



# MYANMAR'S FEDERAL DEMOCRACY CHARTER: ANALYSIS AND PROSPECTS

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## INTRODUCTION

On 1 February 2021, the Myanmar military staged a coup and unconstitutionally declared a one-year state of emergency transferring all state powers to the Commander-in-Chief. The 'state of emergency' has been extended for six more months up to August 2022. Since the coup, the Myanmar military has attempted to consolidate power through force. In response to the military's unconstitutional (see: Noel 2022) seizure of power, a group of MPs elected in the November 2020 elections formed the Committee Representing the Pyidaungsu Hluttaw (CRPH) which was mandated by 80 per cent of the elected MPs to act on behalf of the legitimate legislature (Union Parliament). In parallel civil servants, civil society organizations and large numbers of common citizens have contested the military rule through a nationwide civil disobedience movement (CDM), while about five of the approximately 20 ethnic armed organizations (EAOs) have been forced to resume active resistance against the military mostly in Kachin, Kayin, Chin and Shan States.

On 31 March 2021, the CRPH released the Federal Democracy Charter (hereafter the Charter or FDC) (CRPH 2021a). When the Charter was announced, Myanmar was still in an early stage of launching the Spring Revolution (hereafter the Revolution) against the coup manifested in flash mobs and other protests, and the launching of the CDM. In response to a violent crackdown and a one-sided escalation of violence by the military, civilians have resorted to self-defence in an increasingly desperate effort to shake off military domination. The Revolution reached the stage of armed resistance in September 2021. The National Unity Government (NUG) was formed on 16 April 2021 in accordance with the Charter. It established a People's Defence Force (PDF) on 5 May 2021 and announced a war of self-defence on 7 September 2021. The Myanmar military's response to dissent since the beginning of the Revolution has been brutally repressive, especially in declaring the PDF and its partners as terrorist organizations and launching crackdowns and 'clearance operations'. Against this backdrop of political crisis

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and transformation, the broadest national unity front of the Revolution known as the National Unity Consultative Council (NUCC), established on 8 March 2021, revised the Charter and had it approved at the People's Assembly held on 27–29 January 2022.

The revised Charter is more elaborate than its earlier version in terms of norms and principles for founding a federal union and citizens' rights, and lays out more detailed guidelines for writing an interim constitution and a permanent constitution. The Charter consists of two parts. Part I contains basic principles which should bind the constitution-making process—most importantly, the idea that Myanmar would become a 'Federal Democratic Union'. Part II defines interim governing institutions and goals for institutions during the interim period, as well as the process of elaborating a permanent new constitution.

This Constitution Brief looks at the revised Charter's substantive provisions to identify the key ones and to raise questions, where relevant, about how certain issues have been approached. This Brief is structured around three main sections: Section 1 provides an overview of the process through which the Charter was developed and revised; Section 2 explores the political purpose and legal nature of the Charter; and Section 3 focuses on the content of the Charter.

This Brief builds on an earlier version prepared by International IDEA Myanmar after the Federal Democracy Charter was first issued in 2021. Intended for key stakeholders interested and/or participating in Myanmar's return to democracy and to enable a better understanding of the Charter—its purpose, origins and contents—it has now been updated and reflects the latest FDC revisions. The hope is that this will, in turn, help stakeholders to develop informed positions on the Charter and related efforts by the CRPH and NUCC to restore democratic governance and constitutionalism in Myanmar. Furthermore, the Brief highlights legal and political considerations to support interim institutions' (especially the NUCC's) constitution-building efforts.

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## 1. CHARTER-MAKING PROCESS

### **Why does Myanmar need a new constitution?**

In the morning hours of 1 February 2021, the day the newly elected Union Parliament was scheduled to convene for its first session, the military detained the leaders of the National League for Democracy, including State Counsellor Aung San Suu Kyi and President U Win Myint, cabinet ministers, the chief ministers of several regions, and other members of key institutions such as the Union Election Commission. The military unconstitutionally declared the military-nominated First Vice President Myint Swe (who had received the second highest number of votes in the presidential election) Acting President. Myint Swe therefore had no constitutional authority when he convened a meeting of the National Defence and Security Council (NDSC), attended by military and military-nominated members only, and declared a

state of emergency based on article 417 of the 2008 Constitution for one year (effectively transferring legislative, executive and judicial powers to the military's Commander-in-Chief).

Under article 417, a state of emergency is permitted only if there is a threat of 'disintegration of the Union or national solidarity or the loss of national sovereignty' due 'to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means'. To date, the military has provided no credible evidence of electoral fraud on a scale that would amount to a loss of sovereignty, and it is legally doubtful that electoral fraud constitutes 'wrongful forcible means'. In addition, the constitutional procedure outlined in article 417 was not followed as it requires that the President must coordinate with all members of the NDSC, that only the President has the authority to declare the state of emergency, and that the President must inform the Union Parliament. In effect, the consultative meeting with the NDSC was not held with all its members, Myint Swe was not the Acting President and thus had no authority to declare a state of emergency—and nor was the Union Parliament informed. The military violated the 2008 Constitution it had itself drafted. Contrary to its claims, all its subsequent decisions and appointments are thus unconstitutional and illegal.

The unconstitutional coup (Noel 2022) renders the Constitution invalid and inapplicable. Myanmar, therefore, is now in need of a new constitution.

### **Is the Federal Democracy Charter an interim constitution?**

No, it contains an interim constitutional framework in its Part II, but due to its largely political nature is best understood as a political framework rather than a strictly legal document. This is because it is ultimately too vague on a number of issues and does not contain any constitutional checks and balances (for instance no court is empowered to enforce its provisions). It concentrates power in the largest consultative body, the NUCC and the People's Assembly, and emphasizes the need for political consensus rather than the strict legal application of constitutional provisions.

### **Who participated in the Charter-making process?**

In the aftermath of the coup and with the onset of violent persecution by the military of any political opposition to its takeover, there was limited public information on the Charter-making process in the weeks after the formation of the CRPH, due to the extreme security risks that participants were under. While the CRPH was clearly the primary driving force behind the Charter, members of the CRPH and of the newly formed NUG stated that the Charter was developed inclusively in the spirit of collaborative and collective governance. For example, after the announcement of the Charter in March 2021, U Yee Mon, the CRPH Spokesperson, commented: 'In fact, the charter was not entirely drafted by the CRPH. It was drafted and approved by at least four groups, including elected lawmakers and political parties, CDM (civil disobedience movement)/strike leaders, protest leaders, and civil society organizations representing women and youth. The NUCC will be formed based on those four groups.' (Irrawaddy 2021). Similarly, MP and CRPH member Lwin

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Ko Latt stated in an interview with the BBC: 'We discussed with EAOs, political parties which do not collaborate with the State Administrative Council (SAC), leaders from the strike committees and CDM, and Members of Parliament for 20 days, and agreed on the Charter in order for the CRPH to lead and form the interim government' (BBC 2021).

