

Civil Society Position Paper Reviewing and Reframing the ASEAN's Five-Point Consensus

Summary of recommendations

- The Association of Southeast Asian Nations (ASEAN) must immediately act to stop the Myanmar military junta's atrocity crimes and violation of international law.
- ASEAN must stop lending legitimacy to the military junta by ending all official engagements, and organise a truly inclusive dialogue among the National Unity Government (NUG), the National Unity Consultative Council (NUCC), the Committee Representing Pyidaungsu Hluttaw (CRPH), Ethnic Revolutionary Organisations (EROs) and civil society during Indonesia's Chairship.
- ASEAN must set up a clear mandate for the role of ASEAN Special Envoy grounded in human rights principles, justice, and accountability. The role must be full-time, lasting three years, and the envoy must be accountable to ASEAN leaders and foreign ministers, not only representing the interests of its current chair.
- ASEAN must ensure the delivery of aid by centering border-based organisations in its aid delivery and halt all humanitarian assistance through the ASEAN Coordinating Centre for Humanitarian Assistance.
- ASEAN must ensure that the Special Envoy engages with the NUG, the NUCC, the CRPH, and EROs and completely cut ties with the military junta.

Failure to take up the above recommendations within three months from the ASEAN Summit on 9 - 11 May will prompt the people of Myanmar to reconsider whether or not Myanmar's membership in ASEAN is still in their best interest.

Background

The Myanmar military's attempted coup d'état of 1 February 2021 has resulted in a multitude of atrocities throughout the country as well as threats to peace and stability in the entire Southeast Asian region. Following the attempted coup, over 1.4 million people have been internally displaced.¹ The worsening violence committed by the Myanmar military junta has resulted in an influx of refugees from Myanmar into neighbouring countries such as Thailand.² The large-scale refugee movements have had deep political and socioeconomic consequences, and a direct threat to regional border security.³

The Association of Southeast Asian Nations (ASEAN), since the adoption of the Five-Point Consensus (5PC) on 24 April 2021,⁴ has been pivotal in addressing the crisis. ASEAN, however, has continued to fail in implementing the 5PC or yielding concrete results to resolve the crisis. Meanwhile, the Myanmar military has bluntly disregarded the 5PC as it keeps committing heinous crimes, including the escalation of airstrikes. It is important to note that, since the attempted coup, neither ASEAN nor any of its members has imposed sanctions on the military junta or related entities.⁵

This paper delves into an assessment and analysis of ASEAN's policy approach — with the 5PC at the centre — through a nexus of political willingness, political impact, feasibility, and

1 Myanmar Humanitarian Update, UNOCHA, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-28-6-april-2023>

2 "Thousands Flee Across Thai Border to Escape Fighting in Myanmar's Karen," *Irrawaddy*, 7 April 2023, <https://www.irrawaddy.com/news/burma/thousands-flee-across-thai-border-to-escape-fighting-in-myanmars-karen.html>

3 See <https://www.iseas.edu.sg/mec-events/socio-economic-impacts-of-the-2021-coup-in-myanmar/> and <https://www.bangkokpost.com/thailand/general/2514811/border-security-boosted-as-fighting-erupts-in-myanmar>

4 See <https://asean.org/wp-content/uploads/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf>

5 "Philippine ambassador to UK describes Myanmar coup as military 'taking back democracy,'" *Myanmar Now*, 25 April 2023, <https://myanmar-now.org/en/news/philippine-ambassador-to-uk-describes-myanmar-coup-as-military-taking-back-democracy/>

