

International Parliamentary Inquiry submission of evidence by Justice For Myanmar

1. Justice For Myanmar is a covert group of activists dedicated to improving the lives of all the people of Myanmar. We are working to end the systemic causes of inequality, corruption, violence, war crimes, and crimes against humanity.

Failures of the international response

2. The Myanmar military has an established pattern of committing genocide, war crimes and crimes against humanity with total impunity.¹ The lack of a response from the international community and international businesses, even when faced with the military's 2017 campaign of genocide against the Rohingya, emboldened the military leadership to attempt a coup. The military leadership were further enabled by its international network of businesses, which provided a source of revenue independent of parliamentary scrutiny, and a system for senior members of the military to personally profit.² The international community and key businesses ignored both the warning signs, extensive evidence and expert recommendations.³
3. In August 2019, the United Nations Independent International Fact-Finding Mission on Myanmar (IIFMM) released a report on the economic interests of the Myanmar's military.⁴ It found that the military owned and operated two major holding companies – Myanma Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC). MEHL, MEC and their subsidiaries generated revenue dwarfing all civilian-owned companies in Myanmar. The UN Fact-Finding Mission concluded that the military's business empire enabled it to secure financial resources to support its unlawful activities, including acts of genocide, war crimes and crimes against humanity, and to evade accountability and oversight.
4. Significantly, the UN Fact-Finding Mission considered that foreign companies involved in commercial relationships with Myanmar's military, MEHL or MEC pose a "high risk" of contributing or being linked to violations of international human rights and humanitarian law. It urged foreign companies to "sever their relationships" with these entities, or otherwise risk being complicit "in law, fact or the eyes of the broader public", in contributing to the financial resources available to the military. The report also highlighted the complicity of countries that have authorised the transfer of arms and dual use goods to Myanmar, knowing they would be used for the commission of genocide, war crimes and crimes against humanity, and recommend a comprehensive arms embargo. The Report "put companies on further and effective notice" of the human rights implications that arise from maintaining business relationships with the military. The report did not lead to any immediate sanctions on the military's business interests, or actions from international companies partnered with the Myanmar military and its conglomerates.
5. While some governments have imposed targeted sanctions against the junta, its leaders and the Myanmar military's economic interests following the military's illegal coup attempt, this has been uncoordinated and unsystematic, and reinforcement measures are still unknown. Furthermore, we note with deep concern that regional governments have not implemented any sanctions in response to the military's illegal

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<https://www.ohchr.org/en/press-releases/2018/09/myanmar-un-fact-finding-mission-releases-its-full-account-massive-violations?LangID=E&NewsID=23575>

² <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

³ <https://www.amnesty.org/en/documents/asa16/2969/2020/en/>

⁴ <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

coup attempt.⁵ These include Australia, Japan, South Korea, India and ASEAN member states. This allows military conglomerates to continue to do business in the region, enabling the Myanmar military's criminal conduct. While the UK, EU, Canada and US have taken positive steps to sanction military conglomerates, state-owned enterprises and arms brokers, we also note that many entities and individuals remain unsanctioned, including those identified by the FFM. Notable examples include military conglomerate joint ventures Telecom International Myanmar, Myanmar Brewery and Virginia Tobacco, as well as the military controlled Myanmar Oil and Gas Enterprise, which has not been sanctioned by the US, UK or Canada.

6. There urgently needs to be sanctions on products from Myanmar, including timber, jade, gems and pearls, in order to prevent companies circumventing sanctions on entities involved in natural resource extraction, which remains a key financial resource for the Myanmar military. For instance, existing sanctions on Myanmar Timber Enterprise, imposed by the US, EU, UK and Canada, has failed to stop the teak trade which provides revenue to the military junta.⁶ Similarly, sanctions against Myanmar Gems Enterprise, also imposed by US, EU, UK and Canada, has not stopped the trade in gems via third countries, as seen in the example of Vaibhav Global.⁷ In these cases where the military junta monopolises trade in a particular good, an import ban may be more effective to block revenue.
7. Despite mounting evidence of the importance of Telecom International Myanmar, trading as Mytel, in providing revenue, intelligence, technical support and equipment for the Myanmar army, no sanctions have been imposed on the company.⁸
8. Oil and gas remains the biggest source of foreign revenue for the military junta. While the EU has belatedly moved to sanction the junta controlled Myanmar Oil and Gas Enterprise, other jurisdictions have failed to take action, allowing the flow of oil revenues to continue, financing the junta's campaign of terror. Myanmar was forecast to earn 2,305 billion kyat (about US\$1.5 billion) from oil and gas revenues in 2020/21, according to a budget brief from the Ministry of Planning, Finance and Industry, made before the coup attempt.⁹ The absence of US sanctions in particular has provided a pass to Thai and Singaporean banks to continue to facilitate payments, including in US dollars. Leaked documents show the concern of Min Aung Hlaing personally in ensuring the flow of oil and gas revenues, and further sanctions would deal an important blow to the junta.¹⁰ We also note the lack of international action against junta-controlled banks, which continue to operate