Part I of the Charter was easier for stakeholders to agree on than Part II. According to some members of the strike committees, Part I was negotiated and agreed upon by a broader spectrum of actors, whereas some stakeholders were not fully consulted on Part II (i.e. strike committees) or did not agree upon it (some EAOs). Indeed, NUG Minister of Union Federal Affairs, Dr Lian Hmung Sakhong, acknowledged that Part II was revised just before being announced and that this may have been why there was less explicit support for it than Part I; he also noted openness on behalf of the NUG to revisit Part II accordingly (VOA News 2021). Enjoying the clearest mandate and electoral legitimacy, the CRPH was the leading actor in the initial stages of preparing the Charter. It could have acted alone, but chose to consult with and include other political stakeholders. Therefore, the NUCC later announced that the Charter had been agreed within the larger platform already at the outset and began its widely inclusive review process on 24 May 2020 (Women of Burma 2021). As the CRPH is one of four original member organizations forming the NUCC, a link between the elected MPs and the wider group of stakeholders was ensured from the beginning. When the Charter was first announced on 31 March 2020, the Revolution had only lasted for two months. Drafting the Charter and having it discussed and agreed as broadly and inclusively as otherwise possible, in peaceful conditions, implied extreme risk. During the weeks when the earlier version of the Charter was being developed, many potential stakeholders or members of the NUCC had not formally joined the body yet. It is also the more inclusive NUCC that undertook the task of revising the document and organizing the first People's Assembly in January 2022, which approved the revised Charter. At the same time, the composition of the NUCC has also expanded from four to five member groups by including Interim State/Federal/Ethnic Representative Committees, called 'Members of the Charter' in both versions of the Charter. Therefore, the highest consultative committee has become more inclusive and representative. When the NUCC held its first press conference on 16 November 2021, it claimed to have 28 members. That number increased to 33 in January 2022, including 8 unnamed EAOs or ethnic resistance organizations (EROs).

### **What documents were referenced in making the Charter?**

Many constitutional design features, particularly in Part I (Declaration of Federal Democratic Union) of the Charter (both original and revised), are based on the draft Constitution of the Federal Republic of the Union of Burma adopted on 12 February 2008, crafted in the 1990s–2000s by National League for Democracy (NLD) lawmakers and ethnic armed forces in Myanmar's border areas who were part of the Federal Constitution Drafting and Coordination Committee (for Burmese and English versions see: FCDCC 2008). It is less clear which documents and/or other comparative experiences were referenced in developing Part II (Interim Constitutional Arrangements).

Part I represents clear concessions to demands of EAOs, and includes many principles related to federalism, democracy and rights. The 2008 Constitution is only mentioned in the context of its ultimately envisaged abolishment; no continuity from the constitutional framework established by the 2008 Constitution is foreseen. This may be different from actual practice, where there appears to be a pragmatic approach which implies a certain degree of continuity with the 2008 Constitution. The revised Charter has seen significant further improvements in laying out citizen and democratic rights to be provided for in the future permanent constitution. These come not only from the text of the above-stated draft Constitution of the Federal Republic of the Union of Burma Second Draft but from the inputs of the NUCC's non-EAO discussants such as women's and labour rights organizations. International human rights are explicitly mentioned as relevant sources of law for the first time in a constitutional document in Myanmar, namely: the UN Convention on the Rights of the Child; the Freedom of Association and Protection of the Right to Organise Convention (ILO Convention 87); and the Right to Organise and Collective Bargaining Convention (ILO Convention 98). This may be an opening for including other references to international human rights law in constitutional law in the future.

#### **Will the Charter be revised, or is its current form final?**

The original Charter was designed to be revised and even in its current form it remains open to amendments. The NUCC was tasked with revising Part II before submitting it to the People's Assembly for approval. The CRPH has shown a willingness to consult on and, possibly, revisit the text of the Charter since its promulgation—particularly Part II. In an interview, NUG Minister of Union Federal Affairs, Dr Lian Hmung Sakhong noted: 'As Part II of the Charter is a matter of business operation, we will revise and add as relevant while we are implementing the tasks' (VOA News 2021). The initial version of the Charter foresaw the possibility for an amendment of 'the strategic plans' (Part II, Chapter 7, article 4), a term that was not defined but might refer to Part II of the Charter in its entirety. The revised version of the Charter provides that the NUCC may amend the 'interim constitutional arrangements' (i.e., presumably, Part II) and submit those amendments to the People's Assembly for approval (Part II, Chapter 10, article 59). It is unclear whether this provision also applies to Part I of the revised Charter, and therefore whether or not the principles intended to inform the future final constitution can be amended. However, the CRPH has taken concrete actions on the basis of the Charter (i.e. forming the NUG), demonstrating commitment to it as the foundation of a way forward for Myanmar for the time being, even if it will be adjusted or even repealed or replaced in the longer term. The NUCC may revise or enlarge the FDC and submit those amendments or additions to the Charter to the People's Assembly for approval (Part II, Chapter 10, article 59).

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## 2. POLITICAL AND LEGAL PURPOSES OF THE CHARTER

The Charter's primary objectives are: '1. To eradicate all sorts of dictatorship, including military dictatorship; 2. To completely abrogate the 2008 Constitution; 3. To build the Federal Democratic Union; and 4. To develop a people's civilian government' (Revised FDC, Part 1, Chapter 1). This implies that the Charter serves both political and legal purposes.

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### Political purposes

The charter-making process lasted more than a year from the drafting of the Charter starting in March 2021 to the promulgation of its revision in January 2022, and final publication in March 2022. The Charter is not a fully-fledged interim constitution, let alone a permanent constitution. But it serves as a foundation for different political groups with a stake in how the Spring Revolution proceeds and/or what type of a Myanmar union or state is going to be established. The original Charter can be seen as an offer from the CRPH to the EAOs, ethnic groups and parties and other pro-democracy actors to form an alliance against the Myanmar military, while the revision is a negotiated settlement among political stakeholders who came together in the NUCC platform. The revised Charter also serves as a reference document for future members of the NUCC, while its current members continue to develop the Charter. The NUCC already has terms of reference for its activities and future members.

Many observers of the crisis in Myanmar believe that the only way the elected parliamentary representatives could effectively combat the Myanmar military, militarily and politically, was by entering into an alliance with the EAOs/EROs, (ethnic) political parties and other emerging pro-democracy actors and those who are loosely described as civil society. This also includes civil servants who refused to take illegal orders from the military. In a broader context, the Spring Revolution has thus given rise to other pro-democracy actors beyond the NLD and its supporters. These actors also had to be accounted for and included in the political alliance against the Myanmar military. For example, the CDM has acted largely autonomously from established political parties or organizations so far and represents a new and powerful source of political mobilization outside the political party structure, especially appealing to youth. The original Charter represented an offer to these groups to build a coalition among long-established and newly-emerging pro-democracy forces: by acknowledging the rise of the CDM, it commits to honouring CDM participants and to incorporating the CDM in the interim governing arrangement. CDM groups now sit on the NUCC, and the first step of the revised Charter's modified 12-step road map (see Figure 1, Step 1) commits to mobilizing, encouraging and supporting the CDM and protests.