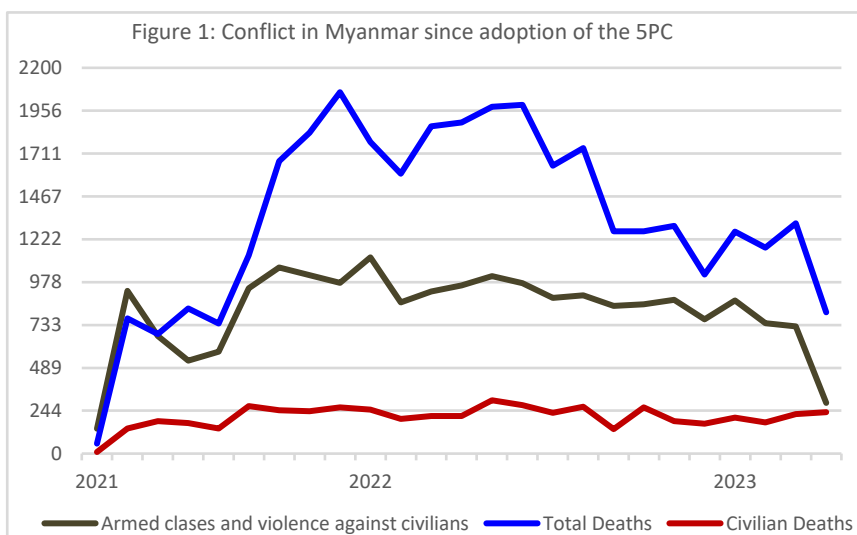
effectiveness. How has ASEAN’s current Myanmar policy fared, and how can it be improved? This paper further proposes policy recommendations for ASEAN and its member states, in particular the ASEAN Chair and neighbouring countries with shared borders.

Assessment and analysis of ASEAN’s approach and the Five-Point Consensus

ASEAN’s approach and the 5PC have shown to be incoherent, ambivalent and, most importantly, ineffective as it neglects to recognise the root cause of violence in Myanmar, the military. By pursuing an “inclusive dialogue” for a negotiated settlement with the perpetrators of atrocity crimes, and insisting on aid delivery through the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) in which the source of violence dictates the agenda and decisions, ASEAN has exacerbated the ongoing human rights and humanitarian catastrophe in Myanmar and risked the worsening of regional political and socioeconomic instability.

By not taking concrete actions towards resolving the crisis in Myanmar, ASEAN is condoning and enabling the junta to commit numerous crimes against the people. ASEAN is failing to protect the people of Myanmar, hurting its own credibility and integrity. Without ASEAN’s meaningful and concrete intervention, Myanmar has been allowed to cause border insecurity, refugee influx, commercial and economic loss, and organised transnational crime.

The lack of implementation of the 5PC, coupled with ASEAN’s willingness to allow the junta to participate in its meetings as representative of Myanmar despite its banning Min Aung Hlaing from participation in the ASEAN Summits — while putting aside the legitimate government of Myanmar — has falsely lent legitimacy to the Myanmar junta. This in turn has encouraged the junta to continue to act with blanket impunity. Meanwhile, ASEAN is seen to have made few efforts to seek help from its Dialogue Partners and the United Nations Security Council (UNSC). Such partners could lend support to the bloc to address the multi-dimensional crisis in Myanmar with meaningful and substantive actions. The call for ASEAN’s robust action may seem to come with a risk of diverging from the bloc’s non-interventionist approach, but the cost of not taking concrete actions comes at a much higher cost.



Point 1 of the 5PC to call for an “immediate cessation of violence in Myanmar” has proven to be completely ineffective. Even after the adoption of the 5PC, the military junta has committed atrocities against civilians: airstrikes, artillery shelling, massacres and killings, detention, torture, gender-based violence, and burning of properties. The junta continues to silence and persecute dissent. The total arrests of anti-junta individuals have been reported to reach 21,850. Meanwhile, 17,846

have been unlawfully detained and remained in detention, and 154 have been sentenced to death.⁶ In 2022 alone, at least 9,096 violent acts had involved or been initiated by the military junta.⁷ Since the adoption of the 5PC, the military junta has carried out 759 airstrikes, resulting in 386 civilian deaths (see Figure 1).⁸ There have been 2,043 violent acts after the adoption of

