

Ko Ko Aung

Submission to the Senate Foreign Affairs, Defence and Trade References Committee

Inquiry: Democracy and human rights in Myanmar

Submitted by: Ko Ko Aung (personal capacity)

Contact: [REDACTED], [REDACTED]

Perspective: Australian immigration and refugee lawyer (protection, humanitarian and family pathways)

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Scope and Limits of this Submission

1. I make this submission in my personal capacity, drawing on professional experience supporting Myanmar nationals and diaspora communities navigating protection, family separation, and migration uncertainty in Australia. I do not disclose client-identifying information.
2. I focus on the Inquiry's Terms of Reference: the state of democracy and human rights in Myanmar, especially the phased elections commencing from December 2025, and the barriers to an inclusive civilian democratic government.
3. I address: (a) why the election process is structurally incapable of delivering inclusion; (b) the protection-risk consequences of ongoing atrocities; (c) displacement and the shrinking global resettlement environment; (d) Rohingya-specific risks (citing sources and acknowledging this is not my primary specialty area); (e) the National Unity Government (NUG) and collaboration with Ethnic Armed Organisations (EAOs); (f) ASEAN's role and limits; and (g) what "meaningful, transparent and effective" Australian action could look like.

Executive summary

Myanmar's planned and ongoing phased elections should not be treated as a pathway back to democratic rule. The military's governance architecture, entrenched by the 2008 Constitution and coercive security control, means elections risk functioning as institutional consolidation rather than democratic transition.¹ Evidence indicates the junta continues to rely on terror tactics (including airstrikes and legal repression) to suppress opponents and shape "participation," while significant areas of the country remain in active armed conflict.^{2,3}

From a refugee-law perspective, the most immediate policy danger is premature normalisation, the temptation to treat election milestones, official announcements, or a curated sense of stability as proof that protection risks have eased, even while atrocities and displacement continue. That risk becomes sharper as third-country resettlement options contract and neighbouring host environments remain insecure and legally precarious for displaced people from Myanmar.

Australia's response should be anchored in three propositions:

¹ John Curtis, 'Myanmar's civil war' (Research Briefing, House of Commons Library, 09 April 2025) 21.

² 'An airstrike on a hospital in a rebel-controlled area of Myanmar kills 34 and injures 80', *AP World News* (Internet Article, 12 December 2025) <<https://apnews.com/article/myanmar-military-rakine-hospital-bombing-a172351a33cf747d71fba740f1c0882>>.

³ 'Myanmar's military government declares Karen ethnic rebels a terrorist group as elections loom', *AP World News* (Internet Article, 29 August 2025) <<https://apnews.com/article/kayin-karen-elections-terrorist-army-7a8a0672d6ea32d933049fc6aa27c7e5>>.

1. The elections do not remove the structural barriers to an “inclusive civilian democratic government”, including entrenched military power under the 2008 Constitution and the exclusion of genuine opposition participation.⁴
2. Ongoing human rights violations, including credible reporting of extrajudicial killings, torture, arbitrary detention and conflict-related atrocities, mean the protection risk profile for many Myanmar nationals is not improving and may deteriorate around election-related crackdowns.⁵
3. Australia’s Myanmar policy settings should treat the “election process” as a likely mechanism of military entrenchment rather than democratic transition, prioritising accountability, humanitarian access, and protection pathways.
4. A key policy risk is premature “normalisation” in migration decision-making, despite large-scale displacement and severe humanitarian need.⁶

Accordingly, Australia should: withhold legitimacy from the election process absent minimum conditions; strengthen targeted measures that constrain atrocity capacity; expand humanitarian support (including cross-border delivery); safeguard non-refoulement in practice; expand and expedite protection and family-linked pathways; and strengthen protections against transnational repression affecting diaspora communities in Australia.

Key recommendations (summary)

Recommendation 1 (Legitimacy): Withhold legitimacy from the phased elections unless minimum democratic conditions exist (free participation, release of political prisoners, independent media, safety from coercion, credible observation).

Recommendation 2 (Atrocity-capacity): Maintain and strengthen targeted measures limiting the junta’s capacity to commit abuses (coordinate with partners), and link any future easing to measurable human rights benchmarks.

Recommendation 3 (Humanitarian): Increase humanitarian support (including cross-border delivery where necessary) and address escalating food insecurity and displacement.

Recommendation 4 (Non-refoulement): Safeguard non-refoulement in practice: ensure migration decision-making does not treat “election milestones” as evidence of reduced risk without objective country information and verified change on the ground.