The Charter, therefore, still functions as the offer of the terms for this alliance. The offer of terms is made in the form of a constitutional instrument to publicly bind the NLD to credible commitments in pursuing longstanding ethnic group demands for greater autonomy and a highly decentralized form of federalism, but also demands such as secularism, diversity and inclusion, human rights



Figure 1. The 12-step road map

1	To mobilize, encourage and support the mass movements, including the CDM, in order to completely end the military coup and to eradicate all sorts of dictatorship, including military dictatorship, so that the Federal Democratic Union can be established
2	To cooperate in respective sectors through the formation of committees representing parliaments with the elected members of parliaments
3	To develop a platform where allied political parties, ethnic resistance organizations, and civil society organizations including unions, women's, youth and minority groups shall collaborate to deliberate political agreements and implement the action plan
4	To draft and ratify the Federal Democracy Charter
5	To form the Interim National Unity Government, and legislative and judiciary institutions in accordance with this Charter
6	To call a People's Assembly with the participation of all forces with common goals of the ultimate end of dictatorship and establishment of the Federal Democratic Union
7	To develop the strategy to end dictatorship, to abrogate the 2008 Constitution and to establish a Federal Democratic Union
8	To draft a transitional constitution
9	To form a transitional government
10	To draft and endorse the Federal Democratic Constitution by convening the Constitutional Assembly
11	To ratify the Federal Democratic Constitution endorsed by the Constitutional Assembly by holding a referendum and holding elections
12	To form legislative, executive and judiciary bodies as per the ratified Federal Democratic Constitution and to practise constitutionalism

and women's empowerment. This has the aim of overcoming historic trust deficits including those between the NLD, which makes up most of the elected Parliament, the CRPH (17 of its 20 members), and the EAOs/EROs and ethnic political parties. Hitherto there has been a lack of trust on the part of the EAOs and ethnic political parties towards the NLD, because during its last term the NLD was perceived to prioritize negotiations with the military over addressing ethnic demands for federalization and greater autonomy (having portrayed itself as a party that was going to bring peace to Myanmar through a participatory process). In taking the form of a constitutional instrument, the Charter serves as a credible device to publicly commit the NLD to pursuing the demands of ethnic groups—who taken together represent a critical bloc for Myanmar's pro-democracy alliance. The CRPH/NUCC commits itself in the Charter to implement the objectives, visions and political road map agreed in the Charter together with all the democratic forces and with a collective leadership approach.

As an offer from the CRPH/NUCC for a political alliance against the Myanmar military, the Charter binds the interim government and future constitution-making body or bodies (including the NUCC) to reconstitute Myanmar as a Federal Democratic Union. Part I, Chapter 4 gives effect to that commitment in

many respects. The Charter makes concessions to longstanding demands of the EAOs that go far beyond the principles agreed during the recent series of peace conferences and the amendment proposals that the NLD government put forth in parliament in late 2019 (for a detailed analysis of the two bills see: International IDEA 2019). In the original Charter the CRPH, presumably representing the revised position of the NLD, committed to a deeply decentralized federal system with most power resting with the sub-national units as opposed to the Union (i.e. federal) level. This indicates that the CRPH recognized the importance of showing an increased commitment to pursuing ethnic groups' vision for a federal Myanmar and attempts to respond to the important EAOs' current leverage. This political offer-cum-settlement further consolidated to a more advanced or stable stage and is reflected in the revised Charter.

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### Legal status

The Charter represents an effort by the CRPH/NUCC to tackle the constitutional void brought about by the coup and seize a new constitutional opening offered by the Spring Revolution. Given the escalating crisis and the fact that the 2008 Constitution has been so severely violated and its authority undermined by the Myanmar military, a return to it seems difficult to imagine; that Constitution stipulates an imposed power-sharing formula between elected representatives and an autonomous and shielded Myanmar military that controls large segments of the public sector, in particular the security forces.

In drafting the Charter, the CRPH was initially relying on the democratic legitimacy it has from the 2020 elections to claim the authority to: (a) lead a process for drafting a new constitution for Myanmar; and (b) abolish the 2008 Constitution. It concurrently struck a deal with a number of EAOs/EROs and other resistance forces resulting in the formation of the NUCC that has revised the Charter, now serves as the broadest and most inclusive standing body among the interim institutions, gives policy guidelines to the NUG, and steers the constitution-making process. It should be noted that due to guarantees of political power and autonomy that the military enjoyed under the 2008 Constitution, including the power to effectively veto any constitutional amendments, no constitutional change of this magnitude would have been possible through a parliamentary amendment process before the coup. As such, Myanmar has a unique opportunity to engage in a new constitutional vision and design a constitution for a more peaceful and inclusive future. How this moment is dealt with will have longstanding impacts on the legitimacy and sustainability of future constitutional arrangements in the country.

On the important question of the applicable law and legal continuity, the Charter is less specific. The NUG has clarified that all legacy laws remain in effect, except the 2008 Constitution itself and all those laws and provisions that are incompatible with the principles of the Charter. All 'legislative' acts issued by the military de facto authorities since the coup are equally considered legally null and void. However, it is unclear how this affects judicial



acts and decisions, as well as registrations, transactions, property titles, etc., resulting in a considerable degree of legal uncertainty.

### **Is the Charter effectively Myanmar's new constitution?**

When the Charter was announced in March 2021, it was quite clear that the Charter is not meant to be a new constitution for Myanmar, or even a new interim constitution. This is confirmed by the revision: the 8th and 10th steps of the revision's 12-step road map are dedicated to drafting a transitional constitution for the period from the end of the Spring Revolution until the founding of the Federal Democratic Union, and a permanent constitution for the union (Revised FDC, Part 1, Chapter 3). International IDEA differentiates between interim arrangements established, for example, in peace agreements, and 'interim constitutions' which it defines as:

a constituent instrument that asserts its legal supremacy for a certain period of time pending the enactment of a contemplated final constitution. An interim constitution can, therefore, be understood as a 'constituent instrument' in terms of constituting (transitional) government structure. Furthermore, it (a) asserts legal supremacy, formally established in the document; (b) is limited temporally; and (c) provides for a future constitutional process.

(Zulueta-Fülscher 2015: 9)

In accordance with this definition, the Charter has a number of features that could be considered an interim constitution. However, the Charter and its revision do not explicitly claim to be one and its provisions for both interim governing institutions and the future constitutional process remain vague. This is particularly true when compared with other interim constitutions, such as those of South Africa and Nepal. That is not to say the level of detail in the text defines what the text is from a legal perspective; it is not uncommon to see 'thin' interim constitutions when these are drafted during active conflict.

The drafting and revising of the Charter and its contents (as reviewed below) seem to suggest it is meant to serve more as a pre-constituent vision document and political commitment. In some conflicts, the vision document could be the peace agreement that is then translated and operationalized into more detail in an interim constitution (like for Nepal). In Myanmar, however, there is no peace agreement to provide this general vision for the transition to a democratic system.

As such, the Charter (both original and revision) could be seen as a pre-constituent document fulfilling this purpose, paving the way for a transitional constitution and a final or permanent constitution as stated in the revised Charter (Part 1, Chapter 5). This is not unheard of from a comparative practice standpoint, and the revised Charter itself includes two steps in the 12-step road map for writing the two constitutions along the way. According to Chapter 9 of the revision that arranges for the transitional period, the NUCC shall draft and approve a transitional constitution during this interim period that is to

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be submitted for approval and enactment to one of the following People's Assemblies (Part 2, Chapter 9, articles 54–55).

### How does the Charter impact on the status of the 2008 Constitution?

On the same day that the CRPH released the Charter, it also declared the abolishment of the 2008 Constitution in a separate statement (CRPH 2021b). These were clearly envisioned as two separate actions on the part of the CRPH, meaning that the 2008 Constitution was not considered automatically abridged or replaced by the Charter. From a social contract perspective, it is possible to consider the 2008 Constitution to be politically 'dead' or invalid since its terms have been so radically violated and its authority undermined by the military's recent illegal actions. From a legal perspective, however, it may be less clear how the 2008 Constitution has been formally abolished, and what authority would be required to formally abolish it.

