

Written evidence from NUG Campaign UK (MYA0035)

Executive Summary

This submission highlights the crimes against humanity, and gross violations of international and domestic law the Myanmar State Administration Council ('SAC') has committed since it staged a coup in Myanmar on 1 Feb 2021. This is followed by recommendations that the UK can take to ameliorate the humanitarian crisis in Myanmar such as:

1. Temporary 'protected status' visas for Myanmar nationals residing in the UK;
2. Conducting further investigations against SAC-affiliated businesses and individuals;
3. Imposing further targeted sanctions against SAC-affiliated businesses and individuals;
4. Supporting Myanmar in upholding the rule of law;
5. Utilising the UK's influential position in the UN; and
6. As an ASEAN Dialogue Partner, putting forward tangible and effective actions for ASEAN to take.

Who We Are

1. We, NUG Campaign UK, are an inclusive group of Myanmar diaspora in the UK, including minorities such as the Kachin, Karen, Rohingya and Nepalese. Our objective is to support the democratically-elected civilian government of Myanmar, the National Unity Government ('NUG'), through advocacy and fundraising.
2. We aim to amplify the voices of our fellow civilians in Myanmar, liaise with capable international entities and form new partnerships with the shared goal of ousting the authoritarian and illegitimate SAC.

Background

3. The Committee Representing the Pyidaungsu Hluttaw, the elected representative legislature ('CRPH'), declared the SAC a 'terrorist organisation' on 1 March 2021.¹
4. The SAC is comprised of the following parties:
 - a) the Myanmar military (Tatmadaw), who was responsible for the displacement and deaths of the Rohingyas;
 - b) the Myanmar Police Force; and

¹ Committee Representing Pyidaungsu Hluttaw, Announcement No. 10/2021 (1 March 2021).

- c) other financially and otherwise motivated parties

who have been involved in committing crimes against humanity nationwide.

5. In particular, the SAC has committed gross breaches of international law and domestic law, including:
 - a) The Universal Declaration of Human Rights;
 - b) The Geneva Conventions; and
 - c) The 2008 Constitution of Myanmar.

The Universal Declaration of Human Rights

6. The SAC has committed numerous violations of the Universal Declaration of Human Rights² including the following:
 - a. Article 3: right to life, liberty and security of person;
 - b. Article 5: freedom from torture, or cruel, inhuman or degrading treatment or punishment;
 - c. Article 9: freedom from arbitrary arrest, detention or exile;
 - d. Article 10: right to a fair trial; and
 - e. Article 19: freedom of expression and to receive and impart information amongst many other human rights violations.
7. The SAC has arbitrarily arrested over 5,300 civilians, has warrants out for another 1,822, and has killed over 800³, including over 50 children. It has sentenced 20 civilians to death⁴ and has conducted cruel physical and psychological torture, including sexual assaults⁵.
8. Every member of NUG Campaign UK has friends or family members who have been unlawfully detained by the SAC. We have no means of contacting them, and even their lawyers have been denied access.
9. We are anxious about their physical and mental well-being, especially of those who have sustained injuries, as the SAC usually denies medical care to the wounded.⁶

² Adopted by the UN General Assembly in 1948.

³ Assistance Association for Political Prisoners (Burma), <https://aappb.org/> (accessed on 23 May 2021 at 15:50)

⁴ 'Myanmar tribunal sentences 19 to death for violence toward military', *Nikkei Asia*, 10 April 2021.