Recommendation 5 (Pathways): Expand and expedite protection and family-linked pathways for Myanmar nationals with credible protection needs and immediate family separation cases, including clearer priority processing settings, informed by UNHCR-assessed needs.

Recommendation 6 (Transnational repression): Strengthen protections against transnational repression in Australia, including clearer reporting pathways and confidence-building with diaspora communities.

⁴ Special Advisory Council Myanmar, *Myanmar’s Way Forward* (Final Report, 5 December 2025) 36.

⁵ Vibhu Mishra, ‘UN warns Myanmar’s planned elections will deepen repression and instability’ *UN News Global perspective Human stories* (News, 28 November 2025) <<https://news.un.org/en/story/2025/11/1166472>>.

⁶ Special Advisory Council Myanmar (n 4) 6.

1) The election process is not a credible pathway to inclusive civilian democracy

1.1 Structural barrier: military-embedded constitutional design

The 2008 Constitution, drafted under military direction, was designed to preserve military primacy and constrain civilian control, including through guaranteed military influence over key institutions.⁷ This architecture is not a technical footnote: it is the core reason why an election, even if procedurally staged, cannot deliver “inclusive civilian democratic government” absent genuine constitutional transformation.

The elections do not remove the structural barriers to an “inclusive civilian democratic government”, including entrenched military power under the 2008 Constitution and the exclusion of genuine opposition participation.⁸

1.2 Conditions on the ground: coercion, criminalisation, and engineered participation

Credible analysis and reporting indicate election arrangements are occurring amid:

- armed conflict and territorial fragmentation;^{9,10}
- criminalisation of dissent and severe penalties aimed at deterring disruption;¹¹
- restrictions on opposition parties, independent media, and civil society capacity to operate freely.¹²

Criminalisation under the junta’s election protection law is already being used to suppress criticism and deter scrutiny. Reuters reported on 19 December 2025 that the junta said it had arrested more than 200 people under a new law against “undermining” elections, and that at least 229 people had been charged under the law as reported in the junta-run press. Reuters further reported that the law’s scope captures protests and criticism on social media, with penalties ranging from imprisonment to the death penalty.¹³

An election under these conditions is better understood as a mechanism to generate administratively managed legitimacy. Treating it as democratic transition risks misreading the junta’s strategic objective: to repackage entrenchment as restoration.

⁷ John Curtis (n 1) 11.

⁸ Ibid.

⁹ International Crisis Group, *Ethnic Autonomy and its Consequences in Post-coup Myanmar* (Crisis Group Asia Brief, 30 May 2024).

¹⁰ Ministry of Foreign Affairs of the National Unity Government, ‘ASEAN Stakeholder Engagement on Myanmar: Addressing the Five-Point Consensus, Upholding Democracy and Rejecting the Military’s Sham Elections’ (Press Statement for Immediate Release, 11 October 2025).

¹¹ ‘Myanmar arrests hundreds under new election law ahead of December vote’ *Reuters* (News, 19 December 2025) <<https://www.reuters.com/business/media-telecom/myanmar-arrests-hundreds-under-new-election-law-ahead-december-vote-2025-12-19/>>.

¹² Asian Network for Free Elections, ‘Myanmar Junta’s Planned Elections: Falling Short of Democratic Legitimacy’ (Online Assessment Report, 30 September 2025) <<https://anfrel.org/myanmar-juntas-planned-elections-falling-short-of-democratic-legitimacy/>>.

¹³ ‘Myanmar arrests hundreds under new election law ahead of December vote’ *Reuters* (News, 19 December 2025) <<https://www.reuters.com/business/media-telecom/myanmar-arrests-hundreds-under-new-election-law-ahead-december-vote-2025-12-19/>>.

1.3 Observation and credibility: why minimum conditions matter

International electoral standards require, at a minimum, meaningful political competition, freedom from coercion, and the ability of independent observers and media to operate. Absent these conditions, recognition becomes complicity: it provides diplomatic cover for repression and weakens accountability messaging.

Practical implication for Australia: Public and diplomatic messaging should avoid language that implies the elections are a legitimate pathway unless minimum democratic conditions are met.