**While it is clear that the Charter did not in itself explicitly invalidate the 2008 Constitution, the question remains whether the statement made by the CRPH after the Charter's promulgation did in fact legally abolish the 2008 Constitution, by default making the Charter the primary proto-constitutional document in Myanmar from the perspective of pro-democracy actors representing the will of the people.**

Some aspects of the Charter and statements from NUG and CRPH members seem to recognize that the 2008 Constitution may still be considered technically in force, at least in part, until replaced by a new permanent constitution. For example, the Charter (both original and revised) itself declares the 'ultimate abolishment of 2008 Constitution' as an objective (Part I, Chapter I—emphasis added) and identifies determining 'a strategy for eradication of the dictatorship, abolishment of the 2008 Constitution and building of a Federal Democratic Union to implement it...' as a step *subsequent* to passing the Charter (Part I, Chapter 3, article 5 in original and Part I, Chapter 3, article 7 in revision). So, while it is clear that the Charter did not in itself explicitly invalidate the 2008 Constitution, the question remains whether the statement made by the CRPH after the Charter's promulgation did in fact legally abolish the 2008 Constitution, by default making the Charter the primary proto-constitutional document in Myanmar from the perspective of pro-democracy actors representing the will of the people. This proposition presents several legal challenges and uncertainties which may require attention.

### How will the Charter be (legally) enforced?

While the Charter meets many of the characteristics of an interim constitution as discussed above, there is a large overarching question of its legal enforceability. Legal enforceability is also recognized as a key feature of interim constitutions that distinguishes them from peace agreements and other transitional arrangements. With regard to the lack of enforceability in the original Charter, Myanmar's Legal Aid Network expressed concerns about the Charter's lack of enforcement mechanisms, questioning how it will be operationalized and how compliance with it may be induced (Legal Aid Network 2021). These challenges are particularly daunting given that (a) as of May 2022, the security situation still does not allow the CRPH or NUG to effectively govern or exercise direct power on the ground in large parts of Myanmar; and (b) the Charter does not provide for a judicial infrastructure that could, at least on paper, support its enforcement. If the Charter is not enforceable and lacks accompanying compliance mechanisms, and the 2008 Constitution is abolished, this highlights the risk of a period of severe legal uncertainty in Myanmar or even a complete constitutional vacuum.

It is worth noting that compared to the original Charter's Chapter 6 which only had one article stating that the NUG and the NUCC will jointly formulate policies for the interim judiciary, Chapter 7 of the revised Charter has six articles relating to the interim judiciary. It stipulates that civilian courts recognized by the NUG and the judicial systems of the existing EAOs/EROs in territories under the latter's control are legitimate and that the NUCC will also form joint judicial coordination committees to adjudicate matters within States/Federal Units (Revised FDC, Part 2, Chapter 7, articles 47–49). But not a single civilian court has been explicitly recognized so far by the NUCC, and there is confusion and uncertainty over what is actually meant by judicial systems of existing EAOs/EROs. Most importantly, how the NUCC-recognized civilian courts (when they come to exist) and EAOs/EROs' judicial systems will guarantee the rule of law in this interim period is an important question.

Most importantly, the Charter does not foresee any role for a judicial body to exercise constitutional review; all constitutional disputes are to be discussed and resolved in the NUCC, the most inclusive of the interim governance structures, in an effort to achieve consensus and collective decision-making. This is meant to prevent any legal claims based on the terms of the Charter from being settled by independent judicial bodies, as was the case with the Constitutional Tribunal under the 2008 Constitution (at least on paper), and as is the case in systems dedicated to the principle of constitutionalism. In that sense, the Charter clearly displays features of a proto-constitution, where constitutional questions are primarily negotiated through political settlements, rather than the interpretation of constitutional terms by an independent judicial body.

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### 3. SUBSTANCE OF THE CHARTER

Having reviewed process issues around Charter-making, and the fundamental questions about its purpose, this Brief now examines the substance of the Charter (both original and revised) to flag issues and provisions of note.<sup>1</sup>

#### **Part I: Principles for the design of a final constitution and the constitution-making process**

Part I of the Charter is devoted to guiding the process of making a new final or permanent constitution as well as the transitional constitution and contains basic principles which ought to bind the constitution-making, in terms of both process and substance. As noted above, Part I's contents represent a series of significant concessions to ethnic group demands, including mostly those

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<sup>1</sup> Readers should keep a few preliminary points in mind, particularly for this section. (1) This Brief is based on an unofficial English translation of the Charter, as circulated on social media. While this has been cross-checked with the original Burmese version, some perceived vagueness in the text or even contradictions between provisions could be the result of what is lost in translation. (2) The Charter, overall, is nevertheless quite vague on the systems being proposed. For example, it includes a commitment to representation of ethnic nationalities in decision making but without any description of how that would be reflected in institutional or electoral system design. (3) It is not clear how the Charter's two parts relate to each other legally (e.g., is the interim government in Part II constrained by the human rights commitments in Part I?).

related to principles of a future federal system, and to citizen and democratic rights.

Regarding the future constitution-making process, the revised Charter's Part I includes commitments to writing a transitional constitution, convening a Constitutional Assembly to write a permanent constitution, and holding a referendum to ratify the new permanent constitution (Chapter 3, articles 8, 10, 11). Further details about this constitution-making process laid out in Part I are available and further clarified in Part II. The NUCC will not only lead and implement the process of drafting a transitional constitution and submit it to the People's Assembly for ratification but also formulate an action plan for drafting the final constitution (Part II, Chapter 3, article 17(g, h)). It means that the NUCC will remain influential and participate in the future Constitutional Assembly to be held in due course. The revised Charter does not specify how many members will be part of the NUCC's constitution-making body, nor how these members will be chosen (or possibly elected), but a reasonable assumption would be that the NUCC must primarily draw upon the advice of its own members that belong to five different groups. The NUCC will also seek advice from technical teams it may form as necessary to implement its duties (Part II, Chapter 3, article 17(k)).

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**Entrusting the broader, more inclusive NUCC with a leading role in writing the transitional and permanent constitutions stipulated in the revised Charter is an important first step.**

Although the process of drafting the original Charter and formulating related interim government efforts could be considered as NLD-dominated (as a result of the 2020 election results and due to time constraints), it will be important to ensure broad inclusivity in the constitution-making body as well as a practical decision-making mechanism to ensure that smaller ethnic groups and pro-democracy forces have a meaningful influence on the negotiations and that the final constitution is a largely consensual document. Entrusting the broader, more inclusive NUCC with a leading role in writing the transitional and permanent constitutions stipulated in the revised Charter is an important first step. The federal principles laid out in Part I, Chapter 4, which reserve significant powers to the sub-national units, as opposed to the central (federal) government, suggest that the constitution-making process and adoption of the final constitution could also ensure a central role for those states as the constituent units.

