

# Myanmar Political Instability: Is it a Military Coup or Constitutional Emergency?

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On 1<sup>st</sup> February 2021, the military led by General Min Aung Hlaing, Commander-in-Chief of the Defence Forces took over the political power of the country and arrested hundreds of elected members of *Pyidaungsu Hluttaw* (*Pyidaungsu Hluttaw* is a Union Legislative Assembly of Myanmar comprising of two Houses – *Pyithu Hluttaw* and *Amyotha Hluttaw*). Aung San Suu Kyi, the State Councillor and the leader of the pro-democratic party, National League for Democracy (NLD) was also arrested. The political transition from authoritarian to democracy in Myanmar that started back in 2010 ended and once again, the military regime begins. After years of hurdles and pro-democratic movements, Myanmar had undergone its first multi-party elections in 2010 after the adoption of the 2008 Constitution. The election paved the way towards democratic consolidation. However, the recent military takeover of the government has shattered the core of the nascent democracy to which the country might succumb. In the light of the above context, the paper analyzes the causes of the ongoing political instability in Myanmar. It also argues that the actions of the military are not a Constitutional Emergency as claimed by the military.

## Brief Political profile of Myanmar:

Burma came to be known as Myanmar in 1989. The political history of Burma before the British annexation in 1885 was the history of ethnic nationalities like that of Burman, Chin, Shan, Mon, etc. The colonial period in Burma lasted from 1885 to 1948 (Steinberg, 2010). The civilian government was formed eventually in 1948 when Burma gained its independence from the clutch of British rule, however, it was short-lived. Myanmar's democracy was overthrown in 1962 when General Ne Win took power in a military coup. Ne Win's retirement from politics brought an end to the 'Burmese Way to Socialism' and consequently led to the downfall of the Burma Socialist Program Party (BSPP). Consequently, the military regime once again reconstituted itself and control Burma on 18<sup>th</sup> September 1988 (Kipgen, 2016). The official name of the military government changed from BSPP to State Law and Order Restoration Council (SLORC), led by General Saw Maung (Kipgen, 2016).

Under the new leadership of Saw Maung, a multi-party system was once again introduced, and private sectors were also established. The SLORC government attempted to increase its legitimacy and announced the multi-party elections to be held in May 1990 (Sakhong, 2012). The

NLD led by Aung San Suu Kyi won the elections overwhelmingly but the military government failed to honor the election results and refused to transfer power to the winning party. The SLORC was eventually abolished and reorganized as State Peace and Development Council (SPDC) on 15<sup>th</sup> November 1997 (Kipgen, 2016). It was led by General Than Shwe who succeeded General Saw Maung in 1992. After a long gap of two decades, the first multi-party election was held in 2010 under the new Constitution which was adopted in 2008.

### **Causes of Political Instability in Myanmar**

The struggle for power between the NLD and the military has led to political instability in the country. There are two main causes or reasons that may have contributed to the mounting instability in Myanmar. And, the setback of democracy in Myanmar started with the November 2020 elections.

### **Elections 2020**

The Myanmar General elections are normally conducted simultaneously for the Union, states, and regions legislative assemblies, which include both the houses (*Pyithu Hluttaw* and *Amyotha Hluttaw*) of the Union Legislative Assembly. The lower house is known as the *Pyithu Hluttaw* and has a maximum strength of 440, while the maximum strength of the upper house (known as the *Amyotha Hluttaw*) is 224 (Constitution of the Republic of Myanmar, 2008). On 8<sup>th</sup> November 2020, General Elections were held for the Union Legislative Assembly as well as states and regions assemblies. In the 2020 elections, there were 315 seats (out of 440 seats) available in the lower house and 161 seats (out of 224 seats) in

the upper house. (Naing & Aung, 2020). The NLD won the elections with a landslide victory by securing a total of 396 seats (Nair, 2020).

On 1<sup>st</sup> February 2021, the first session of the *Pyidaungsu Hluttaw* was scheduled to be held to endorse the election results thereby approving a new government (Goldman, The New York Times, 29<sup>th</sup> May 2021). However, the military after losing the elections refused to accept the results alleging that there has been widespread voters fraud across the country. They blamed the Union Election Commission (UEC) for mishandling the 2020 elections and accused the UEC to have been sided with the NLD. The military-owned 'True News' (TV Channel controlled by the military) claimed that there had been 10.5 million irregularities on voter lists which were double or triple entries for single names or national registration card numbers, dead people, and underage voters (Callahan, 2021).

