

# Myanmar in Crisis: Human Rights Situation, February 2021

## OHCHR Myanmar Team

*11 February 2021*

### Introduction

1. In a dramatic reversal of Myanmar's fragile democratic transition, military Commander-in-Chief Min Aung Hlaing removed the civilian Government on 1 February, detaining the country's political leadership and hundreds of parliamentarians in the capital where they had gathered for the opening of a new Parliament, and vesting all legislative, judicial and executive powers of the State in himself.<sup>1</sup> In justifying his action,<sup>2</sup> the Commander-in-Chief alleged electoral fraud in the November 2020 elections.

2. The state of emergency that was declared on 1 February appears to violate constitutional provisions.<sup>3</sup> According to Article 417 of the military-drafted 2008 Constitution – which the Commander-in-Chief has claimed to be the basis of his actions – the President may only declare a national emergency *following* consultation with the National Defence and Security Council (NDSC). The apparent chronology on 1 February indicate that not only was President Win Myint forcibly and illegitimately removed from office, but the subsequent meeting of the NDSC did not include all of its constitutionally designated members.<sup>4</sup>

3. Developments since 1 February in Myanmar have had and will continue to have significant human rights implications. The Myanmar Team of the Office of the High Commissioner for Human Rights (OHCHR) has been monitoring such developments in three main areas: rule of law, due process and deprivation of liberty, and the rights to freedom of expression, access to information and peaceful assembly. OHCHR has also been tracking the potential long-term impacts of this political crisis on the people of Myanmar, especially the most vulnerable in society.

### Rule of Law and Institutions

4. Myanmar's rule of law institutions have suffered a serious blow as a result of the coup. Upon seizing power, the Commander-in-Chief attempted a number of steps at legally justifying the military's actions. This included invoking constitutional provisions to declare a state of emergency based on accusations that the incumbent government acted "to take over the

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<sup>1</sup> Office of the President, Order Number (1/2021), 1 February 2021

<sup>2</sup> Office of the Commander-in-Chief of Defence Services, Announcement to public, 2 February 2021

<sup>3</sup> See: *ibid.*

<sup>4</sup> Global New Light of Myanmar, 2 February 2021

sovereignty of the Union by wrongful forcible means” resulting in “disintegration of the Union” or “disintegration of national solidarity”.<sup>5</sup> Ostensibly, these grave charges were the basis upon which both President Win Myint and State Counsellor Aung San Suu Kyi were detained. Two days later, however, both the President and State Counsellor were given comparably frivolous, minor charges under the 2013 National Disaster Management Law and the 2012 Export and Import Law respectively – the State Counsellor was found to be in possession of walkie-talkies which had reportedly been imported illegally; whereas the President was alleged to have greeted election campaigners in violation of COVID-19 restrictions. Such charges appear to be politically-motivated and accordingly arbitrary.

5. The Commander-in-Chief established a State Administration Council (SAC)<sup>6</sup> led by the top five generals of the military chain of command – reminiscent of the former military dictatorship’s State Peace and Development Council – to date to oversee Government appointments. At the sub-national levels, the SAC outlined the composition for State/Region and Self-Administered Division/Zone administration bodies as comprising:<sup>7</sup> Administration Council/Committee chairman; one military (or Tatmadaw) officer; one local representative; one Immigration and Population Department official; one Police Force official; and one administrator – highlighting the security imperatives with which the military intends to govern. Similar structures are being replicated at the district and township levels supplanting democratic mechanisms that have previously managed local administration.<sup>8</sup>

6. Following its installation, the SAC has methodically and swiftly dismissed sitting judges and announced new appointees to the Supreme Court of the Union and to State and Region High Courts. It also appointed new members to the Constitutional Tribunal. These measures, naturally, undermined judicial independence.

7. Significantly, the SAC reconstituted the Union Election Commission (UEC),<sup>9</sup> which in turn has revoked the letters of accreditation issued to parliamentarians who won seats in the November 2020 general elections.<sup>10</sup> This in effect nullifies the results of the elections last year, which national and international election observers concluded to be generally credible and reflective of the will of the majority of voters.<sup>11</sup> In response, almost 300 elected NLD Members of Parliament formed a Committee Representing the Pyidaungsu Hluttaw (also known as the Union Parliament), and called for the Committee to be recognized as the democratically elected representatives of the people and as the legitimate leaders of Myanmar.

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<sup>5</sup> Office of the Commander-in-Chief of Defence Services, Announcement to public, 2 February 2021, para. 7

<sup>6</sup> Office of the Commander-in-Chief of Defence Services, Order No. (9/2021), 2 February 2021

<sup>7</sup> State Administration Council, Order No. (16/2021), 3 February 2021; and State Administration Council, Order No. (17/2021), 3 February 2021.