Besides laying out in broad terms the process for making a new constitution, Part I of the Charter also sets out substantive requirements for drafting the final Federal Democratic Union constitution, mostly contained in Part I, Chapter 4. Chapter 4 is itself broken down into three sections which collectively identify 'Union Vision and Union Values', 'Guiding Principles for Building the Federal Democratic Union', and 'Foundational Policies for Building the Federal Democratic Union' which set out requirements that the final constitution must meet. The requirements increased in number from 37 in the original to 63 in the revision. Some of the fundamental policies identified would be found in many constitutional democracies like the commitment to a separation of powers, but some of them are tailored to the specificities of constitutional politics in Myanmar, such as the version of federalism envisioned. In total,

Chapter 4 envisions a future constitutional framework with the following main characteristics:

- *Sovereign power belongs to the constituent units ('member states') and the peoples in these states:* The Charter defines the nature of the constituent power in a future federal Myanmar. By contrast with the 2008 Constitution, which provides that sovereign power is 'derived from the citizens' (article 4), the Charter adopts an explicitly pluri-national conception of Myanmar, as consisting of constituent peoples, who through their sub-national governments, 'are the original owners of sovereignty'. Such a conception seems to amount to a coming-together (con-)federation of sovereign constituent units, with a central state only carrying out the functions explicitly given to it by the states. Importantly, however, it is left open exactly who these peoples and states are, an issue which is likely to require negotiation in the future. The Charter does not specify a number of sub-national units, nor criteria for how they might be defined or whether new units will be permitted or called for. It is possible that existing delineations may be carried over, but it is not clear whether the distinction between states and regions, for example, will be maintained. The Charter is silent on the issue of a federal territory or location of the capital.
- *Decentralized federal system:* Significantly, according to the Charter, all powers will be divided between the central (federal) government and constituent unit governments (legislative, judicial and executive). The allocation of responsibilities between central and constituent unit institutions will be based largely on the principle of subsidiarity, whereby power is allocated to the lowest level of government that is best able to address a policy issue. Accordingly, the Union (centre) would have '[o]nly the powers necessary to maintain the common interests of all the constituting states of the federal Union', whereas the constituent units would have all residual powers by default (Part I, Chapter 4, Section III, article 6). Such an arrangement constitutes an important concession to ethnic groups that have long demanded greater autonomy for constituent units. The 'constituting states' (constituent units) will all have 'equal rights' suggesting a symmetrical form of federalism. Intergovernmental relations are also accounted for. The Charter holds that constituent units would have their own revenue collection mechanisms, but fiscal federalism arrangements would be defined in more detail through legislation (rather than enshrined in the federal constitution). Land and natural resources will be owned by the people in the states and managed by the states, thus addressing another longstanding request from EAOs/EROs. Notably, sub-national units will be entitled to have their own constitutions, a longstanding and core demand of National Ceasefire Agreement EAOs that proved contentious during the series of 21st century Panglong peace conferences. The initial version of the FDC provided that the local level of government would fall under the competency of the sub-national units, and thus would be regulated by their constitutions, but the revised FDC does not mention the local level of government. The power of the constituent units would also include the question of citizenship, which is quite unique from a comparative practice standpoint.

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**The Charter does not specify a number of sub-national units, nor criteria for how they might be defined or whether new units will be permitted or called for. The Charter is silent on the issue of a federal territory or location of the capital.**

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**The Charter calls for all security sector agencies, including the military, to be treated according to the principles of civilian command and democratic oversight, including oversight by the judiciary and the legislature.**

- *Bicameral legislature with equal powers between the lower house and the upper house:* This is a significant change compared to the current arrangement under the 2008 Constitution. The proposed arrangement would strengthen the influence of constituent units in Union level decision-making. Interestingly, members of the lower house are to be elected 'on the basis of township or population' (a remnant of the 2008 Constitution), whereas members of the upper house would be 'nominated by the respective states', suggesting indirect election by states' legislatures or even appointment by states' executives. All states are to have equal representation. With regard to the lower house, a question may arise whether the existing 330-township structure of Myanmar will be adopted to elect the lower house, or which population data will be used to elect the lower house on the basis of population.
- *Change in the form of government:* The Charter calls for the establishment of a 'parliamentary system' at the Union level. The Union will be headed by a Prime Minister-led cabinet to be complemented with a Union Chancellor or President. This constitutes an important change compared to the previous system provided for by the 2008 Constitution, allowing for the removal of the executive through a vote of no confidence, rather than only through an impeachment process.
- *Security sector reform:* The Charter stipulates the doctrine of human security. It calls for all security sector agencies, including the military, to be treated according to the principles of civilian command and democratic oversight, including oversight by the judiciary and the legislature. This commitment has been a longstanding demand of the NLD and represents one of the clearest ruptures with the legacies of the 2008 Constitution. The Charter also commits to inclusion in the security sector, but it is unclear whether this implies integration of EAOs. The Charter also calls for a decentralization of security forces without specifying whether this means the creation of sub-state armies, a longstanding demand of EAOs. A Federal Police Force and State Police Forces will be formed separately and independently.
- *Judicial institutions:* The Charter remains vague on judicial powers, with no mention of judicial review, nor a clear provision for writs petitions or on standing before court, issues that are critical to human rights protection. An independent constitutional court will resolve disputes between the federal union and states or among states themselves but none has been set up for the interim or transitional periods. The Charter seems to foresee a dual court system, where the federal level and each state would have their own set of courts respectively (as per a reading of Chapter 4, Section III, articles 3 and 9). This represents another rupture with the 2008 Constitution, which contained a single court hierarchy system.
- *Human rights:* The Charter recognizes both collective and individual rights and seems to make a distinction between fundamental rights, which are due to all people, and fundamental rights of citizens. There is no detail, however, about the scope of the rights belonging to these distinct rights holders. Likewise, citizens that belong to ethnic nationality groups shall enjoy individual and collective rights and the Charter also mentions other



citizen rights, individual rights and cultural self-determination, without specifying what exactly is contained under each of these broad headings ('individual rights', 'collective rights', 'fundamental rights' and 'cultural self-determination'). There are several ethnic rights mentioned explicitly, as well as general principles for protecting minorities within minorities via sub-state constitutions. The grounds for anti-discrimination mentioned in the revised Charter are broad, covering race, faith, gender, disability, sexual orientation and any other forms of discrimination. In Part 1 it declares: 'Ethnic people shall have equitable socioeconomic and cultural rights. They shall be entitled to the progressive actions and affirmative actions' (Chapter 4, Section III, article 46), while being less clear on how that is to be achieved. In addition to fundamental rights, citizen rights, individual rights and ethnic collective rights, the revised Charter states and guarantees various other rights including economic, social and cultural rights, press freedom, the rights to access and disseminate information, child rights, labour rights, farmers' rights, and environmental rights. This larger repertoire of rights in the revised Charter can be seen as a significant improvement. But the language of rights adopted in the Charter is still general and open to a restrictive interpretation, and the human rights section particularly harks back to legacy concepts from historic Myanmar constitutional arrangements, including the 2008 Constitution regarding citizenship and ethnic identity. These have proved problematic in the past and may require further review and refinement.

- *Independent commissions*: As the original Charter foresaw the establishment of new independent commissions, the number of independent commissions has tripled in the revised Charter. In addition to the original five commissions (on anti-corruption, elections, human rights and anti-discrimination, the right to information, and gender-based and domestic violence), ten more will be formed including those on transitional justice, truth and reconciliation, minority rights, women's rights, child rights, resettlement of displaced people, labour and farmers' rights will be formed. Notably the Charter does not include any specific provisions on the functioning and powers of the Office of the Auditor General, which could be considered as an important independent oversight body.
- *Secularism*: The Charter provides a commitment to separate politics and religion (i.e. an official or privileged status cannot be given to Buddhism, the religion of the majority). This commitment differs from the 2008 Constitution which recognizes the 'special position of Buddhism as the faith professed by the great majority of the citizens of the Union' (FCDCC: article 361), which has been criticized by some ethnic groups as being discriminatory.