<https://asia.nikkei.com/Spotlight/Myanmar-Coup/Myanmar-tribunal-sentences-19-to-death-for-violence-toward-military>

⁵ "' I thought I would die." Myanmar protesters describe torture they suffered in detention', *CNN World*, 28 April 2021. <https://edition.cnn.com/2021/04/27/asia/myanmar-coup-detainees-torture-intl-hnk/index.html>

The Geneva Conventions

10. The SAC has been deliberately targeting attacks against medical personnel including paramedics, ambulance drivers and even volunteer medics in gross violation of the Geneva Conventions.⁷
11. Thousands of medical personnel nationwide have been arrested and killed⁸, resulting in a healthcare crisis amidst a global pandemic⁹.
12. Many of our family and friends in Myanmar have not had a COVID-19 vaccination; it is life-threatening even to leave their homes for regular healthcare appointments as there is an ongoing risk of gunfire, bombs and even snipers.
13. In addition, in gross violation of Protocol I of the Geneva Conventions¹⁰, the SAC has been specifically targeting attacks against the civilian population.

The 2008 Constitution of Myanmar

14. The SAC violated the 2008 Constitution of Myanmar, a constitution drafted by the junta themselves.
15. It violated the 2008 Constitution as follows:
 - a. Section 73 (a): The Vice President shall serve as Acting President only if the office of President falls vacant due to “resignation, death, permanent disability, or other cause”. Interpreted *ejusdem generis*, the office of President can only fall vacant due to a cause with a permanent effect; as the arrest of President Win Myint by the SAC did not have a permanent effect, it did not result in the office of President falling vacant. Thus, the appointment of U Myint Swe as the Acting President was illegal.

⁶ ‘Authorities blame death of protester shot in Mandalay on Covid-19’, *Myanmar Now*, 25 February 2021. <https://www.myanmar-now.org/en/news/authorities-blame-death-of-protester-shot-in-mandalay-on-covid-19>

⁷ ‘Medics risk lives to treat injured in Myanmar anti-coup protests’, *Aljazeera*, 3 March 2021. <https://www.aljazeera.com/news/2021/3/3/myanmar-medics-risk-lives-to-treat-injured-in-anti-coup-protests>

⁸ Brian Elmore, ‘Medical Workers Targeted in Myanmar’s Post-Coup Crisis’, *The Diplomat*, 5 May 2021. <https://thediplomat.com/2021/05/medical-workers-targeted-in-myanmars-post-coup-crisis/>

⁹ Zsombor Peter, ‘Myanmar’s Efforts to Control COVID-19 Crumble Since February Coup, Aid Groups Say’, *Voice of America*, 12 April 2021. <https://www.voanews.com/east-asia-pacific/myanmars-efforts-control-covid-19-crumble-february-coup-aid-groups-say>

¹⁰ Articles 51 and 57, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

- b. Section 412(a): A state of emergency requires a sufficient reason that endangers lives, shelter and property of the public. An election fraud does not fulfil these criteria and therefore, the declaration of the state of emergency is illegal.
- c. Section 418(a): In a state of emergency, the President shall transfer the legislative, executive and judicial powers of the Union to the Commander-in-Chief. However, U Myint Swe, as stated above, cannot be Acting President and so the power transfer to the Commander-in-Chief is illegal.

16. Therefore, the SAC has itself committed treason, a punishable offence under the Penal Code of Myanmar¹¹, its attempt to transfer power to itself was an illegal and unconstitutional coup, and the SAC's regime itself is illegal and unconstitutional.

Our Recommendations

Temporary 'protected status' visas for Myanmar nationals residing in the UK

17. We recommend the UK to implement a temporary immigration protection for Myanmar nationals.
18. There are currently over 30 Myanmar students¹² with expiring passports and/or visas residing in the UK. However, due to the illegal takeover of Myanmar's Embassy in the UK by the SAC personnel, Myanmar nationals are reluctant to request the Embassy for passport renewals for fear of their personal safety and their family's safety in Myanmar.
19. A private letter sent to the UK Foreign, Commonwealth & Development Office on behalf of these students was responded to by Nigel Adams MP¹³ where he listed available immigration options, including the 'Exceptional Assurance' concession currently extended to 30 June 2021. However, these options failed to consider the exceptional circumstances of the above students who fall through the crack of the immigration system.
20. After the 30 June deadline, these students have no choice, but to undergo the arduous and cumbersome asylum application process. It is likely that many will be forced to return to Myanmar during this crisis.