<sup>8</sup> State Administration Council, Order No. (18/2021), 3 February 2021; and State Administration Council, Order No. (19/2021), 3 February 2021.

<sup>9</sup> State Administration Council, Order No. (7/2021), 2 February 2021

<sup>10</sup> Union Election Commission, Announcement of the Union Election Commission, 5 February 2021

<sup>11</sup> See, for example: People’s Alliance for Credible Elections, 2020 General Elections Observation Preliminary Findings, 9 November 2020; and The Carter Center, Election Observation Mission Preliminary Statement, 10 November 2020. See also: Joint Statement by Domestic Election Observer Organizations, 29 January 2021, available at <https://www.pacemyanmar.org/mmobserver-statement-eng/> (Accessed 9 February 2021)

## **Arbitrary Arrests and Detentions**

8. As of 11 February, over 300 government officials, political operatives, activists, and members of civil society, including journalists, monks and students have been arrested and detained in relation to the coup. Most of these individuals detained on 1 February were affiliated with the National League for Democracy (NLD) government; those detained in the days since increasingly include those involved in the civil disobedience movement. Gathering information has been difficult since the beginning of the coup and it is likely that the number of people detained since 1 February is greater than is presently known. With the number of arrests and detentions increasing all the time, tracking the numbers, circumstances under which arrests are occurring and confirming the conditions of detention has become extremely challenging. During the evening of 10 February alone, dozens of politicians, political activists and former UEC officials were arrested and detained.

9. President Win Myint and State Counsellor Aung San Suu Kyi are reportedly being held under house arrest. At least one foreigner, Australian academic and economic advisor to the State Counsellor, Sean Turnell, has also been detained at his hotel. A large majority of others detained are being held incommunicado in undisclosed locations, with no access to their families or to legal representation. It is unclear whether these individuals held *incommunicado* have been afforded any degree of humanitarian access or due process, including being charged with a crime or being brought before a judicial body of any sort. In almost all cases, there has not even been official acknowledgement that the individual has been detained. If not clarified immediately, these unaccounted-for cases may constitute enforced disappearances.

## **Rights to Freedom of Expression and Peaceful Assembly**

10. Military appointed authorities have taken numerous measures to restrict the public's rights to freedom of expression and peaceful assembly since 1 February. While not absolute, these rights can only be restricted when provided by and in conformity with the law, when the restrictions are to achieve a legitimate aim and when the restrictions are proportionate to achieve those aims. Authorities' primary focus in protest situations should always be on not interfering with peaceful assemblies and facilitating the same, and protecting those demonstrating from harm without discrimination.

11. Rights to freedom of expression, including access to information and of peaceful assembly have been infringed repeatedly by the military-led authorities. These violations have included attempts by the military-led authorities to curtail internet and mobile data services and the functionality of social media applications. In the hours immediately following the coup, a nationwide telecommunications shutdown (on voice, SMS and mobile Internet services) was imposed; while on 3 February, the Ministry of Transport and Communication ordered a three-day suspension to Facebook access – a suspension that has since been extended beyond the stated end date and which remains in effect. Thereafter, it further ordered an indefinite suspension to Twitter and Instagram. A nationwide Internet shutdown was imposed for most of 6-7 February, resulting in a near absolute shuttering of civic space. Internet services resumed unexpectedly in the afternoon of 7 February. Such measures violate international human rights standards as they appear to have no legal justification and their blanket application indicates they are not proportionate to achieve a legitimate purpose. Similar concerns have persisted with the proposal by the authorities

of a new draft Cyber Security Law which would introduce sweeping powers of censorship, including the ability to shut down websites, online services, and penalties of up to three years imprisonment for violating the law.

12. Despite this situation, a coordinated civil disobedience campaign took off on 2 February, with a general clamour of pot-banging and horns lasting longer each evening than the previous. This robust show of dissent morphed rapidly into a broader civil disobedience movement led by doctors and nurses, with Myanmar celebrities, civil servants, university lecturers, lawyers, religious leaders, and others participating in the campaign, many of them young people and women. Trade unions and organized labour organizations also played a key part in calling upon their membership to abandon their workplaces to stand against the military's seizure of power. Myanmar diaspora overseas, including Rohingya in Cox's Bazar, also joined the protests. At the same time, general strikes were called, which resulted in growing protests, estimated to involve hundreds of thousands, in dozens of locations across the country by the week's end. In some cities, individual or small groups of police joined demonstrators.