6 Figures as of 3 May 2023, the Assistance Association for Political Prisoners (Burma), <https://aappb.org/?p=24872>
 7 Figures as of 4 May 2023, ACLED, <https://acleddata.com/dashboard/#/dashboard/83D98BE578F6AB58EF1A9214035BF923> and <https://acleddata.com/dashboard/#/dashboard/049F21F8BEED12786F5468F55E942991>
 8 Figures as of 4 May 2023, from ACLED, <https://acleddata.com/dashboard/#/dashboard/83D98BE578F6AB58EF1A9214035BF923> and <https://acleddata.com/dashboard/#/dashboard/049F21F8BEED12786F5468F55E942991>

the UNSC resolution on 21 December.⁹ Over 60,000 civilian properties, including medical facilities, schools and religious sites, have been torched or destroyed following the attempted coup.¹⁰

Since December 2022, at least 244 civilians have been slain from 262 airstrikes carried out by the junta (see Table 1). In comparison to Ukraine, although airstrikes have totalled 1.96 times of those in Myanmar, the number of civilian fatalities has been much lower. Most recently, on 11 April 2023, the junta launched an aerial attack on a civilian gathering in Sagaing Region, killing at least 170 people.¹¹ This incident came only weeks after the UN Human Rights Council adopted a resolution on the human rights situation of Myanmar on 4 April, which condemns the junta's continuing violence against civilians and holds the junta solely responsible for the worsening crisis in the country.¹² It also came just weeks before the ASEAN Summit on 9 - 11 May. In response, 546 civil society organisations (CSOs) have condemned the airstrikes and welcomed a request for an urgent UNSC discussion on Myanmar to address the increasing severity of international crimes against civilians.¹³

	Myanmar		Ukraine	
Month	Reported Events	Reported Civilian Fatalities	Reported Events	Reported Civilian Fatalities
Dec 2022	40	6	84	2
Jan 2023	58	21	38	48
Feb 2023	51	2	125	4
Mar 2023	59	20	119	15
Apr 2023	54	195	149	5
Total	262	244	515	74

Figures in this table include all sources used by ACLED including reports by Ukraine Ministry of Defence updated by ACLED. Data in this table was pulled on 20 Apr 2023 and includes reported events up to 14 Apr 2023

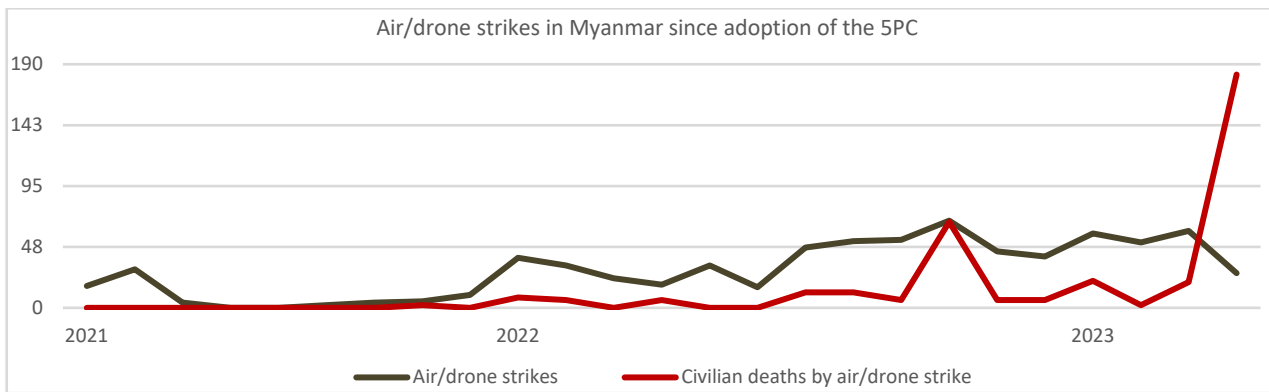
9 Figure as of 4 May 2023, ACLED, <https://acleddata.com/dashboard/#/dashboard/DCDD320DA6BF902AB720C4F750AC11A7>

10 Figure as of 6 April 2023, Myanmar Humanitarian Update, UNOCHA, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-28-6-april-2023>