2) Human rights situation: protection risk is not improving and may worsen around elections

Ongoing serious human rights violations mean the protection risk profile for many Myanmar nationals is not improving and may deteriorate further around election-related crackdowns. The UN Human Rights Office has reported that the military's violence against civilians has escalated to unprecedented levels, including patterns of retaliatory airstrikes and shelling against civilians and civilian-populated areas, alongside arbitrary arrests and prosecutions and other abuses.¹⁴

Recent reporting also highlights continued large-scale civilian harm from airstrikes affecting civilian infrastructure, including health care. For example, an Associated Press report in December 2025 described an airstrike that destroyed a hospital in Mrauk-U Township, Rakhine State, killing 34 people and injuring around 80.¹⁵ These patterns are consistent with coercive governance: using fear and collective punishment to control populations and degrade perceived opposition capacity.

In this context, the election period should be treated as a foreseeable flashpoint for intensified repression. UN human rights reporting confirms that election preparations are already accompanied by arrests and extreme sentences for dissent. On 23 December 2025, the UN Human Rights Office warned of intensified violence, repression and intimidation ahead of the military-controlled vote, stating that "dozens" had reportedly been detained under an "election protection law", and referencing reports of exceptionally harsh sentences, including three youths reportedly jailed for 42–49 years for hanging anti-election posters.¹⁶

3) Displacement and the regional protection gap and shrinking resettlement horizons

Myanmar's conflict has produced sustained displacement internally and across borders. Displaced Myanmar people in neighbouring countries frequently lack durable legal status, face movement restrictions, labour exploitation risks, and inconsistent access to services. In professional practice, this produces a recurrent pattern: people remain stuck, unsafe to return, but without stable legal protection where they are.

¹⁴ United Nations Human Rights Office of the High Commissioner, 'Myanmar: Türk warns against violence and intimidation ahead of military-controlled vote' (Press Release, 23 December 2025).

¹⁵ 'An airstrike on a hospital in a rebel-controlled area of Myanmar kills 34 and injures 80' *AP World News* (Internet Article, 12 December 2025) <<https://apnews.com/article/a172351a33cf747d71fba740f1c0882>>.

¹⁶ United Nations Human Rights Office of the High Commissioner (n 14).

The resulting “protection gap” is worsened when third-country solutions narrow. For displaced communities, hope for pathways to countries like Australia often becomes the only perceived durable solution, yet Australia’s humanitarian capacity is finite and cannot meet escalating regional need alone.

This makes it even more important that Australia’s policy settings:

- do not inadvertently encourage premature return;
- preserve fair access to protection pathways; and
- support genuine regional protection and humanitarian infrastructure, including cross-border modalities where access is blocked.

4) Rohingya: worsening risks amid Rakhine conflict dynamics (AA and military) and enduring accountability needs

I acknowledge the Rohingya situation is not my primary specialty area. However, credible sources show this must be addressed in any serious democracy/human rights assessment of Myanmar.

4.1 Current risk environment: abuses by multiple actors and deepening vulnerability

Human Rights Watch has reported severe restrictions and grave abuses affecting Rohingya populations in Rakhine, including under the Arakan Army’s influence.¹⁷ UK Home Office country information (January 2026) compiles reporting of Rohingya facing serious harms in Rakhine, including forced recruitment and being used as “human shields,” as well as restrictions, violence and impeded humanitarian access.¹⁸ UN reporting similarly recognises allegations of grave abuses against civilians by multiple conflict parties in Rakhine and notes significant Rohingya cross-border flight in recent years.¹⁹

4.2 Accountability remains central, not optional

The Rohingya genocide proceedings at the International Court of Justice underscore that Myanmar’s human rights crisis is not new, and that accountability remains an unresolved prerequisite for any credible transition narrative.²⁰ Recognition of elections without minimum conditions risks sidelining accountability and repeating past cycles: legitimising power without justice.

Implication for the Inquiry: Any Australian response to Myanmar’s elections and democracy must explicitly include Rohingya protections, accountability mechanisms, and non-refoulement safeguards.

¹⁷ ‘Myanmar: Arakan Army Oppresses Rohingya Muslims Severe Movement Restrictions, Pillage, Mistreatment in Northern Rakhine State’ *Human Rights Watch* (News Release, 28 July 2025) <<https://www.hrw.org/news/2025/07/28/myanmar-arakan-army-oppresses-rohingya-muslims>>.

¹⁸ United Kingdom Independent Advisory Group on Country Information, *Guidance: Country policy and information note: Rohingya including Rohingya in Bangladesh, Burma, January 2026* (Country Policy and Information Notes, 08 January 2026).

¹⁹ United Nations Human Rights Office of the High Commissioner (n 14).