13. Following a live telecast of the Commander-in-Chief addressing the nation on 8 February, demonstrations during a national strike swelled the following day. Along with that live telecast, State-run Myanmar Radio and Television issued a warning to anti-coup protesters, announcing that "action would be taken in accordance with the law if there are violations of state stability and peace, safety of people, and the rule of law".<sup>12</sup> At the same time, the military issued "section 144 orders",<sup>13</sup> prohibiting "unlawful assembly, talks, using vehicles or in persons in marching around, protests, destroying and violent acts", limiting public assemblies to less than five persons, and imposing a curfew from 8pm to 4am in townships across Nay Pyi Taw Council Territory, Yangon, Mandalay, Magway, Sagaing, Tanintharyi and Ayeyarwaddy regions, as well as Kachin, Kayah, Kayin, Mon and Shan states.<sup>14</sup>

14. While there were no major incidents at the mass gatherings that took place over the weekend of 6 and 7 February, a noticeable increase in the use of force was observed on 8 and again on 9 February when police used water cannons in the capital, Nay Pyi Taw, resulting in injuries to peaceful demonstrators.

15. On 9 February, water cannons were again used – this time in Nay Pyi Taw, Bago and Mandalay. Reportedly, lethal ammunition was used for the first time in Nay Pyi Taw, resulting in the brain death of a young protester. In videos and photographs seen by OHCHR, 20-year-old Mya Thwe Thwe Khine is seen trying to avoid a water cannon's stream and is being pulled away by another lady as she is shot in the head from the back. Five others were also injured in Nay Pyi Taw by lethal ammunition and rubber bullets.

16. On the same day in Mandalay, 40 demonstrators were arrested and detained, and State television announced that four police officers were injured after some protesters threw stones at police. Other than some exceptions involving a small number of demonstrators in an otherwise peaceful crowd, the demonstrations that have been ongoing for days across dozens of cities have been peaceful.

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<sup>12</sup> See: <https://www.facebook.com/523763414336156/posts/3858998297479301/?sfnsn=mo>

<sup>13</sup> This is in reference to section 144 of the Criminal Procedure Code.

<sup>14</sup> Global New Light of Myanmar, 10 February 2021

## **Socio-Economic Impacts and Discrimination**

17. Myanmar has high levels of poverty, in both rural and urban environments, where access to basic economic and social services are limited. In the last decade of the democratic transition, there was progress on sustainable development to lift people out of poverty, including improvements to health, education, and livelihoods – sectors that had been decimated by previous military regimes. There is significant risk that these gains will be reversed and that life for ordinary people in Myanmar will become increasingly difficult. Myanmar’s economy had already been suffering badly as a consequence of the COVID-19 pandemic, and possible further declines in foreign investment as a result of the coup would worsen the economic outlook.

18. Discrimination against ethnic and religious minorities, which has long been a feature of military actions and policy, as well as denial of their right to self-determination, could be further exacerbated. Further, OHCHR has received information about new Tatmadaw deployments to Kachin, Shan and Kayin which will likely result in renewed conflicts in those areas taking place. Although the military has affirmed previous commitments to facilitate the return of Rohingya refugees, and to comply with provisional measures ordered by the International Court of Justice, the impact of the new regime’s policies on the situation in Rakhine State will need to be closely monitored.

19. If the present political crisis is protracted, it could foreseeably have far-reaching impacts on the economy of the country. Instability and a heavy-handed military response would not only be likely to deter international investment and development funding from donors, but may also lead to the reintroduction of crippling sanctions regimes. Civil disobedience and large-scale protests, work stoppages and general strikes, while legitimate, could result in unintended consequences on the health of economic growth and recovery from COVID-19.

20. During a pandemic, international efforts to ensure that the campaign to treat COVID-19 and vaccinate the public may need additional resources and priority. Health services could be impacted due to the large-scale public gatherings and due to work-stoppages. Emergency humanitarian assistance might be required to assist individuals most vulnerable to the impacts of COVID-19 including those with pre-existing conditions, the elderly, displaced persons, minority communities, especially those in areas most-impacted by the unintended consequences of the civil disobedience campaign.

21. International condemnation of the military seizure of power has seen some States considering the reintroduction of economic sanctions. On 10 February, the United States of America announced the introduction of sanctions targeting the coup leadership, their business interests and families. In years past, sanctions regimes have been imposed by several States and have had major impacts on the economic growth and stability of the Myanmar economy. In 2018-19, the Independent International Fact-Finding Mission on Myanmar strongly recommended that any punitive measures imposed on the country target the economic interests of the Tatmadaw leadership responsible for past international crimes committed in the country and avoid impacts on the broader population.