

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

20 September 2024

Submission to the Inquiry into Australia's Sanctions Regime

To whom it may concern,

The South Asian Research and Advocacy Hub (SARAH) appreciates the opportunity to submit to the Federal Inquiry into Australia's Sanctions Regime. SARAH is a volunteer research group formed last year as part of the Law Reform and Social Justice Department (LRSJ) at the ANU College of Law. We are run by South Asian students who aim to research and advocate for South Asian communities, and are assisted by academics, community associations and other non-government organisations.

This submission will be based on pre-existing research, knowledge within our communities and our own lived experiences. We all belong to communities that are affected by the conflict in Myanmar and its ripple effect on the wider South-Asian region. We, therefore, hope to give our perspective on how Australia's sanctions regime can be improved and better aligned with Australia's national interest. We wish to recognise the diversity of our communities - and that no single submission can capture our intellectual diversity. Therefore, we in no way mean to represent the perspectives of all South Asian communities - only a section backed by academic literature.

We will provide a summary of our submissions and then explain our submissions in relation to the terms of reference. We welcome the opportunity to answer any questions from the committee regarding this submission. We can be contacted at lrsj.anu.sarah@gmail.com.

Kind regards,

The South Asian Research and Advocacy Hub (SARAH)

Summary of our Submissions

Submission 1: We submit that Myanmar is a crucial part of both South and South East Asia, and that promoting regional stability and human rights in our neighbourhood is in Australia's national interest.

Submission 2: We submit that there have been allegations of ongoing human rights abuses in Myanmar by Australian companies particularly in the mining sector which undermines South East Asian and South Asian regional stability, contributing to the volatile political environment in Myanmar.

Submission 3. We submit that it is in Australia's national interest to establish whether or not human rights violations are being committed by Australian companies to ensure that domestic companies abroad are compliant with Australian rules and norms.

Submission 4. We submit that should any Australian company be found to be in violation of human rights, then Australia has an obligation and vested interest in ensuring that they face comprehensive sanctions.

Submission 1: Australia's national interest in Myanmar and importance of regional stability in South and South-East Asia

As Myanmar is situated geographically at the crossroads between South and Southeast Asian regions, the state's political and economic stability significantly impacts the broader dynamics of Asian foreign affairs. The ongoing conflict, alleged human rights abuses and the deep-rooted nature of military rule in Myanmar have posed direct challenges to both its people and the regional security, the flow of trade and the integrity of democratic principles in the Indo-Pacific region (OHCHR, 2023).

Australia can strengthen its position as an advocate of freedom and democracy by prioritising the protection of human rights, especially in Myanmar. Additional involvement in resolving the ongoing Rohingya refugee crisis would bolster Australia's standing as a responsible global actor. The crisis is not only a humanitarian emergency but a security risk to the Asia Pacific region, as displaced individuals are often susceptible to exploitation by criminal networks or extremist terrorist groups, undermining regional peace (UNRIC, 2024).

Promoting regional stability in Myanmar through additional targeted sanctions on entities involved with human rights violations aligns with Australia's broader strategy of maintaining prosperity and security in the Indo-Pacific region. A stable Myanmar would soothe rising world tensions and allow Australia to foster greater economic ties in South Asia and South East Asia (DFAT, 2024). Australia supporting human rights protection and peace initiatives in Myanmar would be essential to secure the state's geopolitical interests and ensure long-term stability for the state itself (Kfir, 2017).

Therefore, it is in Australia's national interest, alongside other democratic ASEAN states, to take a proactive approach in addressing the conflict in Myanmar and mitigating its consequences. The promotion of regional stability and the protection of human rights in Myanmar supports the values of human rights and multilateralism, underpinning Australia's foreign policy stance (DFAT, 2024).

Submission 2: Alleged Crimes Committed By Australian Mining Companies In Myanmar

The involvement of Australian mining companies in Myanmar is a key factor in what has been occurring in the South Asian and South East Asian region. While Australian companies have been accused of alleged human rights violations, environmental degradation and economic exploitation, the resulting civil conflict has contributed substantially to the widespread internal and external displacement amongst the local population.

During the early 2010's Australian mining companies such as Twinza Oil and Mallee Resources Limited (formerly Myanmar Metals) leveraged the early liberalisation of the state's economy. They subsequently established numerous operations across the country to primarily mine Jade and other valuable minerals (Justice For Myanmar, 2024b). With mines being embedded in areas controlled by the military junta, these operations have been allegedly linked to human rights violations, such as the forced displacement of local communities and environmental degradation (Justice For Myanmar, 2024b). Such actions have contributed significantly to the suffering of the Myanmar people, raising critical legal and ethical questions about the role of foreign enterprises in conflict zones.