²⁰ ‘Landmark Myanmar Rohingya genocide case opens at UN’s top court’ *Reuters* (Video, 12 January 2026) <<https://www.reuters.com/video/watch/idRW604312012026RP1/>>.

5) The National Unity Government (NUG), collaboration with EAOs, and the limits of cohesion

5.1 The reality: unprecedented cooperation, but not unified command

Post-coup resistance has created new forms of cooperation between democratic actors, local defence forces, and long-standing ethnic organisations. However, credible analysis emphasises that Myanmar's armed and political landscape is fragmented, with diverging objectives among EAOs, varied territorial governance arrangements, and competing external pressures.²¹

The International Crisis Group has described the rise of de facto autonomy and the likelihood of a more fractured political geography, with donors increasingly needing to engage with non-state actors who control territory and services.²² This reality complicates any simple “NUG vs junta” framing.

5.2 ASEAN stakeholder engagement and the NUG/EAO interface

NUG statements indicate engagement with ASEAN-linked “Stakeholder Engagement Meetings” and a shared rejection (among participating stakeholders) of sham elections as a pathway to peace.²³ While such engagement is politically contested, it illustrates a critical point: durable settlement requires dialogue that includes democratic stakeholders and ethnic political authorities, not only the junta.

5.3 Policy implication for Australia: engage broadly, avoid false binaries

Australia should avoid two unhelpful extremes:

- Over-romanticising NUG capacity (which can underestimate fragmentation and local political realities); and
- Excluding democratic and ethnic stakeholders (which rewards junta veto power and undermines inclusive transition).

A realistic policy approach supports: (a) inclusive political dialogue frameworks; (b) protection of civil society and local governance actors; and (c) accountability and humanitarian access, without pretending there is already a single coherent alternative government able to implement state-wide transition.

6) ASEAN: structural limits, competing incentives, and why Australia must be clearer

ASEAN's Five-Point Consensus has repeatedly been reaffirmed, including in the October 2025 ASEAN Leaders' Review and Decision.²⁴ Yet ASEAN has limited enforcement capacity and operates by consensus, while the junta has repeatedly resisted meaningful implementation. Reuters reporting in October 2025 illustrates continued ASEAN frustration and calls for junta cooperation, paired with limited leverage to stop election plans.²⁵

²¹ International Crisis Group (n 9) 13-14.

²² Ibid 14-16.

²³ Ministry of Foreign Affairs of the National Unity Government (n 10).

²⁴ Association of Southeast Asian Nations, ‘ASEAN Leaders' Review and Decision on the Implementation of the Five-Point Consensus Kuala Lumpur, Malaysia’ (Statement, 26 October 2025).

²⁵ Danial Azhar, ‘ASEAN's Myanmar peace plan not hard to implement, Malaysia foreign minister says’ *Reuters* (News, 24 October 2025) <<https://www.reuters.com/world/asia-pacific/aseans-myanmar-peace-plan-not-difficult-implement-malaysia-foreign-minister-says-2025-10-24/>>.

Analytical work on the Five-Point Consensus highlights persistent contestation and the practical limits of ASEAN's approach.²⁶

My assessment (as opinion, grounded in the above)

ASEAN's incentives often tilt toward regional stability, economic continuity, and non-interference norms, rather than rights enforcement. This does not mean ASEAN states are indifferent to suffering; rather, the institution's design and member-state incentives make human rights outcomes structurally difficult to deliver without sustained external alignment and pressure.

What Australia can do

Australia should:

- publicly align its Myanmar policy with a rights-based interpretation of regional stability (stability through protection, not repression);
- transparently state what it expects of ASEAN processes (minimum democratic conditions, humanitarian access, inclusive dialogue); and
- materially support ASEAN-adjacent humanitarian and accountability initiatives without legitimising sham elections.

7) Australia: preventing premature “normalisation” in migration and protection settings

Australia's Myanmar policy settings should treat the “election process” as a likely mechanism of military entrenchment rather than democratic transition, and should prioritise accountability, humanitarian access, and protection pathways.

7.1 Election milestones are not evidence of reduced risk

For refugee decision-making, “stability signals” must be verified against objective country information and on-the-ground change, especially where the state remains an agent of persecution or serious harm. This Inquiry should caution against any shift in migration decision-making that treats elections as “progress” absent verified improvements in:

- arbitrary detention practices;
- torture and ill-treatment risk;
- legal repression and surveillance;
- ability to safely relocate; and
- safety for returnees with diaspora links.