11 "Horror of Myanmar Junta's Aerial Massacre in Pazi Gyi," *Irrawaddy*, 20 April 2023, <https://www.irrawaddy.com/features/horror-of-myanmar-juntas-aerial-massacre-in-pazi-gyi.html>

12 UN Security Council, Resolution 2669 (S/2669/2022), 21 December 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/767/33/PDF/N2276733.pdf?OpenElement>

13 "Open Letter: The United Nations Security Council's meeting on Myanmar must lead to firm measures against the junta," *Progressive Voice*, 17 April 2023, <https://progressivevoicemyanmar.org/2023/04/17/open-letter-the-united-nations-security-councils-meeting-on-myanmar-must-lead-to-firm-measures-against-the-junta/>



The statistics and the continuing nature of the junta's crimes undeniably display its categorical refusal to implement the 5PC and take heed of ASEAN's warnings. ASEAN's call to end the junta's horrific crimes has been left unheard. This demonstrates how the bloc lacks political will to exercise more authority. Hence, this point of the 5PC must be called into question, with the goal of clarifying how and why ASEAN should utilise its diplomatic and economic tools at its and its members' disposal.

In Point 2 of the 5PC, ASEAN pledged to hold a "constructive dialogue among all parties concerned" to "seek a peaceful solution in the interests of the people." By paying official visits and meeting with only representatives of the military junta and its approved groups, ASEAN has lent false legitimacy to the junta over the past two years. It is crucial to make the distinction that the military junta meets both domestic legal criteria and international definition of a terrorist organisation. ASEAN's approach to the crisis in Myanmar has demonstrated its unwillingness to engage with the National Unity Government (NUG) — the legitimate government of Myanmar, Ethnic Revolutionary Organisations (EROs), People's Defence Forces (PDFs), and civil society. So far, no dialogue has been secured between ASEAN, as a bloc, and the NUG or EROs. As long as ASEAN insists on officially engaging with the military junta, such dialogues may never take place. The regional bloc's repeated engagements with the military junta will only discourage the NUG, EROs and the Myanmar public from communicating and relying on ASEAN. The current approach cannot translate into meaningful progress for a peaceful solution for Myanmar.

Further questions can be raised about the regional bloc's interpretation of "the interests of the people". The people of Myanmar have frequently expressed their will and aspiration to topple the Myanmar military and establish a federal democratic Myanmar grounded in principles of human rights, the rule of law, and justice and accountability. Their calls must be respected and followed by ASEAN.

Point 3 of the 5PC created the role of the ASEAN Special Envoy to Myanmar and required it to be selected by the ASEAN Chair. The mandate's limited one-year term — most of which dedicated to the selection process and reporting to the incumbent Chair — indicates no direct accountability to ASEAN as a whole. The term falls too short to accomplish meaningful progress and instead gives the Special Envoy, as representative of their home state, an avenue by which they can maintain amicable ties with the junta and shirk their responsibility to address the crisis.

The Special Envoy from Cambodia's two official visits to Myanmar in March and June 2022, as well as all envoy-led meetings, were limited by the military junta to its approved groups. The Special Envoy from Brunei was also appointed through sole consultation with the military junta.¹⁴ Such practices showed severe lack of political willingness of both ASEAN Chairs to adhere to the 5PC. It is crucial to note that as long as the Special Envoy's visits to Myanmar are held in cooperation with the military junta, such visits will only corrupt the effort to "facilitate mediation of the dialogue process" under Point 3, rendering the mandate ineffective. The effectiveness of the

¹⁴ "Myanmar CSOs Reject the Appointment of Brunei's Foreign Minister II as the ASEAN's Special Envoy to Myanmar," *Progressive Voice*, 6 August 2021, https://progressivevoicemyanmar.org/wp-content/uploads/2021/08/ASEAN_CS0_Statement_6_Aug.pdf

role of Special Envoy to Myanmar in its current state must therefore be immediately and thoroughly reviewed.

ASEAN's exclusion of voices from the NUG, the National Unity Consultative Council (NUCC), the Committee Representing Pyidaungsu Hluttaw (CRPH), EROs, PDFs, and civil society in the selection process of the Special Envoy and in initiating a constructive dialogue is in direct contradiction with the spirit of Points 2 and 5 of the 5PC which promote engagement with “all parties concerned”.

