

Written evidence from Human Rights Watch (MYA0052)

Background

1. Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in over 100 countries around the world. We have reported on human rights abuses in Myanmar for over three decades.
2. Since the February 1, 2021 coup, Myanmar's military has launched a brutal crackdown on nationwide protests calling for a restoration of democracy, with the same callous disregard for human life it has demonstrated over decades in conflict areas in ethnic minority regions. Military units implicated in past atrocities against the ethnic Rohingya in Rakhine State and other areas have now been deployed in the streets of Yangon, Mandalay, and other cities and towns, and forces across the country have repeatedly used lethal force, including live ammunition, [mortar shells](#), and [grenades](#), and so-called less-lethal weapons unlawfully.
3. To date, security forces have killed over 820 people, including at least 50 children, some as young as 5, and [arbitrarily detained](#) an estimated over 4,300 activists, journalists, civil servants, and politicians. Hundreds have fled the country.
4. Authorities have also forcibly disappeared several hundred people suspected of participation in anti-coup demonstrations or in the opposition Civil Disobedience Movement during nighttime raids on homes throughout the country, putting them at increased risk of torture and extrajudicial executions while in custody. Enforced disappearances, when committed as part of a widespread or systematic attack on a civilian population, may amount to [crimes against humanity](#).
5. Freedom of speech has been severely repressed. The State Administration Council junta has [amended the penal code](#) to create new offenses and expand existing and already-overbroad offenses, and suspended sections of the privacy law, removing basic protections, including prohibitions against arbitrary detention and unfettered surveillance. It has also used [emergency provisions](#) to impose effective bans on peaceful assemblies in most major cities and towns. It has also cut off mobile internet data with [enforced temporary outages](#) and then a total cutoff in mid-March. The junta has also blocked public WiFi and most broadband internet services, further reducing access to the internet. The local nongovernmental organization Freedom Expression Myanmar estimates that just 0.5 percent of the population now has internet access.
6. The junta has specifically [attacked the media](#): arresting journalists, raiding the offices of newspapers and online media, and banning outspoken media outlets and satellite television. At least 71 journalists have been arrested since the coup, of whom at least 48 remain in detention. The authorities have charged many of those detained with violating a new provision in the penal code, section 505A, that makes it a crime to publish or circulate comments that "cause fear" or spread "false news."
7. The junta imposed [martial law](#) in 11 townships in Mandalay and Yangon on March 15, which means that any charges against peaceful protesters and journalists in those areas will now be tried by military courts, all but ensuring legal proceedings will deprive those charged of their basic fair trial rights.

8. Renewed fighting and ensuing insecurity in ethnic minority areas has forced [about 57,000 people](#) in Kachin, Shan, and Karen States and Bago Region to flee their homes. Increased conflict has worsened the already tenuous humanitarian situation. The United Nations Development Programme [warned](#) that half of Myanmar's population, about 25 million people, could be living below the national poverty line by early 2022.

Questions posed by the Committee

How can the UK Government improve its response to the crisis in Myanmar? How can it coordinate more effectively with international allies to influence a peaceful resolution to the crisis? What was the impact of the February sanctions on regime officials? What further action is needed?

9. The UK government—in particular in the context of the upcoming G7 meeting it is hosting in June 2021—should be working with like-minded governments to impose tougher economic sanctions and other economic measures targeting the Myanmar military and its leaders, and leading efforts to table a UN Security Council resolution imposing a global arms embargo on Myanmar. The UK government should also be pursuing all possible avenues for international justice, including continuing support for investigation efforts by UN bodies, referral of the situation to the International Criminal Court, and, where applicable, investigation under UK domestic law under universal jurisdiction laws. It is essential that the UK government, standing with other governments, demonstrate to the junta that their abuses—and unwillingness to engage meaningfully with the UN and outside actors about restoring democratic rule—is coming at a severe cost to their economic interests and standing on the international stage, and that engaging in atrocities with impunity will result in international efforts to hold them criminally liable.