Australian mining companies operating in Myanmar have been linked to dangerous activities that may have long-term effects on local Myanmar farmers. One example of an Australian company allegedly linked to human rights violations is Mallee Resources Limited. The company has been accused of allegedly displacing villagers who reside nearby their mining operations (OECD Watch, 2024). Furthermore, mining companies allegedly aligned themselves with the Tatmadaw to combat protests against their mining practices (Knaus, 2024), leading to the military utilising a heavy-handed approach of intimidating or abusing protesters.

The extent of environmental damage caused by these mining companies is a cause for concern. Widespread deforestation has been observed in surrounding areas of mining sites, which have consequently destroyed various vital ecosystems (Cowan, 2022). Water sources near mining sites are subjected to being polluted with chemicals utilised in these mining operations, which has further exacerbated the hardship of various local agrarian communities (Justice For Myanmar, 2024b). The long-term effect of this degradation on the environment is severe and threatens the livelihoods of not only the current population of Myanmar farmers but future generations as well.

Moreover, one of the most pressing issues that has resulted due to the conflict is the widespread displacement of Myanmar refugees across Asia and other neighbouring countries. By the end of December 2023, it was estimated that more than 2.6 million people had been internally displaced in Myanmar as a result of the conflict (United Nations High Commissioner for Refugees, 2024). This was worsened by Cyclone Mocha, which struck Myanmar in May 2023 and has affected up to 3 million people. Additionally, 142 aid workers in Myanmar were either arrested or detained between January and November 2023 (UNHCR, 2024).

More than 1.3 million people have fled Myanmar and are currently being hosted in other countries (UNHCR, 2024). One country is Bangladesh, which has been housing almost 1 million Rohingya refugees in some of the most densely populated refugee camps (UNHCR, 2024). With almost 75% of the Rohingya population being children and women, they are highly dependent on humanitarian aid for education, food and supplies, but do not have access to it due to a lack of funding from humanitarian aid and the Bangladeshi government (UNHCR, 2024). While 30,000 refugees have been moved by the Bangladeshi government to other refugee camps in the country to receive better care, this is not a significant leap in improving their living conditions, as there is limited humanitarian assistance (UNHCR, 2024).

Additionally, Malaysia and Indonesia have been housing more than 160,400 refugees (UNHCR, 2024). It is important to note that the route to reach Malaysia and Indonesia is highly dangerous due to the choppy sea, but also sickness and assault from the smugglers who took them if they did not have the money for the trip as well as piracy (Edwards, 2014; UNHCR, 2024). The conditions on the boats were highly unsafe for the passengers, as the boats hold more passengers than it could carry (Edwards, 2014). This has resulted in 1 of 8 Rohingya refugees dying while attempting the journey to Indonesia or Malaysia (UNHCR, 2024).

India is another country that has been hosting 93,100 refugees from Myanmar (UNHCR, 2024). They have been arbitrarily detained and deported back to Myanmar between 2018 and 2022, live in poor conditions without access to food, water or humanitarian aid and supplies (Office of the High Commissioner for Human Rights, 2024). Rohingya refugees have been racially discriminated against both by Indian citizens but also by politicians and have been persecuted because of this (OCHA, 2024).

It is important to note that while these countries are doing their best, it is unsustainable for them to continue to house more refugees from Myanmar, as they cannot provide the safety and security these refugees need due to their own lack of resources. This is especially disappointing

when considering other wealthier countries, such as Australia, have the resources to at least provide humanitarian aid, but have instead cut back on the aid they have previously provided (Howes, 2023). Between 2020 and 2023, Australia provided \$11.6 million to NGOs supporting Rohingya refugees, however this has been slashed to just \$6.4 million (Howes, 2023). This was done due to a change in direction of where funding should go amidst the Ukraine-Russia conflict (Howes, 2023). However, this is deeply troubling as Australian funding was previously able to reach and support up to 390,000 Rohingya refugees to provide them with water, sanitation and education (Howes, 2023).

While the Australian government has committed to donating \$135 million from 2023-2025 to various humanitarian organisations like the Red Cross and the United Nations and have increased the number of humanitarian visas available to Rohingya refugees, it can only achieve so much when there are no sanctions on Australian-owned mining companies who worsen the situation in Myanmar (Giles, 2022; Wong, Giles and Conroy, 2023). With a substantive number of people being internally displaced or have fled, the role of foreign enterprises in perpetuating instability cannot be overlooked. These companies' actions have resulted in alleged violent repression and environmental destruction, and Australia's response is inconsistent at best. This inconsistency should be addressed and focused on to better meet Australia's national interests, as there is a lack of action from the government to combat the alleged exploitation occurring in Myanmar and perpetuating its instability.

