding shortages that threaten their operations. Investment in women's voice and leadership, alongside political and development training, is essential. Funding should be channelled to women human rights defenders, ensuring their financial stability, and enabling them to continue their vital advocacy and defence of rights.

Risk of legitimising the junta

The junta failed to consolidate power after the coup and has neither territorial control nor the capacity to administer the functions of government.

The rationale provided by the military for the state of emergency and the process they followed to declare it did not align with the emergency provisions set out in Myanmar's 2008 Constitution or its national laws. Consequently, the state of emergency and the establishment of the "State Administration Council" by the military under these pretences are deemed illegitimate.⁷

However after the coup the Myanmar United Nations Country Team adopted a set of "principles of engagement" for UN programming in Myanmar, referring to the junta as "the de facto authorities" conferring the junta status as the Government of Myanmar, in contradiction to UN intergovernmental forums on Myanmar.⁸

Despite the stated principles of engagement, UN representatives have met with the junta 66 times since 2021, with these meetings promoted by the junta in an attempt to claim legitimacy. Additionally, the junta have leveraged photo opportunities in 6 ceremonies when UN entities have presented credentials to military officials.⁹

In contrast the UN has not made similar public presentations to the NUG, despite the NUG having both de jure and de facto legitimacy.

MCN recommends that the Australian aid program in Myanmar continue to implement policies of non-engagement with the junta to avoid legitimising the junta through either direct or indirect links.

⁷ Special Advisory Council Myanmar (2021). *Briefing Paper: Recognition of Governments - Special Advisory Council for Myanmar*. [online] Special Advisory Council - Myanmar website. Available at: <https://specialadvisorycouncil.org/2021/08/briefing-paper-recognition-of-governments/>, accessed 6 Nov. 2023.

⁸ Ibid

⁹ Ibid

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Other challenges in directing funding through large NGOs and multilateral organisations

Weaponization of aid

While funding should still be directed through large NGOs and multilateral organisations, this aid can only reach vulnerable communities in junta-controlled areas. Additionally, the junta has weaponized aid by blocking aid convoys, and imposing travel restrictions on humanitarian workers.

The junta continues to block aid to Rakhine state, despite the recent devastation of Cyclone Mocha in May, in which 200,000 buildings were destroyed. IDP camps and sites are severely affected, with 85 percent of shelters destroyed.¹⁰

Registration

The Organisation Registration Law (ORL) law imposed by Myanmar's junta in October 2022 requires both national and international NGOs and associations to register compulsorily.

The military has directed strict supervision over NGO and INGO operations, which is seen as an effort to clamp down on their ability to distribute aid effectively.

Larger organisations/INGOs are better able to navigate the security impacts of registering under the SAC so this has the effect of directing more aid funds to these large organisations, and less to smaller local CSOs and especially groups/organisations involved in any advocacy work.

Given these challenges, it is vital DFAT re-evaluate the approach to aid delivery. We must prioritise the needs of the most vulnerable communities and focus on supporting grassroots organisations and the CSOs that operate directly on the ground, while continuing our relationships with large NGOs and multilateral organisations.

Supporting CSOs and the NUG

CSOs and the NUG play a pivotal role in addressing the pressing humanitarian challenges and deliver tangible assistance to affected populations.

These organisations have decades of experience in delivering humanitarian relief and support services to areas where people have been displaced or impacted by conflict, as well as documenting human rights abuses.

CSOs and the NUG continue to provide vital assistance to those in need, for example:

¹⁰ The World Bank (2023). *Extremely Severe Cyclonic Storm Mocha, May 2023, Myanmar: Global Rapid Post-Disaster Damage Estimation (GRADE) Report*. World Bank. Available at: <https://www.worldbank.org/en/country/myanmar/publication/global-rapid-post-disaster-damage-estimation-grade-report>, accessed 9 Nov. 2023.

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The NUG Ministry of Women Youths and Children's Affairs in coordination with the Karen Womens Organization has provided maternity kits, hygiene kits and dignity kits to IDP women, and dignity kits and legal counsel to female political prisoners.¹¹

In Sagaing Division, ongoing food supply aid efforts are assisting individuals displaced by conflict. The Ministry of Humanitarian Affairs oversees local administrative bodies coordinating relief, focusing on essential needs like food, emergency shelters, and rebuilding support for affected villages including providing emergency shelters for temporary dwellings in secure locations. Township humanitarian officers play a crucial role in managing and supporting these relief initiatives.