Recommendations on sanctions and economic measures:

10. Existing UK sanctions on military leaders and companies—including the Myanmar Economic Corporation (MEC), Myanmar Economic Holdings Limited (MEHL), and Myanmar Gemstone Enterprise—are an important step forward. But they do not adequately target the massive foreign currency revenues that are bankrolling the military and giving it the capacity to purchase weapons and other items on the international market. The UK, in coordination with the US, EU, and other countries with economic interests in Myanmar, needs to better target these revenues, by focusing more on financial institutions that process payments that benefit sanctioned entities.
11. Most urgently, the UK government should collaborate and coordinate with other governments to freeze access by Myanmar entities to foreign currency revenues from oil and gas projects, which are currently being paid into accounts outside Myanmar held by the Myanmar Oil and Gas Enterprise (MOGE). These measures can be taken either under sanctions law seizing property that benefits a sanctioned person (e.g., Sr. Gen. Min Aung Hlaing), or possibly by utilizing anti-money laundering laws. (Alternatively, the UK can sanction MOGE and then provide licenses to allow production and payments to continue, provided that relevant banks block MOGE from accessing or withdrawing it.) The UK should also impose measures blocking UK companies from engaging in new transactions with MOGE. Gas wealth is the single greatest source of the military's revenues; reducing access to it would significantly influence its calculations.

12. The UK government should also work with other governments to extend or enforce sanctions that would freeze other foreign currency revenues being sent into accounts of the Myanmar Timber Enterprise and junta-controlled enterprises in the extractive sector that collect revenues, fees, taxes, and other payments from sales of teak, gemstones, jade, and other precious stones or metals.
13. The UK government should aggressively enforce existing import laws relating to Myanmar teak and impose new sanctions prohibiting import of teak sourced from Myanmar, even if it is purchased from an intermediary seller who is not sanctioned.
14. UK actions are important, even for transactions conducted in US dollars. UK actions buttress actions taken by the US and EU by helping to put banks on notice in key jurisdictions—including Singapore, Hong Kong, and Thailand—that there will be legal repercussions for them under UK law if they do not freeze revenues in question. Any bank that conducts transactions in British pounds, whether it is a UK bank or not, can be compelled to enforce UK sanctions and follow UK financial regulations.
15. Depriving the military of its access to foreign revenue can compel the military to change its behavior, but only if there is a coordinated and unified approach across different jurisdictions. Coordinated and effective enforcement of sanctions will place pressure even on entities not subject to sanction jurisdictions, since general risk compliance mechanisms will affect business decisions and general legal and reputational risks will increase.
16. The UK government should also impose additional individual sanctions on military leaders and persons enabling them, including:
 - All security force officials implicated in military abuses, including Defense Services and Myanmar Police Force commanders in the capital, Naypyidaw; Bureau of Special Operations chiefs; commanders of Regional Military Commands, Regional Operations Commands, Military Operations Commands, Light Infantry Divisions, State and Region Police Forces, and Security Battalions (Lon Htein); and directors in Military Security Affairs and Special Branch;
 - The State Administration Council (SAC) junta *as an entity*, as well as *all* SAC ministers and deputy ministers serving under Sr. Gen. Min Aung Hlaing, and all chairs and members of state and regional administration councils. Currently, only some SAC leaders at the union level are sanctioned;
 - State enterprises and industries currently under military control, including the Ministry of Defense, Directorate of Defence Industries (KaPaSa), Myanmar Petrochemical Enterprise, Myanmar Petroleum Products Enterprise, Heavy Industrial Enterprises Nos. 1, 2, and 3, Myanmar Gem Enterprise, and Myanmar Timber Enterprise, as well as their directors;
 - All directors and corporate officers of MEC and MEHL subsidiaries; and
 - Crony companies that maintain close economic, commercial, familial, and operational ties to the military, enabling and benefitting from the coup and military human rights abuses, and their directors.