As a whole, Chapter 4 defines the guiding principles to inform constitutional design choices in the final constitution. Some of these principles were likely included to accomplish the goal of bringing all pro-democracy and ethnic group actors on board with the Charter, and overall represent significant concessions to the longstanding and core demands of EAOs.

However, it is important to note that in their current form, these principles still require significant elaboration—and this elaboration process may prove

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**The Charter recognizes both collective and individual rights and seems to make a distinction between fundamental rights, which are due to all people, and fundamental rights of citizens. There is no detail, however, about the scope of the rights belonging to these distinct rights holders.**

contentious. For example, the protection of the right to self-determination in the Charter has been a sensitive issue in Myanmar's pursuit of peace since the end of the colonial era. The Charter promises 'self-determination' without defining what this means in practice. Self-determination is a right which can be understood and interpreted in many different ways, including in its external (and most extreme form) as a right to secession (Cats-Baril 2018). This is how many ethnic organizations have understood it over the years, referencing the 1947 Constitution, which explicitly gave Shan, Kachin and Karenni (Kayah) this option. Notably, some commentators stated that the Shan Nationalities League for Democracy raised concerns about the vagueness of guaranteeing 'the right to self-determination in full' in the initial version of the FDC, fearing that it could foster secessionist demands from minority groups within Shan State, such as the Pao or the Wa. 'In full' in the original charter has become 'the full democratic rights, equality and self-determination' in the official English translation of the revised Charter—which could still be read to encompass this understanding, an interpretation that could eventually come into contradiction with those of the NLD and other actors. A premise of such a potential disagreement appears in the Conclusion to the (original) Charter's Part I, which implies that ethnic groups have irrevocably given up their right to secession in agreeing to the Charter. The relevant passage draws a direct connection to the Panglong Agreement (signed on 12 February 1947 by Aung San and representatives of the Kachin, Chin and Shan) by stating: 'Ethnic leaders who built the Union have given up their right to build their own separate nationalities and signed 1947 Panglong Agreement to build this Union as a federation where countries come together as a Union'. It is worth noting that this controversial language has been changed in the revised FDC's Part 1 Conclusion, to: 'They [Leaders of ethnic nationalities] tried to build a federal union of congregating states'.

### **Part II: Interim government arrangements**

Part II of the Charter provides elements of an interim constitutional framework for governing Myanmar until a transitional constitution is promulgated. Part II makes clear that the Charter is a temporary document that remains in force until the Federal Democratic Union constitution comes into effect, preceded by a transitional constitution (Chapter 11, article 60). Part II covers the main functions of the legislative and executive branches of the Union level, independent bodies and institutions, or sub-state government. Although Part II of the original Charter was silent on the functioning of the judiciary, the revised Charter has some provisions with regards to the rule of law. Part II also does not clarify questions of legal continuity. The lack of legal certainty to some extent contrasts with the Charter's own explicit commitment to constitutionalism as an overarching principle.

The interim governance system foreseen by the Charter includes the following institutions:

- An 'Interim Legislature' named the 'Federal Union Parliament' (*Pyidaungsu Hluttaw*) as a bicameral parliament, with two houses of equal powers. Both houses consist of parliamentarians elected in 2020 who do not cooperate

with the Myanmar military, and exclude Myanmar military-appointed MPs. In practice, they have been sitting as one single, combined Union Assembly. Also, the CRPH represents the joint Union Assembly, and includes members elected to both the Pyithu Hluttaw and the Amyotha Hluttaw (upper house). There is no formal mandate to include non-state actors (i.e. EAOs/EROs, CDM, strike committees, civil society organizations) in the interim legislature which could be on account of a desire to maintain the democratic legitimacy of the institution by respecting the 2020 election results. Recognizing the difficulty of convening the Federal Union Parliament (many of whose members are in jail or in hiding), Chapter 5 reserves important powers to the CRPH to continue to act in its representative role and to enact Union level legislation, regulate the legislative process, form 'support committees' and appoint the President, Vice President and Cabinet (in agreement with the NUCC).

However, the CRPH remains somehow outside the interim government arrangements provided by the Charter. The Charter does not define the size, membership, and decision-making rules of the CRPH. In general, little is publicly known about the way the CRPH has been operating or will continue to operate in future; it is also not clear what institutions or constitutional provisions define or in other ways constrain the CRPH, and in fact the initial version of the Charter suggested that the NUG is accountable to the CRPH, which also maintains effective final authority over NUG appointments. The revised Charter stipulates cooperation between the CRPH and the wider NUCC (of which it is itself a member) in implementing the Charter. Notably, Chapter 8 also provides for state/constituent units' 'legislative mechanisms' (presumably parliaments) in principle, but does not give details on their competencies, composition, formation, or procedures.

- *The Interim National Unity Government (NUG)* is to serve as the executive branch at the Union level in the interim period. The CRPH has the power to appoint the NUG with the approval of the NUCC.<sup>2</sup> The Charter provides that the NUG consists of the President, the State Counsellor (until now a position not explicitly foreseen in constitutional law), two Vice Presidents, a Prime Minister and cabinet ministers and deputy ministers, Attorney-General and Auditor-General. President and Vice Presidents are heads of state, and the Prime Minister is the head of the NUG. The NUG is responsible to the NUCC and the People's Assembly. Even though Aung San Suu Kyi is not known to have joined the NUG actively and in person due to her detention and subsequent imprisonment since the coup, she has been declared to be the State Counsellor by the CRPH in one of its first legislative decisions. The revised Charter stipulates that the term of State Counsellor is the same as the term of the NUG, which is the end of the interim period, followed by the transitional period governed by the yet to be elaborated transitional constitution. Accordingly, the State Counsellor is responsible for advising the NUG in accordance with the Charter, but cannot effectively exercise this function while in detention.<sup>3</sup> This raises questions over reality and practicality, although Aung San Suu Kyi's appointment is understandable in terms of legitimacy and symbolism. In the design of

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**The Charter foresees an 'Interim Legislature' as a bicameral parliament, with two houses of equal powers. Both houses consist of parliamentarians elected in 2020 who do not cooperate with the Myanmar military, and exclude Myanmar military-appointed MPs. In practice, they have been sitting as one single, combined Union Assembly.**

<sup>2</sup> Revised FDC, Part 2, Chapter 6, article 35.

<sup>3</sup> See: Revised FDC, Part 2, Chapter 6, articles 39–41.

### Box 1. Composition of the National Unity Government (NUG)

As of May 2022, headed by President Win Myint and State Counsellor Aung San Suu Kyi in absence, Acting President Duwa Lashi La, and Prime Minister Mahn Win Khaing Than, the NUG has 33 cabinet members and 18 ministries. Twenty four of the 33 cabinet members are *not* affiliated with the NLD (73%) and nine are women including Aung San Suu Kyi (27%). To date, National Ceasefire Agreement EAOs and others have confirmed that they were consulted in the formation of the NUG, with two primary ethnic stakeholders choosing not to participate. For full details on membership of the NUG, please see Annex I.

**The Interim NUG is to serve as the executive branch at the Union level in the interim period. The CRPH has the power to appoint the NUG with the approval of the NUCC.**

the NUG, one can see hangovers from the 2008 Constitution, including the retention of the two Vice Presidents. The NUG is the executive branch, and has accordingly acted as the face of the Myanmar Spring Revolution.