The claims made by the military on grounds of electoral misconduct, dishonesty, and inconsistencies neither have any proof of evidence nor the accusation made against the NLD in rigging votes was definite. On 11<sup>th</sup> January 2021, the military called on President-elect Win Myint and the Speaker and asked them to convene a special session of the *Pyidaungsu Hluttaw* to address the election disputes. However, the President-elect declined to convene a session asserting that disputes concerning elections are the responsibility of the Election Commission (Crouch, 2021).

### **The power struggle between State Administrative Council (SAC) and National Unity Government (NUG)**

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The military claims that the refusal to convene a special session of the *Pyidaungsu Hluttaw* is the basis for a declaration of emergency under the 2008 Constitution (Crouch, 2021). By late January 2021, tensions heightened when General Min Aung Hlaing threatened to annul the Constitution due to the Government's abuse of it. Both the parties tried to negotiate and settle the matter. However, talks and negotiations between the two rivalries abruptly came to an end on 31<sup>st</sup> January 2021.

On 1<sup>st</sup> February, the military illegally seized the power and detained Aung San Suu Kyi, other political leaders, and civil society activists (Callahan, 2021). The following day the military junta formed a Union Government headed by Min Aung Hlaing officially named it as the State Administration Council (SAC) and began establishing sub-national councils (Callahan, 2021). However, the Committee Representing Pyidaungsu Hluttaw (CRPH) has declared SAC as a terrorist group on 1<sup>st</sup> March 2021 (Committee Representing Pyidaungsu Hluttaw (CRPH) Announcement No (10/2021). The military claimed that in pursuant to Section 419 of the Constitution, the State Administrative Council with 11 members was formed including Chairman General Min Aung Hlaing (Myanmar Times, 2<sup>nd</sup> February 2021).

Out of the eleven members, there are three civilian members and the other eight members are from the military (Myanmar Times, 2<sup>nd</sup> February 2021). The members of the SAC increased by eight totaling 19 members by the end of March. The SAC has now included ten civilians and eight military members. Most of the civilian members are from ethnic

nationality parties such as Kayin People's Party (KPP), New National Democracy (NNDP), National Democratic Force (NDF), Arakan National Party (ANP), Kayah State Democratic Party (KySDP) and Mon Unity Party (MUP) (Min Tun., Thuzar & Montesano, 2021).

The inclusion of the civilian members which comprised more than half of the total members of the SAC, is quite intriguing. The military's approach in forming the SAC is ambiguous. Some scholars like H.M. Min Tun, M. Thuzar and M. Montesano argued that the SAC is an anti-NLD project (Min Tun., Thuzar. & Montesano, 2021). This argument holds true since most of the civilian members who joined the SAC have suffered electoral defeat at the hands of the NLD candidates.

Amidst the violence and nationwide protests across the country, the SAC took over the power forcefully and transformed it into a caretaker government. General Min Aung Hlaing became the new Prime Minister of the newly formed caretaker government on 1<sup>st</sup> August 2021 (Johnson., Cushing. & Kerry, 2021). Min Aung Hlaing has reiterated that elections will be held by 2023. He has also mentioned that his administration will work within the framework of ASEAN and will cooperate with the ASEAN Special Envoy in Myanmar (Johnson., Cushing. & Kerry, 2021). In other words, General Min Aung Hlaing may extend his reign for another two years until new elections are held in 2023.

Since the military takeover in February, people witnessed some kind of protests and strikes (which is violent) almost every day against the military

authorities across the country. The Assistance Association for Political Prisoners activist group has reported that 939 anti-coup protestors have lost their lives and 6,990 people have been arrested by the military authorities till October 2021 (Johnson., Cushing. & Kerry, 2021).

The ousted NLD leader, Aung San Suu Kyi has been facing four charges. She has been accused of possessing illegally imported walkie-talkies and of violating the country's natural disaster management law by breaching coronavirus restrictions (Ratcliffe, 2021). She has also been charged under telecommunications law and has been further accused of causing "fear or alarm to the public". If Suu Kyi is convicted of these charges, the military will likely prevent her from contesting elections in the future.