17. The measures recommended above reflect the current calls and actions of the opposition Civil Disobedience Movement and much of Myanmar's civil society.
18. The UK government should work with other governments to adopt a common set of benchmarks and criteria, to communicate to the Myanmar junta, setting out the conditions to be met for sanctions to be eased. These should include that the junta:
 - Unconditionally release all individuals arbitrarily detained since February 1;
 - Rescind the "state of emergency" and all orders, decisions, and policies adopted by the National Security and Defense Committee and State Administrative Council since February 1;
 - Restore civilian leadership of national and state-level ministries and other government institutions;
 - Recognize the parliament duly elected in November 2020 and certified by the Union Electoral Commission, and allow the formation of a democratically elected government; and
 - Cease the use of excessive and unnecessary force in carrying out law enforcement.

Is the Government making full use of the UK's position as the UN Security Council Penholder on Myanmar? What further action should it be taking through the Security Council?

19. As penholder on Myanmar at the UN Security Council, the UK government should immediately open negotiations on a draft resolution authorizing a comprehensive global arms embargo on Myanmar. The UK has failed to make full use of its position as penholder in its reluctance to do so thus far. Imposing a global arms embargo on Myanmar is the minimum necessary step the council should take in response to the military's escalating human rights abuses. Arms and materiel provided to Myanmar's security forces are likely to be used by the security forces to commit violations of international human rights and humanitarian law.
20. On May 5, over 200 nongovernmental organizations from around the world [called on the Security Council](#)—and specifically the UK as Myanmar penholder—to immediately launch negotiations on a global arms embargo. While it may not be possible to persuade China and Russia to accept robust UN measures, the UK should nonetheless seek to do so. The council has had hundreds of meetings on Syria in the last decade but has not given Myanmar any genuine attention, despite ethnic cleansing, crimes against humanity, acts of genocide, and the killings of hundreds of protesters.
21. While any of the five permanent members of the Security Council may veto proposed resolutions, consensus is not required: in the event a permanent member abstains, a resolution can pass with nine or more votes from the full council, as recently occurred with measures on Somalia and Libya.
22. A comprehensive UN arms embargo should bar the direct and indirect supply, sale, or transfer of all weapons, munitions, and other military-related equipment, including dual-use goods such as vehicles and communications and surveillance equipment, as well as the provision of training, intelligence, and other military assistance. Such an embargo should be accompanied by robust monitoring and enforcement mechanisms.

23. The Security Council should also impose targeted sanctions including global travel bans, and asset freezes on the leadership of the junta and military-owned conglomerates, similar to those described above.
24. While pursuing action at the Security Council, the UK should urge governments around the world to institute bilateral embargoes in the interest of building the broadest possible coalition to oppose the flow of weapons to Myanmar. It should also strengthen monitoring and enforcement processes for its existing arms embargo, increase scrutiny on intermediaries that may be involved in diverting, reselling, or transferring items to Myanmar, and ensure greater oversight over export licensing to prevent any arms or dual-use goods and technologies from being illegally transferred. The UK should call on Russia, China, India, Israel, North Korea, the Philippines, and Ukraine to cut their sales and assistance to Myanmar.
25. The UK should also maintain its efforts at the UN Human Rights Council in Geneva, and ensure, pursuant to UN Human Rights Council Resolution 46/21, that the UN High Commissioner and UN Special Rapporteur continue to monitor and assess the overall human rights situation in Myanmar, and promptly bring information to the attention of the Human Rights Council—including intersessionally through ad hoc briefings. In so doing, they should explore what further steps and resources the UN and its member states need to provide to support continued fact-finding and best respond to abuses.

What steps should the UK be taking to support justice and redress for civilians affected by the violence?