Submission 3: Australia should conduct its own independent regulations to determine whether companies in Myanmar are in breach of human rights violations

In recognition of the alleged human rights violations, resulting displacement and environmental degradation, it is in Australia's national interests to investigate allegations of mining companies breaching human rights norms and regulations. It is upsetting that allegations have been made about Australian companies in Myanmar as this tarnishes Australia's reputation both within the South Asian and South East Asian region, but also in the international community for not adequately addressing these allegations. Australia has important relationships in these sub-continent with countries that are implicated by the conflict in Myanmar, such as India and Bangladesh, and is also home to Rohingya refugees displaced from the conflict. Therefore, it is vital that Australia suitably responds to this crisis by independently investigating allegations of human rights abuses or violations.

This can be established through a reporting scheme that ensures companies based in Australia but have mining operations in Myanmar relay whether or not they are following human rights obligations, and what measures they are taking to meet these obligations. Additionally, Australia can also investigate companies that are based in Australia but have mining operations in Myanmar through examining their financial investments and other actions in Australia. By doing so, Australia can conduct regular investigations into these companies.

It is necessary for Australia to take part in investigating these countries as Australia must do its part in the international community to promote human rights. While other countries, such as the United States of America, United Kingdom, European Union and Canada have already moved to sanction mining entities that have committed human rights violations, Australia is yet to address these companies. As a result, even if they have been sanctioned by the aforementioned companies, they are still able to operate through other countries. One example is Myanma Foreign Trade Bank, which was sanctioned by the United States Department of Treasury but continues to conduct business with Asia Pacific Mining Limited, headed by three Australian executives (Justice For Myanmar, 2024a). By conducting independent investigations into these allegations, Australia can further strengthen our relationships with these countries while also promoting human rights in the international community.

Submission 4: Australia's vested interest is to sanction companies that breach these regulations

If Australian companies operating in Myanmar are found under these new regulations to have breached human rights violations, it is in Australia's national interests to sanction them accordingly. Australia has long held strong diplomatic ties in the South Asian and South East Asian region and has made an effort to maintain its relations so that it may assist these countries in economic and humanitarian development. This is particularly true for Bangladesh with the Department of Foreign Affairs and Trade citing the country as a "long-standing partner... in addressing poverty and providing humanitarian assistance for Rohingyas who have fled Myanmar and their host communities" (DFAT, 2024). It is critical, therefore, that Australia moves to sanction companies whose actions go against Australian values, both in the wider international community but also within our country.

In accordance with this, we propose that one sanction Australia could impose is a ban on the import of minerals from these companies in Myanmar. While there are sanctions already in place surrounding the provision and exchange of assets with designated individuals or entities in Myanmar as provided in the Consolidated List, this list only covers economic companies, such as banks, and does not extend to mining companies (DFAT, 2024). By imposing a ban on the importation of minerals from these companies in Myanmar, this can directly penalise them for breaching Australian and international human rights violations.

It should also be noted that sanctions are effective in ensuring these violating companies are adequately penalised, as it has been proven so in the past. In 2024, the Australian government imposed targeted actions on entities linked to Myanmar's military junta, which included numerous Australian companies, such as Twinza Oil and Mallee Resources Limited (Australian Senate Committee, 2024). The sanctions were designed to curtail financial support to the military junta, who were obtaining a substantial profit from these mining operations (Australian Senate Committee, 2024). Furthermore, these sanctions were also aimed at limiting the Junta's access to international financial systems and markets, reducing the profitability of these mining ventures and signalling Australia's commitment towards addressing human rights abuses.

The impact of these recently imposed sanctions has already been significant, as substantive financial losses have been reported by such companies due to their restricted access to international markets. Furthermore, the reputational damage suffered by these Australian

ventures has further isolated these companies within the global community, preventing further funding and deterring collaboration with other mining ventures. Additionally, operational challenges for these companies have intensified, with logistical difficulties and heightened security risks stemming from international condemnation and the ongoing civil war (Dziedzic, 2024). In response, some companies have been forced to scale back or halt their mining operations, fearing further broader consequences that could further jeopardise the venture. These actions reflect the effect international efforts have on supporting and enforcing accountability for human rights in Myanmar.

Despite Australia's prior pledges towards the safety of Rohingyas and the developmental assistance of Bangladesh, Australia's current mining investments in Myanmar would undermine these efforts. Providing monetary and humanitarian aid without addressing the key factors at play in the humanitarian crisis will likely strain Australia's diplomatic ties with Bangladesh and neighbouring South Asian countries which have tangentially been affected by the Rohingya crisis. As a country who is home to not just refugees from Myanmar but across the world, it should be in Australia's interests to sanction companies that cause displacement and worsen these situations.

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