The humanitarian crisis in Myanmar remains direst and is likely to worsen. More than two years since the adoption of the 5PC, ASEAN has not effectively fulfilled its promise to deliver humanitarian aid through the AHA Centre under Point 4. As long as the Myanmar military junta-appointed Ministry of Social Welfare, Relief and Resettlement sits on the Governing Board of the AHA Centre, provision of aid through the Centre is inconsistent with humanitarian principles of humanity, neutrality, impartiality and independence.¹⁵ The AHA Centre was also not created to handle humanitarian catastrophes that are born out of political crises.¹⁶ ASEAN's partnership with the military junta to provide aid is destructive as it allows the military junta — the root cause of the crisis itself — to “exercise the overall direction [and] control” of aid through the AHA Centre's Governing Board.¹⁷ The bloc's coordination with the military junta through the AHA Centre has, rather than help alleviate the suffering of the people, exacerbated the situation on the ground. The practice further points to the AHA Centre's, and by extension ASEAN's, lack of independence.¹⁸

Proposed Five Counter Points

As the failure of ASEAN's approach and the 5PC points to the bloc's selective engagement with the military junta and ambivalent recognition of authority, the bloc must leverage its platforms and partnerships — including with ASEAN-Plus and Dialogue Partners — with a priority to end the escalating horrendous violence. For effective implementation of the 5PC, this policy paper proposes ASEAN to urgently review and reframe its current approach to the Myanmar crisis.

- **Point 1 on civilian protection and cessation of violence:** ASEAN must set an immediate action plan to stop the military's violence and atrocity crimes, with a minimum benchmark to end the airstrikes as a matter of urgency. In this regard, ASEAN must coordinate an ASEAN-Plus approach involving governments in the region and impose arms embargoes. ASEAN must support the imposition of a global arms embargo, and targeted sanctions. It should further take action to support a referral of the situation in Myanmar to the International Criminal Court or an establishment of an ad-hoc tribunal through a UNSC resolution under Chapter VII of the UN Charter.
- **Point 2 on inclusive dialogue of all parties:** For an inclusive and constructive dialogue among all relevant stakeholders to the ongoing crisis in Myanmar, the 5PC must be amended to be holistic, comprehensive, and consistent with the will of the people of Myanmar. First and foremost, ASEAN must initiate formal engagements in meaningful consultation with key stakeholders of Myanmar, including the NUG, the NUCC, the CRPH, EROs and civil society. An implementation plan must be developed at the ASEAN Summit following the bloc's decision in November 2022. In this plan of action, ASEAN must secure an enabling environment where federal democracy forces and stakeholders are guaranteed agency, respect, and security. This includes an immediate cessation of the junta's violence, persecution of and attacks on democracy forces and

¹⁵ See <https://ahacentre.org/governing-board-of-the-aha-centre/>

¹⁶ “Beyond ASEAN's Five Point Consensus: Humanitarian Assistance to Myanmar,” *FORUM-ASIA*, 5 May 2022, https://www.facebook.com/watch/live/?ref=watch_permalink&v=2146185955544352

¹⁷ Great Expectations: Analysis of the ASEAN Coordinating Center for Humanitarian Assistance on disaster management, *Progressive Voice*, 4 August 2021, <https://progressivevoicemyanmar.org/2021/08/04/great-expectations-analysis-of-the-asean-coordinating-center-for-humanitarian-assistance-on-disaster-management/>

¹⁸ *Ibid.*

collective punishment against the population. ASEAN must also ensure engagements with all parties at all levels in equal terms.

- **Point 3 on ASEAN Special Envoy:** The mandate should serve ASEAN as a whole, answering to all ASEAN leaders and foreign ministers, instead of solely the incumbent chair. ASEAN leaders must set up a clear mandate grounded in principles of human rights and do no harm, and justice and accountability. The term should be extended to three years. The mandate must be a full-time position and hold authority and independence to take actions unencumbered by the delay of infrequent ASEAN high-level meetings. Lastly, ASEAN must ensure that the mandate has adequate authority and resources to constructively engage with all stakeholders, including the resources to ensure the ability of Myanmar democracy stakeholders to travel safely.