26. See above, regarding UN Security Council steps. In addition, the UK should explore all avenues for justice and accountability for grave international crimes committed by the security forces, including coup-related abuses as well as crimes against humanity and war crimes committed in ethnic regions for decades. In addition to supporting a referral to the ICC, the government should formally support the case brought by Gambia against Myanmar before the International Court of Justice concerning the Genocide Convention. This sends an important message that Myanmar's military's continued impunity will not be tolerated, that there are consequences for their crimes and that the UK government is committed to justice for the people of Myanmar including ethnic minorities. In particular, the UK government should consider making a formal intervention in the case. While the government may wish to wait until the Court has considered the preliminary issues before making a formal intervention (Gambia is to file its written statement on the preliminary objections by Myanmar by May 20, 2021 and the court will thereafter set a date for oral proceedings on preliminary objections), it would be open and certainly worthwhile for the UK government to express its intention to intervene before making a formal application as has been done by the Netherlands and Canada. There are valuable legal contributions that the UK government could make including on the targeting of children by the Myanmar military.

What opportunities does the UK's new status as an ASEAN Dialogue Partner bring for mediation?

27. Unfortunately, not much. ASEAN as a group cannot exercise leverage over Myanmar and has no track record of affecting positive outcomes with the military, in recent years, or ever. While ASEAN and Myanmar, at a summit in April, supposedly agreed on "[five points](#)" of consensus including "an immediate cessation of violence in Myanmar" and "constructive dialogue among

all parties,” the junta has since made clear the document means nothing. Two days after the summit, the junta [issued a clarifying statement](#) entirely departing from the consensus, re-labeling its substance as “suggestions” that the junta will give “careful consideration to ... when the situation returns to stability in the country since the priorities at the moment were to maintain law and order and to restore community peace and tranquility.” Arrests and shootings have continued, as has fighting in ethnic areas. In May, the SAC issued statements calling the Committee Representing the Pyidaungsu Hluttaw (CRPH) and National Unity Government (NUG), bodies representing Myanmar’s lawmakers who were democratically elected in November 2020, as “terrorist” organizations.

28. ASEAN members’ diplomatic efforts, never particularly promising in the first place, are moribund. Recent statements by US and EU officials, cautiously optimistic about ASEAN efforts, should not be taken as an actual reason for optimism: they were likely meant mainly to encourage ASEAN members to continue focusing on Myanmar, not to indicate that a diplomatic solution lies in ASEAN’s hands.
29. In reality, there is little ASEAN members alone can do to affect change in the junta’s actions. The best and most useful role they might play would be to serve as intermediaries, delivering messages and communicating benchmarks about current and future sanctions, which are, as noted above, the best measures to lead the junta to end its abusive behavior.

Is the FCDO’s in-country resourcing sufficient? Are diplomats and other officials working in Myanmar given adequate training and support?

30. Consistent with the UK government’s commitment to promoting and protecting open societies and human rights, the UK should continue to find new and creative avenues to support Myanmar civil society including the Civil Disobedience Movement as well as journalists. In line with the UK government’s aid review, the government should be amplifying its financial and practical support to civil society organizations and journalists on the ground including those undertaking high-risk work around the country. Diplomatic staff should meet with these groups and monitor protests and other events. They should also be attending trial proceedings of activists, journalists, and other people detained for politically motivated reasons, and formally requesting access to places of detention. Lessons can be drawn from the response of the UK and other governments in Belarus following the brutal crackdown on peaceful protesters and their supporters in the wake of the August 9, 2020 presidential elections. While the situations are not entirely parallel, there are many similarities including arbitrary arrests, enforced disappearances, and instances of excessive use of force. In the context of Belarus, diplomats went to the homes of people at risk to provide protection, collectively went to places of protest and publicly supported those standing up for rights and democracy. They also held meetings at residences and embassies (where activists could stay for protection), and assisted those who were forced to flee the country including providing them protection and helping them continue their work outside Belarus. Diplomats have and continue to request access to places of detention and monitor trials.
31. The UK should schedule high-level meetings between UK government officials and officials in the CRPH and NUG. Junta officials should not be invited to any bilateral or regional events or forums, and the UK should make clear it will not participate in any meetings, including multilateral meetings, with Myanmar military representatives.

32. The UK should provide safe haven and fast-track UK visas for those at risk from the junta, as well as offering Myanmar people currently in the UK the ability to remain on humanitarian grounds.

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