⁵ <https://www.justiceformyanmar.org/stories/what-has-been-done-to-stop-the-myanmar-militarys-atrocity-crimes>

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<https://www.justiceformyanmar.org/stories/us-companies-imported-nearly-1-600-tonnes-of-myanmar-teak-circumventing-sanctions> and

<https://www.forest-trends.org/publications/myanmars-timber-trade-one-year-since-the-coup/>

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<https://www.justiceformyanmar.org/press-releases/indian-firm-vaibhav-global-limited-selling-myanmar-gems-in-us-despite-sanctions>

⁸ <https://www.justiceformyanmar.org/stories/leaking-military-secrets-for-profit> and

<https://www.justiceformyanmar.org/stories/how-hundreds-of-millions-of-dollars-from-mytel-consumers-will-flow-to-military-generals> and

<https://www.justiceformyanmar.org/stories/nodes-of-corruption-lines-of-abuse-how-mytel-viettel-and-a-global-network-of-businesses-support-the-international-crimes-of-the-myanmar-military>

⁹ https://global-uploads.webflow.com/5e691d0b7de02f1fd6919876/60ace62481ba8c64d866597a_2020-2021_FY_Budget_Brief_0%5B1%5D.pdf

¹⁰

<https://www.justiceformyanmar.org/stories/leaked-documents-show-min-aung-hlaing-personally-concerned-over-oil-and-gas-payments>

internationally, supporting the military's terror campaign and enabling grand corruption.¹¹

9. While some jurisdictions have imposed unilateral arms embargoes, notably the US, EU, UK, Japan, Australia, and South Korea, this remains uncoordinated in the absence of a global arms embargo imposed by the UN Security Council, and 146 countries have no arms embargo on Myanmar.¹² Enforcement of existing arms embargoes also remains weak, especially in the EU. We are concerned that EU enforcement of arms transfers is left to member states and the EU lacks a coordinated enforcement mechanism. This has allowed entities in jurisdictions including Austria, Germany and Sweden to violate the EU arms embargo without consequences. For instance, Austrian authorities have failed to take action against sanctions violations involving Schiebel Corporation and Axis Simulation, as well as a military official training at an Austrian university, despite the issue being raised in parliament¹³ and the media.¹⁴ German authorities have not investigated Grob, which continued to provide maintenance support after the initial sale, as well as possible installation of targeting systems.¹⁵ Sweden has failed to prevent its technology from being re-exported from India to Myanmar, despite an investigation and mounting evidence.¹⁶
10. We note that as part of the irresponsible sale of Telenor Myanmar to the military-linked crony conglomerate Shwe Byain Phyu, Norwegian and UK sanctions were violated as a result of the transfer of lawful interception equipment from Telenor to M1 Group (through an entity registered in the UK Offshore Territory of the Cayman Islands), and then from M1 Group to Shwe Byain Phyu.¹⁷ We also note evidence that the provider of the lawful interception equipment, Utimaco, registered in Germany, may have also violated EU sanctions as a result of support provided following the strengthening of EU sanctions in 2018.¹⁸ Germany has also failed to investigate this.
11. Another crucial action is for the international community to recognise and support the National Unity Government (NUG), as the legitimate government of Myanmar, with a democratic mandate from the 2020 election. Despite broad-based support for the NUG among the people of Myanmar, and NUG's control of territory in Myanmar and successful operations, key international fora continue to engage with representatives

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<https://www.justiceformyanmar.org/stories/revealed-the-international-banks-providing-finance-to-the-myanmar-military>

¹² <https://burmacampaign.org.uk/take-action/arms-embargo/global-arms-embargo/>

¹³ See https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_10507/imfname_1455276.pdf and

https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_10519/imfname_1455442.pdf and

https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_10511/imfname_1455388.pdf

¹⁴ <https://www.profil.at/ausland/myanmar-schiebel-eu-embargo-10889771> and

<https://www.occrp.org/en/investigations/from-jordanian-planes-to-german-software-myanmars-genocidal-military-stocks-up>

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<https://www.justiceformyanmar.org/stories/arms-broker-with-links-to-belarus-russia-and-germany-supplied-myanmar-junta-since-coup-attempt>