The SAC became the fourth military junta in the history of Myanmar politics. The first junta known as the Revolutionary Council was formed right after the military coup of 1962. In the wake of the 1988 military coup, the SLORC was formed which became the State Peace and Development Council (SPDC) in 1997. Myanmar had its first parliamentary elections in 2010 after a long gap of almost two decades.

On the other hand, the National Unity Government (NUG) was formed on 31<sup>st</sup> March 2021 (Committee Representing Pyidaungsu Hluttaw Statement No 23/2021). The NUG is a parallel government comprising of pro-democracy figures, remnants of Aung San Suu Kyi's overthrown administration, and representatives of armed ethnic groups. The NUG regarded the 'military takeover' that 'seized control' in the country as misrepresentation. It has released a

statement in response to the media briefing by Andrew Kirkwood, UN Resident Coordinator and Humanitarian Coordinator (Ad Interim) (National Unity Government, Republic of the Union of Myanmar). The NUG maintains that the 'military takeover' is a misrepresentation and that the military did not 'seized control' of the country. According to their statement, the NUG, Ethnic Armed Organizations (EAOs), pro-NUG districts and local communities have been controlling significant swathes of territory and have been delivering essential services, including healthcare, education and humanitarian assistance (National Unity Government, Republic of the Union of Myanmar).

### **Military Coup or Constitutional Emergency**

The military claimed that the takeover of power is Constitutional and refused to call it a military coup. According to the military spokesman Brigadier General Zaw Min Tun, the military seized power as per the Constitution (Callahan, 2021). General Min Aung Hlaing asserted that the Constitutional Emergency was justified by voter fraud. He assured that free and fair multi-party elections will be held according to the Constitution after the tasks of the emergency period are completed. (Callahan, 2021)

The military has made several claims regarding the declaration of the Constitutional Emergency and the legal sanctions behind it. On the contrary, the international media and observers have been accusing the military for capturing power illegally and term as 'military coup'. The tenet of the military's declaration of emergency was the President's refusal to convene a special session to address what they claimed to be 'election fraud'. Neither

the President nor the Speaker was under no obligation to convene such a session. Even though the military has filed nearly 200 complaints to the Supreme Court, the UEC has rejected the military's allegations of electoral fraud. The UEC claimed that there were no errors to affect the credibility of the vote (Scroll.in 1<sup>st</sup> February 2021).

According to Section 82 and Section 83 of the Constitution, a special session or emergency session can be convened by the Speaker when informed by the President. Again, Section 211 of the Constitution provides that if the President deemed necessary to convene a special session or emergency session of the *Pyidaungsu Hluttaw*, he may intimate the Speaker to convene such session. The President's refusal to convene a special session for election disputes is in line with the provisions of the Constitution. Section 399(g) of the Constitution states that the duties of the Union Election Commission (UEC) shall be constituting election tribunals for the trial of disputes relating to the election under the law of the land (Constitution of the Republic of Myanmar, 2008).

Furthermore, Section 81(c) states that a special session can be convened to discuss matters that require urgent action in the interest of the public (Constitution of the Republic of Myanmar, 2008). In consequence, the President has left the election disputes at the hands of the UEC and denied addressing the matter. The President's failure to address the election disputes and his refusal to convene a special session has irked the sentiments of the military. It became a device for staging a military coup.

On a similar note, the military has also claimed that the declaration of a Constitutional Emergency was made as per the provisions of Section 417 and Section 418 of the Constitution (M. Crouch, 2021). However, the provisions of Section 417 and Section 418 did not justify the military claims of Emergency. According to the provisions of Section 417, only the President has the power to declare an emergency after consulting with the National Defense and Security Council (NDSC) (Constitution of the Republic of Myanmar, 2008). It also states that an emergency could be declared when there is sufficient reason that may disintegrate the Union or national solidarity or cause the loss of sovereignty of the Union by insurgency, violence and wrongful forcible means (Constitution of the Republic of Myanmar, 2008).