²⁶ Tang Siew Mun, ‘Re-examining the Five-Point Consensus and ASEAN's Response to the Myanmar Crisis’ (2025) 20 ISEAS Yusof Ishak Institute 1.

7.2 A professional concern: policy drift by narrative

In practice, risk assessment can drift when public narratives shift (e.g., “election = transition”). The Committee can play a critical role in preventing institutional drift by clearly stating: election announcements do not equal protection improvements.

8) Operationalising the recommendations

Recommendation 1: Withhold legitimacy unless minimum democratic conditions exist

What Australia should do:

- Publicly state Australia will not treat the phased elections as legitimate absent minimum conditions (free participation, release of political prisoners, independent media, safety from coercion, credible observation).
- Encourage partners to adopt consistent messaging to avoid “legitimacy shopping” by the junta.
- Ensure election-related messaging is paired with accountability and protection commitments.

Recommendation 2: Maintain and strengthen targeted measures limiting atrocity capacity

Australia has a sanctions framework for Myanmar and has imposed targeted sanctions on entities linked to military financing and jet fuel supply chains. Human rights analysis indicates sanctions can be meaningful when they are strategically targeted, coordinated and linked to clear aims.

What Australia should do:

- Expand and coordinate targeted measures with partners focused on (a) aviation fuel and aircraft supply chains; and (b) military-linked financial enablers.
- Publish measurable benchmarks for any easing (e.g., verifiable cessation of airstrikes on civilians; release of political prisoners; humanitarian access).
- Increase transparency on the intent and expected impact pathways of sanctions (how they are meant to reduce harm).

Recommendation 3: Increase humanitarian support, including cross-border delivery

UN and humanitarian reporting recognise acute needs, including food insecurity and restricted humanitarian access in conflict settings.

What Australia should do:

- Increase flexible humanitarian funding and support cross-border delivery models where access is blocked.
- Prioritise protection-sensitive programming for displaced people, women and children, and communities facing severe movement restrictions (including Rohingya).
- Support monitoring and accountability for aid diversion risks without using diversion as a reason to abandon hard-to-reach communities.

Recommendation 4: Safeguard non-refoulement in practice (avoid “election = safe” shortcuts)

What Australia should do:

- Issue policy guidance that election milestones are not, by themselves, evidence of reduced risk.
- Ensure decision-makers use updated, credible country information and weight evidence of coercion, surveillance, and conflict dynamics.
- Build quality assurance checks for decisions that rely heavily on political “process” narratives.

Recommendation 5: Expand and expedite protection and family-linked pathways

Protection and family separation are intensifying features of Myanmar displacement. UNHCR data on global resettlement needs underscores the growing pressure on limited places.

What Australia should do:

- Establish clearer priority processing settings for (a) urgent family separation involving immediate relatives; and (b) individuals with credible protection claims linked to political activity, ethnicity, or junta-targeted profiles.
- Increase transparency on pathway availability and eligibility to reduce misinformation and exploitation.
- Ensure practical accessibility (documentation flexibility where documents are unobtainable due to conflict, with integrity safeguards).

Recommendation 6: Strengthen protections against transnational repression in Australia

Diaspora communities can face intimidation, surveillance, coercion, and threats to family overseas. Freedom House and Australian policy commentary recognise transnational repression risks in Australia and the need for stronger reporting and community confidence.

What Australia should do:

- Create and publicise clear reporting pathways for diaspora intimidation and threats.
- Invest in community liaison approaches that build confidence that reports will be taken seriously and handled safely.
- Ensure foreign interference responses incorporate the Myanmar community context and do not rely on under-reporting as a proxy for low risk.

Conclusion

Myanmar’s phased elections should be treated as a high-risk political project, likely to entrench military control, not restore inclusive civilian democracy. The Inquiry can help prevent policy drift by explicitly rejecting premature normalisation and by recommending that Australia tie its diplomatic, humanitarian and protection settings to verified human rights benchmarks, not election timelines.

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Australia cannot solve the crisis alone, but it can be clearer, more consistent, and more effective: denying illegitimate legitimacy; constraining atrocity capacity; scaling humanitarian support; protecting refugees in practice; strengthening pathways for urgent protection and family separation; and safeguarding diaspora communities from transnational repression.

Submitted by:

[REDACTED]
Ko Ko Aung
Special Counsel
Albert Arthur Lawyers
[REDACTED]
[REDACTED]

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