The Ministry of Humanitarian Affairs and Disaster Management humanitarian officers in cooperation with the local organisations have conducted emergency response training on civilian harm reduction and disaster prevention including aviation and artillery danger prevention and response training. These teams also provide awareness about the dangers of landmines and military equipment and conduct training such as psycho-social empowerment programs and Safety for Humanitarians for the members of the public administration and humanitarian officials from the townships where interim public administration is being implemented.

MCN recommends providing aid and development funding to the NUG, Ethnic Administrations and local Civil Society Organisations (CSOs), particularly local/lived experience groups. These CSOs are best placed to deliver support to communities in need as they have the access, local knowledge, and trust of the communities they are serving.¹²

Current challenges

CSOs, NGOs and human rights defenders are faced with significant risk operating in the current oppressive environment and meeting due diligence requirements. Many are operating cross border and face further security concerns associated with being considered illegal in these second countries, including facing arrest and extortion.

Some challenges include:

Requirements for audit trails

Necessitating expenditure records be kept for 7 years can pose a security risk for partners operating low profile as they have to find a safe location to store so many documents and cannot deny links to the organisation if the office/storage location is raided. One local partner recounts how they were forced to hide human rights violations incident reports and receipts in the ceiling, and eventually burned the documents for their own safety.

For the same reason, retaining receipts in the field is a risk to personal safety, often staff will send a photo of a receipt, destroy it, and delete the image from their phone to avoid scrutiny at border checkpoints.

¹¹ Minister Naw Susanna Hla Hla Soe, National Unity Government of Myanmar, Ministry of Women Youths, and Children's Affairs, The Impact of the Myanmar Coup on Women, Youth, and Children Webinar, Myanmar Campaign Network, 15 Dec. 2022

¹² T.W., Anne Décobert, Anonymous Myanmar author (2023). *Aid localisation amidst revolution in Myanmar*. [online] Devpolicy Blog from the Development Policy Centre. Available at: <https://devpolicy.org/aid-localisation-amidst-revolution-in-myanmar-20230920/>. Accessed 6 Nov. 2023

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Retaining receipts also pose security risks for providers of goods and services. Research by Myanmar Research Network at the University of Melbourne revealed that in the Sagaing division, the military government forcibly shut down a local pharmacy and destroyed all its medicinal stock. This action was taken after regional officials discovered the pharmacy's name on a receipt kept by an aid provider for financial auditing.¹³

Other compliance rules – such as gaining three quotations for goods and services, are unfeasible in many circumstances. Another local partner explained that often when they are purchasing both within Myanmar and on the Thai Myanmar border there is only one source for the required goods. The same partner revealed they were forced to reject significant funding from USAID due to unrealistic reporting requirements

Counter-terrorism scanning requirements

Counter-terrorism scanning requirements demand partners to send lists of personal details of their staff and decision makers. NGO staff have been arrested and face up to 7 years prison for working with non-registered organisations with these lists posing a significant risk to their security if they are intercepted.

Non-institutional money transfer systems

Additionally, due diligence frameworks which prevent organisations from using *non-institutional money transfer systems* such as Hundi creates significant logistical challenges to transfer funds to organisations who are not registered, and not based on the border.

MCN recommends DFAT continue to support and consider opportunities to enable increased flexibility of reporting and accountability mechanisms, tailored to suit each organisation, taking into account the prevailing security environment.

Addressing the root cause of the crisis in Myanmar

The junta is the root cause of the humanitarian and human rights crisis in Myanmar, which is committing barbaric war crimes across the country, and denying aid to those in need. In addition to diplomatic pressure, strong definitive action in the form of targeted sanctions must be taken to curtail the junta's access to foreign revenue and ensure accountability for genocide, war crimes and crimes against humanity.

To meaningfully impact the junta's financial resources and demonstrate solidarity with Myanmar's pursuit of federal democracy, we urge Australia to amplify its sanctions efforts, aligning with our global democratic allies. Currently, Australian sanctions account for just 2% of international sanctions against Myanmar.

Humanitarian and development efforts must be supported by diplomatic engagement in favour of cross border humanitarian access, increased refugee rights and protection, and access to work rights for refugees and asylum seekers.

¹³ Ibid

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Myanmar Campaign Network is grateful for the opportunity to submit for this inquiry and would be pleased to offer additional information or clarification on the matters raised in this submission.

Sincerely,

Tasneem Roc
Campaign Manager
Myanmar Campaign Network