¹¹ The Myanmar Penal Code of 1860.

¹² Myanmar Students Union's survey of Myanmar students in the UK with expiring passports and/or visas, 2021.

¹³ Letter from Nigel Adams MP, 23 March 2021.

21. Therefore, we request that the FCDO implements temporary 'protected status' of 6-12 months specifically aimed at Myanmar nationals in these difficult times.

Further investigation and sanctions

22. We recommend that the UK government bolsters its investigation efforts and expands its sanctions against the following parties, in addition to the 25 named persons on the UK sanctions list:

- a. SAC-owned businesses, e.g., Myanmar Oil and Gas Enterprise, which is working with the US multinational company, Chevron, and France's Total¹⁴, Myanmar Timber Enterprise (MTE), Myanmar Pearl Enterprise (MPE), Myanma Gems Enterprise and Lotte Hotel Yangon.¹⁵
- b. SAC-affiliated businesses, e.g., POSCO, which operates a steel joint venture with the military conglomerate MEHL which has 30% stake in the joint venture, and Chevron and Total above who are working with the SAC; and
- c. SAC-affiliated individuals, e.g., the executives, investors and financiers working with the SAC and directly funding their terrorist activities¹⁶, as well as the friends and family of the SAC who have direct or indirect financial interests.

23. The UK should also follow the investigation and sanctions efforts by the US and Australia to expand its current sanctions list. The UK's current sanctions are too narrow and affect only specific military officials and certain public holding companies. At present, the UK sanctions have been ineffective in stopping the income streams that are directly funding the SAC's terrorist activities.

24. We also recommend that the UK government declares the current occupants of the Myanmar Embassy to the UK *persona non grata* by the UK and that the UK government recognises and welcomes the appointment of lawful ambassadors appointed by the NUG.

Rule of Law

¹⁴ 'Opinion: It's time to cut off the gas for Myanmar's military coup leaders', *The Washington Post*, 22 April 2021, < https://www.washingtonpost.com/opinions/global-opinions/its-time-to-cut-off-the-gas-for-myanmars-military-coup-leaders/2021/04/22/83cdd5a0-a384-11eb-85fc-06664ff4489d_story.html>

¹⁵ Cartel Finance Map, *Justice for Myanmar*, <https://data.justiceformyanmar.org/#offshore-gas-fields>

¹⁶ 'Public Companies Financial Supporting the Illegitimate Myanmar Junta', *Justice For Myanmar*, 6 May 2021 <https://www.justiceformyanmar.org/stories/public-companies-financially-supporting-the-illegitimate-myanmar-junta>

25. Myanmar's legal system is currently under the SAC's control. Arrest warrants of civilians are arbitrarily issued, the police are inflicting violence on the civilians, and the judiciary do not uphold the rule of law or right to a fair trial; death sentences have been unilaterally announced on SAC media.
26. The SAC has framed civilians for many of their own actions including the arson of Chinese factories¹⁷, the Shwebo Myoma Market¹⁸ and the Pabedan market.
27. To assist in Myanmar's rule of law during its political turmoil, we recommend that the UK government:
- a. Support the global arms embargo against the SAC;
 - b. Investigates and sanctions any SAC personnel who have been responsible for giving direct orders to
 - i. identify and kill civilians as evidenced from video footage,
 - ii. to arrest civilians and return their corpses to their families the next morning, and
 - iii. to use aggressive interrogation methods;
 - c. Push for the abolition of aggressive interrogation methods analogous to those of Guantanamo Bay and which are against international law and universal human rights standards; and
 - d. Give military assistance to the People's Defence Force of the NUG.

United Nations

28. The UK's ideal position as the UN Security Council Penholder could be useful; for instance, the UK could call for the referral of the SAC's crimes against humanity to the International Court of Justice or a global arms embargo against Myanmar.