- *The National Unity Consultative Council (NUCC)* has emerged as the highest interim standing political body of the interim institutions, and is responsible to the People's Assembly, which convenes every six months. Its main role is to 'provide policy guidance, oversight and coordination for the implementation of strategies stipulated by the Federal Democracy Charter'.<sup>4</sup> The NUCC has been the platform at the forefront of conducting negotiations among existing and potential political stakeholders since March 2020. It is an umbrella body that consists of political forces opposed to the military regime and who have agreed to the goals and road map of the Charter: 'a. Elected members of parliament, including the CRPH; b. Political parties; c. Unions; women's groups; Civil Society Organizations, including those working on affairs of youth and minorities; civil disobedience movement groups fighting against dictatorship, including civil servants; and strike groups; d. The Ethnic Armed Revolutionary Organizations; and e. Interim State/Federal unit representative groups/committees.'<sup>5</sup>

The Charter does not define the size of the NUCC, but its representatives stated that it had 33 members in January 2022. Importantly, alongside the People's Assembly, the NUCC is the only body that is expressly committed to include CDM, strike committees and other emerging democratic actors. Even though it had no explicit powers listed in the original Charter, the revised Charter's Part II has a chapter dedicated to it. While under the initial Charter the NUCC was envisaged as a consultative body providing a forum for pro-democracy stakeholders to 'mobilize, discuss and negotiate', the revised Charter provides a leading role for the NUCC. The revised Charter provides that the NUCC is tasked with developing strategies and providing policy guidance to implement the Charter and fulfil the objectives defined therein (Part II, Chapter 3, article 17). The revised Charter also grants a decision-making role to the NUCC by requiring its approval for legislations enacted and appointments made by the CRPH (Part II, Chapter 5, article 31; Chapter 6, article 35).

Despite the new provisions included in the revised Charter, the mandate of the NUCC remains rather vague. Therefore, it will be important to think

<sup>4</sup> Revised FDC, Part 2, Chapter 3, article 17(e).

<sup>5</sup> Revised Charter, Part 2, Chapter 3, article 15.

about how to ensure that the role of the strike committees and other emerging democratic actors in the transition is more than symbolic. While the NUCC was still manoeuvring the inclusive negotiation process in 2021 and the CRPH was widely believed to be the leading actor of the process behind the NUCC, some actors within the NUCC view it as the ultimate source of authority for the NUG which should over time become a representative body, essentially taking the place the CRPH initially occupied. The Charter also stated that the composition of the NUCC and its role within the interim governance system will be relevant criteria to assess that system's unity and inclusivity. The diverging views on the role and authority of the NUCC point to the fact that the consensus among various groups was still evolving and that details on the interim institutions may be revised in the future. The revised Charter has provided a clear leading role for the NUCC, which is however not yet matched with its capacity to function as an institution.

- The revised Charter also provides for the establishment of *Joint Coordination Committees* consisting of NUCC and NUG representatives (Part II, Chapter 3, article 18). These committees aim to ensure communication and coordination between the NUCC and the NUG's different ministries in defining and implementing, respectively, the strategies to fulfil the Charter's goals.

While the interim governance arrangements established by the original Charter did not seem to dilute the decision-making power and authority of the CRPH, the NUCC (i.e. the CRPH plus the other key stakeholders) has emerged as the leading authority. It is still important to consider what kind of accountability structures might be put in place to ensure collaborative, inclusive, and collective leadership procedures in the Charter's implementation. For example, there are ways to integrate more groups in the current appointment procedures for interim government institutions. The Charter is vague on how the different transitional institutions will interact and how decisions will be made in practice, so working procedures and relationships will need to be developed over time.

An Election Commission and a Constitutional Court are mentioned in Part I of the revised Charter for the future final constitution, but none are foreseen for the interim period. Notably, Part II, Chapter 7, provides that civilian courts recognized by the NUG and the judicial system of the EROs form the interim judiciary (Part II, Chapter 7, article 47). However, not a single civilian court has been explicitly recognized so far by the NUG, and there is confusion and uncertainty over what is actually meant by judicial systems of EROs. How the NUG-recognized civilian courts (when they come to exist) and EROs' judicial systems will guarantee the rule of law in this interim period is an important question. This leaves the exact contours of judicial power in the interim and transitional period poorly defined. With no judicial mechanisms in place to act as a check on the exercise of power by the interim institutions during the transitional period, there are questions as to how accountability and human rights can be ensured. There are also no rules on transparency and public participation. Some of these issues can be addressed by the development of concrete 'checks and balances' mechanisms and inclusive decision-making rules, to complement the Charter.

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**The NUCC has emerged as the highest interim standing political body of the interim institutions and is responsible to the People's Assembly. Its main role is to provide policy guidance, oversight and coordination for the implementation of strategies stipulated by the Federal Democracy Charter.**

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**The Charter is vague on how the different transitional institutions will interact and how decisions will be made in practice, so working procedures and relationships will need to be developed over time.**

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## 4. CONCLUSION

Myanmar is going through an unprecedented time of upheaval and one that requires innovation and efficiency to effectively counter the military coup and restore democracy. What is more, there cannot be a return to the pre-coup status quo, involving power-sharing with the Myanmar military. The ambition, widely shared among diverse stakeholders, is to re-found the state on the basis of democratic and federal principles, drawing a clear line under the historical era of military domination. This requires coordinated and strategic action to hold the coalition of actors engaged in fighting the Myanmar military regime together through the transition. The Charter is an important foundation for this action.

As is common in transitions or times of constitutional beginnings, there are many questions about the sources of legitimacy and authority for the emerging actors and constitutional documents, and about the status of the legal framework and institutional arrangements that pre-dated the coup. Some of these questions are impossible to answer yet, but what is clear is that the Charter's promulgation marks a new phase in Myanmar's resistance to the military coup and efforts to rebuild itself. The Charter represents an important trust-building document and step towards democratic constitutionalism, as a basis for building a strong, broad and inclusive alliance between stakeholders opposed to the military junta.

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**The Federal Democracy Charter has become the written manifestation of the will of the people of Myanmar to overcome military rule and to rebuild the state in a manner that fully reflects its diversity and addresses historical grievances.**

The Charter has succeeded in creating momentum for a broad alliance, and even for the formation of the interim government, but may need further adjustments as the situation evolves. As this analysis suggests, there are some key issues for consideration in the interregnum period, including: balancing the benefits of transparency and accountability with the need for security; interrelationships between the institutions established by the Charter; and the relationship between the NUG and the public. Furthermore, as the unity created by shared opposition to the Myanmar military may fade (or be actively dismantled by the latter), and as the details needed for the future constitutional arrangement for Myanmar become more apparent—including the content of a new constitution and a process for it—there will be a need for profound negotiations, compromise and readiness to reach inclusive agreement among the key stakeholders. While this process will have to be led by the people of Myanmar and their representatives, external assistance will be beneficial—carefully calibrated to adhere to the principles of political neutrality and non-interference, while upholding universal principles of human rights and the rule of law (United Nations 2020).

The Federal Democracy Charter has become the written manifestation of the will of the people of Myanmar to overcome military rule and to rebuild the state in a manner that fully reflects its diversity and addresses historical grievances. While it is not a constitution per se, it replaces the obsolete 2008 Constitution and forms a basis for exercising legitimate power and for shaping the path towards a new, federal constitutional framework. The FDC is remarkable in that it represents an unprecedented ability of a broad set of democratic



stakeholders to find political compromise over difficult questions, and it should be welcomed, celebrated and supported by anyone wishing to see a return to democratic governance in Myanmar. At the same time, a significant degree of legal uncertainty is an unfortunate aspect of the revolutionary period which is likely to feature for some time.