- **Point 4 on ASEAN's humanitarian assistance through the AHA Centre:** ASEAN should re-strategise its humanitarian support plan to ensure the discontinuation of the military junta's representation in the AHA Centre's Governing Board. Myanmar's frontline local responders, including border-based civil society and ethnic community-based organisations — who have proven track records of effective aid delivery, must be placed at the centre of the solution. This could be done by encouraging big aid donors to increase their provision of assistance to or minimise burdensome reporting requirements for Myanmar and regional CSOs. ASEAN must pivot to deliver aid through a people-to-people solidarity approach, particularly channeling through Myanmar's ethnic border regions. While ASEAN realigns its humanitarian operations, it is also paramount that the bloc assumes the responsibility to protect vulnerable groups seeking refuge. ASEAN leaders must ensure asylum and legal protection are granted to those fleeing from Myanmar until they are safe to return home.

- **Point 5 on the Special Envoy's visits to Myanmar:** The mandate must cut ties with the military junta who continues to commit atrocity crimes. The mandate should immediately open formal communications, and must truly engage with key stakeholders which are the NUG, the NUCC, EROs, the CRPH, and CSOs of Myanmar's Spring Revolution. If the Special Envoy is unable to access Myanmar, then it must engage with these stakeholders by making available and creating all channels in other ASEAN countries.

Conclusion

If ASEAN is unable to deliver on the above mentioned points within three months from the ASEAN Summit on 9 - 11 May 2023, the people of Myanmar will have to determine whether Myanmar's ASEAN membership is still in their best interest and in line with their struggle for federal democracy. This could potentially lead to Myanmar initiating the process of removing itself from ASEAN.

The intensifying crisis in Myanmar caused by the military junta has not only caused the lack of human security for the Myanmar people, but also wide-ranging implications for regional stability, socio-economic prosperity, and peace. Such problems now extend beyond the country's borders. Given more self-reflection, ASEAN's policy framework could be more strategic. Its current approach to the Myanmar crisis needs to be revamped in order to align with the aspirations of the Myanmar people. ASEAN must also acknowledge that the military lacks legitimacy and legality, and does not have control on the ground.

Further, ASEAN must recognise that the military's attempted coup of 1 February 2021 has failed after two years. It is in the best interest of ASEAN to be decisive in its actions towards Myanmar. ASEAN must seek with no delay concrete coordination and cooperation from the international community. Particularly, ASEAN must urge the UNSC to adopt a resolution on Myanmar under Chapter VII of UN Charter to stop the military's violence. Such action is a minimum benchmark for the bloc to gain trust from the people of Myanmar and prove that ASEAN is capable of solving the Myanmar crisis and saving people's lives on the ground.

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The position paper is open to signatories from all Myanmar, regional and international organisations until the next ASEAN Summit in September 2023 and will be updated regularly here: <https://progressivevoicemyanmar.org/2023/05/05/civil-society-position-paper-reviewing-and-reframing-the-aseans-five-point-consensus/>. To sign on to the position paper, please send your organisation's endorsement to: info@progressive-voice.org

As of 3 July 2023, the below organisations have signed the position paper.