In case of emergency under Sections 417 and 418, the President is required to submit the matter of transferring the sovereign power to the Commander-in-Chief of the Defense Services either to a regular session if the *Pyidaungsu Hluttaw* is in session, or to an emergency session if the *Pyidaungsu Hluttaw* is not in session. From the day of the declaration of emergency, all the Legislatures i.e. *Pyidaungsu Hluttaw*, States and Regions *Hluttaw*, Leading Bodies of Self-Administered Division are automatically dissolved (Constitution of the Republic of Myanmar, 2008).

The above shows that there is not enough evidence and legal sanction behind the claims made by the military for declaring the State of Emergency. In fact, it was a planned military coup to subdue the elected civilian government. First, there was no transfer of sovereign power



between the President-elect and the Commander-in-Chief as per the Constitution mandates. As mentioned above, the President-elect had refused to convene a special session. Moreover, the first session of the new Pyidaungsu Hluttaw could not be convened since the newly elected representatives of the NLD were arrested and detained by the military armed forces on the same day the elected representatives were supposed to meet.

Second, the military had used unconstitutional means of transferring power from the President-elect to the Commander-in-Chief of the Defense Services. On 1<sup>st</sup> February, the military had detained President-elect Win Myint including Suu Kyi and other NLD leaders (Reuters, 2<sup>nd</sup> February 2021). Meanwhile, the military had appointed the first Vice-President Myint Swe, a former general as the acting President via the military-owned Myawady TV. (In Myanmar, there are two Vice Presidents known as the first and second Vice Presidents. The candidate with the second highest votes next to the President became the first Vice President). The sovereign power was then handed over to Commander-in-Chief Min Aung Hlaing (Asian News International, 1<sup>st</sup> February, 2021).

Third, the appointment of the first Vice President as the acting President is unconstitutional. The Constitution allowed the President to resign voluntarily before the expiry of the term of office (Constitution of the Republic of Myanmar, 2008). However, the President neither resigned nor left his office willingly, in fact he was detained wrongfully by the military. The President can be removed from his office only through impeachment proceedings laid down by the Constitution

under Section 71 (a) to (g)(Constitution of the Republic of Myanmar, 2008). There was no impeachment proceeding to be heard against the President but rather he was illegally replaced by the first Vice President.

In addition, Section 73(a) of the Constitution provides that the first Vice President is allowed to serve as the Acting President only if the office of the President falls vacant due to his resignation, death, permanent disability or any other cause (Constitution of the Republic of Myanmar, 2008). The term 'any other cause' is questionable as it could mean anything. According to Choudhry and Welikala, the interpretation of 'any other cause' should exclude the illegal removal of the President (Choudhry & Welikala, 2021). Furthermore, Section 215 of the Constitution mandates that the President is not answerable to either any Hluttaw or any Court for the exercise of the powers and functions of his office or for any act done or purported to be done by him in the exercise of these powers and functions in accord with the Constitution or any law (Constitution of the Republic of Myanmar, 2008).

It is apparent that the military had illegally seized power from the democratically elected civilian government by staging a military coup. The Constitutional Emergency as the military had claimed is unconstitutional and unjustifiable. The Constitution does not guarantee the appointment of the first Vice President as the Acting President unless the office of the President falls vacant due to the reasons listed in Section 73(a) of the Constitution.

The appointment of the Acting President took place on the same day the

President-elect was arrested and detained by the military. It seems that the coup was planned and unfolded on the day of the first session of the *Pyidaungsu Hluttaw* which insinuates the beginning of a new government. M. Crouch argued that the coup was undertaken at a calculated moment in the political history of Myanmar as it suggests the seats of the military are still valid (Crouch, 2021).

### Observation

The military action on the 1<sup>st</sup> of February 2021 was indeed a military coup that illegally seized power from the democratically elected members. The authority of the military was never challenged in the past regime. However, the 2021 coup is quite intriguing because it is challenged by the NUG. The NUG has regarded itself as the sole legitimate government of Myanmar and has been operating as a shadow government. The NUG had even asked the ASEAN and the US administration to grant them recognition as the legitimate government of Myanmar. In short, at least two governments are functioning in Myanmar—the SAC headed by Min Aung Hlaing and the NUG—and will continue until a new government is formed through democratic elections or negotiation by all the warring parties or organizations.

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