¹⁷ Lily Kuo and Shibani Mahtani, 'As Myanmar protesters torch Chinese factories, workers are caught in spiraling crisis', *The Washington Post*, 17 March 2021.
https://www.washingtonpost.com/world/asia_pacific/china-myanmar-coup-military/2021/03/17/39989378-86c2-11eb-be4a-24b89f616f2c_story.html

¹⁸'Shwebo Myoma Market burns down, over 900 stalls in ashes', *Eleven Myanmar*, 15 May 2021.
<https://elevenmyanmar.com/news/shwebo-myoma-market-burns-down-over-900-stalls-in-ashes>

29. We recommend that the UK call the UN General Assembly to invoke Resolution 377(A), the 'Uniting for Peace' resolution. This way, the General Assembly can consider collective measures such as the use of armed force necessary to restore peace and security in Myanmar.
30. Resolution 377(A) is vital because the UK, as a UN member state, should uphold the principle of The Responsibility to Protect ('R2P'). The international community has the responsibility to protect when a State is manifestly failing to protect its population under Pillar II of the R2P principle¹⁹.
31. The NUG is currently incapacitated from protecting the civilian population. Therefore, we recommend that the UK upholds the R2P principle and sends peacekeepers to Myanmar to protect Myanmar's civilian population.

ASEAN

32. ASEAN has improperly prioritised the principle of sovereignty and non-intervention over its collective responsibility as member States to maintain and enhance peace, security and stability in the region.²⁰ We recommend that the UK reminds ASEAN of the latter values and the proper purposes of the ASEAN which appear to be set aside in favour of the political interests of the member States..
33. The ASEAN five-point consensus from the ASEAN Summit on 24 April²¹ was imprecise and ineffective, and an initial assurance to call for the release of all detainees was omitted from the final version. The number of people being tortured and killed by the SAC continued to increase after the ASEAN Summit²² and because there is no regional legal system, the ASEAN has no means of enforcing the consensus either.
34. Therefore, the tangible and effective actions we recommend the UK put forward as an ASEAN Dialogue Partner include:

¹⁹ The Global Centre for the Responsibility to Protect, <https://www.globalr2p.org/countries/myanmar-burma/>

²⁰ Article 1 (1), The ASEAN Charter.

²¹ Chairman's Statement on the ASEAN Leader's Meeting, ASEAN Secretariat, Jakarta, Republic of Indonesia, 24 April 2021. <https://asean.org/storage/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf>

²² 'Despite ASEAN consensus, military abuses continue around the country', *Myanmar Now*, 30 April 2021, <https://myanmar-now.org/en/news/despite-asean-consensus-military-abuses-continue-around-the-country>

- a. Setting up a one-off ASEAN mediation panel with 1 ASEAN member state and 1 UN representative, and chaired by the UK to initiate negotiations between the NUG and the SAC;
- b. Persuading ASEAN member States to provide temporary immigration protection for Myanmar civilians fleeing Myanmar²³;
- c. Providing effective humanitarian support, e.g., through providing cross-border humanitarian aid and setting up temporary health centres;
- d. Setting up virtual legal clinics, an online education platform, and virtual health clinics that can also prescribe medication.

Conclusion

We, NUG Campaign UK, are very grateful for the UK government's ongoing efforts to help Myanmar's civilian population through various mechanisms including this public enquiry.

We have placed exceptional trust in the UK government's ability to make tangible, positive change and we have made the above recommendations in the belief that the UK government will consider and, as a result, implement our recommendations to assist the 60 million population of Myanmar.

With sincere regards,

NUG Campaign UK

23 May 2021

²³ 'Arrest of journalists a litmus test for how Thailand treats those fleeing persecution in Myanmar', *CNN Business*, 11 May 2021, <https://edition.cnn.com/2021/05/11/media/myanmar-thailand-arrested-journalists-intl-hnk/index.html>