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<https://www.justiceformyanmar.org/stories/india-supplying-fuzes-to-myanmar-military-deepening-complicity-in-its-atrocity-crimes>

¹⁷

<https://www.justiceformyanmar.org/press-releases/telenor-group-is-aiding-and-abetting-m1-group-to-violate-myanmar-sanctions>

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<https://www.justiceformyanmar.org/press-releases/telenor-group-violating-sanctions-through-installation-and-imminent-transfer-of-german-lawful-intercept-gateway>

of the illegal junta, awarding it with legitimacy, fodder for propaganda and emboldening its international crimes. Significant among these fora is ASEAN, which has invited junta ministers to a wide array of meetings, including the ASEAN Defence Ministers' Meeting (ADMM).¹⁹ The central role ASEAN plays in the Indo-Pacific region has impeded coordinated international action to stop the Myanmar military's international crimes, and has provided cover for a lack of action by the regional democracies Australia, Japan and South Korea. ASEAN has therefore enabled the Myanmar military's crimes of genocide, war crimes and crimes against humanity. Through ongoing defence and military cooperation, ASEAN is complicit in the Myanmar military's atrocity crimes. We further note the complicity for regional fora BIMSTEC,²⁰ the Greater Mekong Subregion²¹ and the Lancang Mekong Cooperation Forum.²²

12. These failures by the international community to act against the Myanmar military's international crimes and total impunity has been a key enabling factor that resulted in the coup attempt of February 1, 2021, the ensuing campaign of terror, which has created a humanitarian catastrophe. It is now imperative that the international community changes course to impose real consequences on the Myanmar military, in support of the people of Myanmar's struggle for federal democracy. This must include cutting the supply of revenue and arms to the military junta, ensuring accountability for international crimes committed by the junta and recognising the NUG as the legitimate government of Myanmar, while refraining from legitimising the illegal junta.

Recommendations for the UN Security Council:

1. Impose targeted sanctions against the Myanmar military junta and its business interests.
2. Impose a global arms embargo on Myanmar.
3. Refer the situation in Myanmar to the International Criminal Court.

Recommendations for the UN General Assembly:

1. Recognise the National Unity Government as the legitimate government of Myanmar.
2. Establish an independent ad hoc tribunal into the Myanmar military's international crimes.

Recommendations for ASEAN

1. Exclude the Myanmar military junta from all meetings and activities.
2. Recognise the National Unity Government as the legitimate government of Myanmar, and work with it to resolve the Myanmar crisis.
3. Take concrete action to end the Myanmar military's violence against the Myanmar people.

¹⁹ <https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes>

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<https://www.thehindu.com/news/international/with-invite-to-myanmar-fm-bimstec-steps-out-of-shadows-out-of-line-with-asean/article65264517.ece> and

<https://www.facebook.com/justiceformyanmar.org/posts/pfbid05n4AygeVQoe1rumaoftPK2qTTmpcNhQ5hSkAFJVK195o3LNWea8HZxSgeFim5edJI>

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<https://www.gnlm.com.mm/myanmar-set-an-aim-to-have-50-per-cent-coverage-of-vaccination-across-the-country-at-the-end-of-this-year-senior-general/>

²²

<https://www.usip.org/publications/2022/07/china-bets-strategic-projects-regional-stability-myanmar-coup-regime>

4. ASEAN should encourage its members to not allow the junta and its businesses to use their financial systems, airspace, and coastal waters, and impose arms embargoes and bans on jet fuel.
5. Cooperate with UN Member States to impose a global arms embargo on Myanmar and to refer the Myanmar situation to the International Criminal Court through the UN Security Council.

Recommendations for governments:

1. Recognise and support the National Unity Government as the legitimate government of Myanmar, and work with it to resolve the Myanmar crisis.
2. Impose an arms embargo and targeted sanctions against the Myanmar military and its business interests, including sanctions on jet fuel, jade and gems, teak and junta controlled state owned enterprises, including MOGE and Myanmar Foreign Trade Bank.
3. Hold businesses accountable for aiding and abetting the Myanmar military's atrocity crimes.
4. Cooperate with UN Member States to impose a global arms embargo on Myanmar and to refer the Myanmar situation to the International Criminal Court through the UN Security Council.
5. Call on ASEAN to exclude the Myanmar military junta from all meetings and activities, and end the Myanmar military's violence against the Myanmar people.

Recommendations for businesses:

1. Responsibly end all business with the Myanmar military and its conglomerates.
2. Suspend all payments to the junta and withhold funds in protected accounts, or responsibly disengage.
3. Conduct heightened human rights due diligence in relation to business activities in Myanmar and maintain public transparency.
4. Abide by the policies of the National Unity Government.