

## Why the 1 February 2021 Military Coup in Myanmar was Unlawful under the Constitution

Derek Tonkin: 18 May 2026

In an article remarkably published only 48 hours after the 1 February 2021 coup, Melissa Couch observed in:

<https://eastasiaforum.org/2021/02/03/myanmar-coup-on-the-pretext-of-a-constitutional-fig-leaf/>

“The President was the only person empowered to declare a state of emergency in coordination with the NDSC [National Defence and Security Council]. The Vice-President, ex-general Myint Swe, became the acting President, although there is no evidence that the President willingly left office. The Constitution does not allow the military-backed vice-president to replace the president at whim. Clear reasons are required such as incapacity or death.,

“A meeting of the NDSC was also improbable. The Constitution mandates that its members include civilian office holders like the president, minister of foreign affairs and speakers of the two houses of parliament. It appears that the military has reconstituted the Council with only its military members left, using unconstitutional means to declare a constitutional emergency.

“This renders any attempt by the Commander-in-Chief to exercise power implausible, though it hasn’t stopped him. Already the military has appointed a new president and announced the posts of a range of key offices, from the courts to the anti-corruption commission. The effect of these public statements is mostly smoke and mirrors - appointing a National Human Rights Commission and a Peace Talks Commission in the wake of the coup is not reassuring to anyone.”

On 13 October 2021 Reuters and the Associated Press both reported how it had emerged during his trial that President Win Myint had been pressurized to resign from his position as President on the grounds of ill health, but had declined to do so as this was not the case.

See:

<https://www.asahi.com/ajw/articles/14459918>

and

<https://edition.cnn.com/2021/10/12/asia/myanmar-win-myint-coup-intl-hnk>

In order to maintain a fiction of legality, it accordingly became essential for Min Aung Hlaing to declare a State of Emergency under Article 410 of the Constitution:

[https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs09/Myanmar\\_Constitution-2008%28en%26bu%29-red.pdf](https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs09/Myanmar_Constitution-2008%28en%26bu%29-red.pdf)

To achieve this, the President was required under Article 410 to consult the National Defence and Security Council (NDSC) in order to declare a State of Emergency and for power to be transferred to the military. To carry out the coup, Min Aung Hlaing accordingly had to secure a compliant President willing to call a meeting of the NDSC, which Win Myint was not prepared to do as the situation in his opinion did not warrant this. With Win Myint's unlawful detention, the First Vice President Myint Swe, the military nominee to the Presidency in 2016, became Acting President supposedly under Article 73 of the Constitution and had no hesitation in summoning a meeting of the NDSC.

While Aung San Suu Kyi as Foreign Minister enjoyed no special protection under the Constitution, if President Win Myint declined to resign, then he could only lawfully be removed through the impeachment process set out in Article 71 of the Constitution, which is time-consuming and complex. Here are the provisions of Article 71, which make it abundantly clear that the process of impeachment would take not hours or days, but weeks if not months of investigation involving considerable parliamentary time:

*71. (a) The President or any Vice-President may be impeached for one of the following reasons:*

- (i) high treason;*
- (ii) breach of the provisions of this Constitution;*
- (iii) misconduct;*
- (iv) being disqualified for the President or Vice-President under provisions as prescribed in this Constitution;*
- (v) inefficient discharge of duties assigned by law.*

*(b) If it be required to impeach the President or any Vice-President, a charge signed by not less than one-fourth of the total number of representatives of either Hluttaw included in the Pyidaungsu Hluttaw shall be submitted to the Head of the Hluttaw concerned.*

*(c) Action shall proceed only when this charge is supported by not less than two-thirds of the total number of representatives of the Hluttaw concerned.*

*(d) If one Hluttaw supports the taking of action, the other Hluttaw shall form a Body to investigate this charge.*

*(e) The President or the Vice-President shall have the right to refuse the charge himself in person or through a representative when it is investigated.*

*(f) If, after the investigation, not less than two-thirds of the total number of representatives of the Hluttaw which investigated the charge or caused the investigation to be initiated passed the resolution that the charge has been*

*substantiated and renders the President or the Vice-President unfit to continue in office, the Hluttaw concerned shall submit to the Head of the Pyidaungsu Hluttaw such resolution to remove the impeached President or the impeached Vice-President from office.*

*(g) The Head of the Pyidaungsu Hluttaw shall declare the removal of the President or the Vice-President immediately after the receipt of the submission.*

Min Aung Hlaing was clearly not willing to delay his coup while the detailed process of impeachment was carried through. In any case there was very little likelihood of securing Win Myint's impeachment as this would require a two-thirds majority in either Hluttaw where the impeachment process could be introduced and where the National League for Democracy held 68.04% of the seats in the Lower House and 68.31% of the seats in the Upper House, these figures including the 25% of the seats held by military appointees in both Houses.

The coup thus lacked constitutional justification because of the initial unlawful act of detaining and removing the President from office without any attempt to implement the due process set out in the Constitution.

It follows from this that not only the coup itself, but all subsequent acts of the military regime as well, including the recent "elections", are null and void.

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