The next urgent challenge for the interim institutions is to disseminate the FDC and the promise of a new state that it offers to the people of Myanmar. This must be done in an easy-to-understand, accessible manner, and it should go well beyond simply sharing the text itself on social media. The FDC promises to deliver what most people of Myanmar have been demanding and yearning for ever since the foundation of independent Burma—peace, equality and justice for all, balanced development and the rule of law delivered by effective, accountable institutions at all levels. Citizens must now be reassured that the interim institutions—the NUCC, the CRPH and the NUG—have an actual strategy to achieve this goal, while striving to provide as many services as possible to the people in the interim period. International assistance providers should get fully on board with this unique opportunity to reconstitute Myanmar in the ways that the people of Myanmar have been demanding since the onset of the Spring Revolution—‘We Want Democracy!’. Now, at last, there is a plan for how to get there.

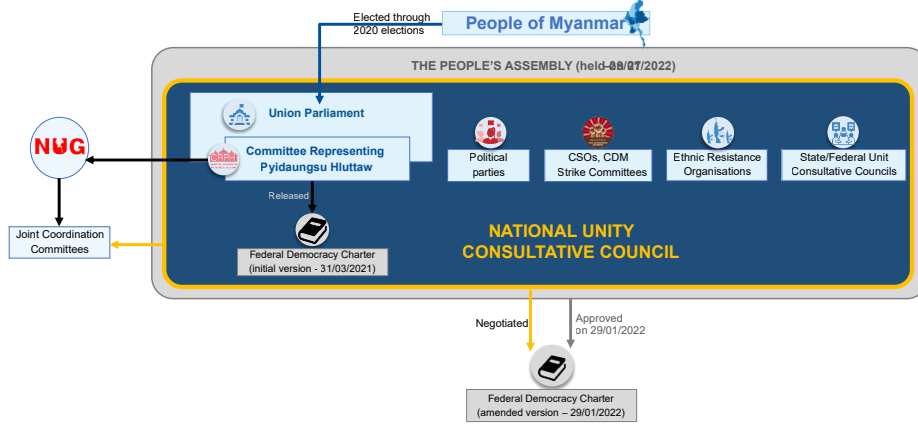
### Annex A. Composition of NUG (as of May 2022)

<b>President</b>	U Win Myint (NLD)
<b>State Counsellor</b>	Daw Aung San Suu Kyi (NLD)
<b>Vice President and Acting President</b>	Duwa Lashi La (Kachin Political Interim Coordination Team—KPICT, Kachin National Assembly)
<b>Prime Minister</b>	Mahn Win Khaing Than (NLD)
<b>Union Ministers</b>	
<b>Ministry of Foreign Affairs</b>	Daw Zin Mar Aung (NLD)
<b>Ministry of Home Affairs and Immigration</b>	U Lwin Ko Latt (NLD)
<b>Ministry of Defence</b>	U Yee Mon (NLD)
<b>Ministry of Federal Union Affairs</b>	Dr Lian Hmung Sakhong (Chin National Front, Interim Chin National Consultative Council)
<b>Ministry of Planning, Finance and Investment</b>	U Tin Tun Naing (NLD)
<b>Ministry of Humanitarian Affairs and Disaster Management</b>	Dr Win Myat Aye (NLD)
<b>Ministry of International Cooperation</b>	Dr Sasa (NLD)
<b>Ministry of Education</b>	Dr Zaw Wai Soe (Independent)
<b>Ministry of Health</b>	Dr Zaw Wai Soe (Independent)
<b>Ministry of Natural Resources and Environmental Conservation</b>	Dr Tu Khaung (KPICT/Independent)
<b>Ministry of Women, Youth and Children Affairs</b>	Naw Susanna Hla Hla Soe (NLD)
<b>Ministry of Human Rights</b>	U Aung Myo Min (Independent/Equality Myanmar)
<b>Ministry of Communications, Information and Technology</b>	U Htin Lin Aung (Independent)
<b>Ministry of Justice</b>	U Thein Oo (NLD)
<b>Ministry of Electricity and Energy</b>	U Soe Thura Tun (NLD)
<b>Ministry of Labour</b>	Nai Tun Pe (aka) Nai Suwunna (former member of Mon Unity Party)
<b>Ministry of Commerce</b>	Daw Khin Ma Ma Myo (Independent)

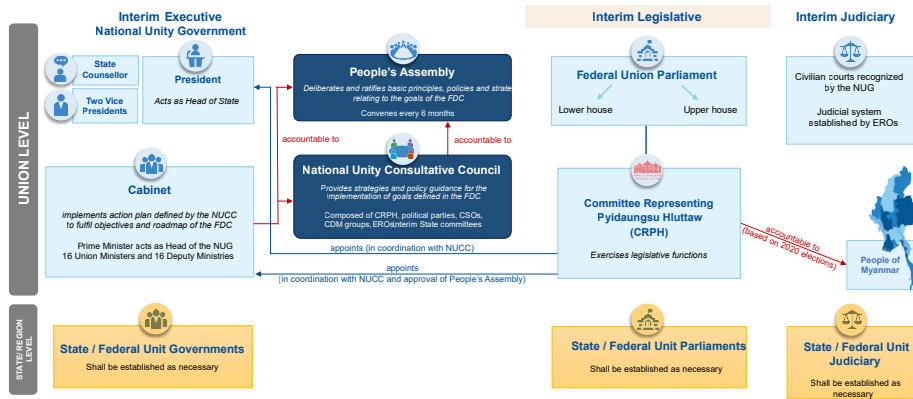
**Annex A. Composition of NUG (as of May 2022) cont.**

Deputy Ministers	
Ministry of Foreign Affairs	U Moe Zaw Oo (NLD)
Ministry of Home Affairs and Immigration	Khu Hte Bu (Karenni National Progressive Party)
Ministry of Defence	Nai Kao Rot (MSICC) (Former member of New Mon State Party)
Ministry of Federal Union Affairs	U Chit Tun (Karenni National People's Liberation Front)
Ministry of Federal Union Affairs	Mai Win Htoo (Ta'ang National Party)
Ministry of Planning, Finance and Investment	U Min Zayar Oo (Former member of Mon Unity Party)
Ministry of Humanitarian Affairs and Disaster Management	Naw Htoo Phaw (Independent)
Ministry of International Cooperation	Hkawng Naw (KPICT/Independent)
Ministry of Education	Dr. Sai Khaing Myo Tun (Independent)
Ministry of Education	Ja Htoi Pan (KPICT/Independent)
Ministry of Health	Dr. Shwe Pon (NLD)
Ministry of Natural Resources and Environmental Conservation	Khun Bedu (Kayan National Party)
Ministry of Women, Youth and Children Affairs	Daw Ei Thinzar Maung (Former member of Democratic Party for a New Society)
Ministry of Human Rights	Baham Htan (Kayan National Party)
Ministry of Electricity and Energy	Lahphai Maw Htun Awng (Independent)
Ministry of Labour	U Kyaw Ni (All Burma Federation of Trade Unions)

**Annex B. The structure of Myanmar's interim governance arrangement**



**Annex C. The structure of the NUCC**



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## ABOUT INTERNATIONAL IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

### What we do

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

### Where we work

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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