Signed by Myanmar organisations

1. 8888 Generation (New Zealand)
2. Action Against Myanmar Military Coup (Sydney)
3. Action Committee for Democracy Development (coalition of 12 activist networks)
4. Active Youths Kalaymyo
5. Ah Nah Podcast – Conversations with Myanmar
6. All Burma Democratic Front in New Zealand
7. Association for Human Rights Defenders and Promoters
8. Athan – Freedom of Expression Activist Organization
9. Auckland Zomi Community
10. Auckland Kachin Community NZ
11. Blood Money Campaign
12. Blooming Padauk
13. Burma Support
14. Burmese American Democratic Alliance
15. Burmese Canadian Network
16. Burmese Community Group (Manawatu, NZ)
17. Burmese Rohingya Organisation UK
18. Burmese Rohingya Welfare Organisation New Zealand
19. Chin Human Rights Organization
20. Chin Community of Auckland
21. Creative Home
22. CRPH Funding Ireland
23. CRPH, NUG Support Team Germany-Deutschland
24. CRPH & NUG Supporters Ireland
25. Democracy, Peace and Women's Organization
26. Democratic Youth Council
27. Educational Initiatives Myanmar
28. Equality Myanmar
29. Federal FM – Mandalay
30. Federal Myanmar Benevolence Group (NZ)
31. Freedom and Labor Action Group (coalition of 3 labour activist groups)
32. Future Thanlwin
33. Generation Wave
34. Global Myanmar Spring Revolution
35. Grass-root People
36. Help Myanmar (USA)
37. Human Rights Educators' Network
38. International Association, Myanmar-Switzerland
39. Justice For Myanmar
40. Karen Human Rights Group
41. Karen Swedish Community
42. Karenni Society New Zealand

43. Keng Tung Youth
44. Kings N Queens
45. Kyaukse University Students' Union
46. Latsinu Women Agency
47. Mandalay Regional Youth Association (MRYA)
48. Mon State Development Center
49. Myanmar anti-military coup movement in New Zealand
50. Myanmar Campaign Network
51. Myanmar Community Group Christchurch New Zealand
52. Myanmar Community Group Dunedin New Zealand
53. Myanmar Emergency Fund (Canada)
54. Myanmar Engineers – New Zealand
55. Myanmar Gonye (New Zealand)
56. Myanmar Students' Union in New Zealand
57. Nelson Myanmar Community Group New Zealand
58. New Zealand Doctors for NUG
59. New Zealand Karen Association
60. New Zealand Zo Community Inc.
61. Olive Organization
62. Overseas Mon Association. New Zealand
63. Rvwang Community Association New Zealand
64. Padauk
65. Progressive Voice
66. Pyithu Gonye (New Zealand)
67. Save and Care Organization for Women at Ethnic Border Areas
68. Save Myanmar Fundraising Group (New Zealand)
69. Shan Community (New Zealand)
70. Shan MATA
71. Southern Dragon Myanmar
72. Southern Youth Development Organization
Tanintharyi MATA
73. Suomi – Myanmar Seura and Myanmar Diaspora Group of Finland
74. Support group for Democracy in Myanmar (The Netherlands)
75. Ta'ang Women's Organization
76. The Ladies
77. Women Activists Myanmar
78. Women Advocacy Coalition – Myanmar
79. Women's League of Burma
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Supported in solidarity by regional and international organisations

1. ALTSEAN-Burma
2. ASEAN Parliamentarians for Human Rights – APhR
3. Association Suisse-Birmanie
4. Asia Justice and Rights (AJAR)
5. Asia Pacific Solidarity Coalition
6. Asian Forum for Human Rights and Development (FORUM-ASIA)
7. Burma Action Ireland
8. Burma Campaign UK
9. Campaign for a New Myanmar
10. Central European Institute of Asian Studies
11. Clean Clothes Campaign South East Asia Coalition
12. CIVICUS: World Alliance for Citizen Participation
13. Free Burma Campaign (South Africa)
14. German Solidarity with Myanmar Democracy
15. Info Birmanie
16. Initiatives for International Dialogue
17. Institute for Asian Democracy
18. International Campaign for the Rohingya
19. Myanmar Accountability Project

20. Myanmar Action Group Denmark
21. Netherlands – Myanmar Solidarity Platform
22. No Business With Genocide
23. SEA Junction
24. Social Action for Community and Development
25. Special Advisory Council for Myanmar
26. Swedish Foundation for Human Rights
27. Thai Action Committee for Democracy in Burma
28. S. Campaign for Burma
29. Union for Civil Liberty
30. Women's Network for Unity
31. YAPPIKA (Indonesia)
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