

2022

## Victims of Violence: The Cyclical Military Takeover of the Myanmar Government

Kajal Patel

Follow this and additional works at: <https://lawcommons.luc.edu/lucilr>



Part of the [International Law Commons](#)

---

### Recommended Citation

Kajal Patel *Victims of Violence: The Cyclical Military Takeover of the Myanmar Government*, 19 Loy. U. Chi. Int'l L. Rev. 109 ().

Available at: <https://lawcommons.luc.edu/lucilr/vol19/iss1/6>

This Student Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago International Law Review by an authorized editor of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

# VICTIMS OF VIOLENCE: THE CYCLICAL MILITARY TAKEOVER OF THE MYANMAR GOVERNMENT

Kajal Patel\*

## ABSTRACT

Myanmar has a long history of military coup d'état. In February of 2021, the Myanmar military took over the government. The military's existing presence in everyday government and Myanmar's 2008 Constitution provides the military the ability to do so. Since the government takeover, violence against citizens has escalated and is legally justified. Additionally, Myanmar has a long history of violence against Rohingya Muslims. Therefore, the recent takeover made this ethnic minority group more susceptible to being ongoing victims of violence. This comment argues that China could end the 2021 military takeover and has incentive to do so. Furthermore, this comment notes that a constitutional amendment is required to remove the military's stronghold on the government and to make reparations to the Rohingya Muslims.

## Table of Contents

I. Introduction.....	109
II. Background.....	111
III. Discussion.....	117
IV. Analysis.....	120
V. Proposal.....	124
VI. Conclusion.....	126

## I. Introduction

The government of Myanmar has a cyclical tendency to rotate between military rule and makeshift democracy. The military coup d'état in 1962 created a strong military presence in Myanmar's everyday government.<sup>1</sup> Since then, military coups have prevented Myanmar from becoming a true democracy. While the 2008 Constitution gave Myanmar's citizens hope of democratic government, the Constitution simply became a means for the military to retain its power in the government.<sup>2</sup> On February 1, 2021, the military conducted a coup and assumed

---

\* Kajal Patel is a third-year JD student at Loyola University Chicago School of Law.

<sup>1</sup> Amy Gunia, *How Myanmar's Fragile Push for Democracy Collapsed in a Military Coup*, TIME.COM (Feb. 1, 2021, 6:13 AM), <https://time.com/5934896/myanmar-aung-san-su-kyi-detained-coup/>.

<sup>2</sup> Maryam S. Khan, *The Constitution of Myanmar: A Contextual Analysis*, 54 L. & SOC'Y REV. 527, 528 (2020) (reviewing MELISSA CROUCH, *THE CONSTITUTION OF MYANMAR: A CONTEXTUAL ANALYSIS* (2019)); Tarun Timalisina, *Democratic Backsliding: The Coup in Myanmar*, HARV. POL. REV. (July 2, 2021), <https://harvardpolitics.com/democratic-backsliding/>.

## The Cyclical Military Takeover of the Myanmar Government

control of the country following the opposition party, National League for Democracy (“NLD”)’s landslide victory in the 2020 election.<sup>3</sup>

Myanmar also has a history of violence towards minority ethnic groups. Specifically, Myanmar has subjected the Rohingya, a Muslim ethnic minority group, to violent atrocities since the country’s independence.<sup>4</sup> As background, the Rohingya account for about one-third of the population.<sup>5</sup> The government has denied Rohingya citizenship, subjected them to discriminatory policies, and considered them outsiders.<sup>6</sup> In 2017, the escalated violence, including rape, murder, and arson, towards Rohingya Muslims further displaced the population, forcing many to flee.<sup>7</sup> Many Rohingya sought refuge in Bangladesh, as well as Indonesia, Malaysia, and Thailand.<sup>8</sup> Especially now after the 2021 military coup, there seems to be no hope for safe return to Myanmar.<sup>9</sup>

The 2008 Constitution is the source of the military’s power and stronghold over the government.<sup>10</sup> To ensure the safety of and give Rohingya their rights, the military must give up their power to elected officials through a constitutional amendment. This comment begins by focusing on Myanmar’s history. More specifically, it explores how Myanmar’s government has operated since gaining independence from British colonial rule and how the military gained its influential power in the civil operations of the government. The history section looks into the history of Rohingya, focusing on the atrocities at the hands of the military. This comment then analyzes Myanmar’s 2008 Constitution, through which the military has retained significant power and is able to recoup the government time and time again. Afterwards, it discusses the February 2021 military coup and the changes made in laws which impact human rights of each Myanmar citizen. This comment then proposes that pressure and sanctions imposed by China will likely compel the Myanmar military to end the coup and give back the government to its elected officials.

---

<sup>3</sup> Rebecca Ratcliffe, *Myanmar Army Takes Power in Coup as Aung San Suu Kyi Detained*, THE GUARDIAN (Feb. 1, 2021, 5:07 AM), <https://www.theguardian.com/world/2021/feb/01/aung-san-suu-kyi-and-other-figures-detained-in-myanmar-raids-says-ruling-party>.

<sup>4</sup> Engy Abdelkader, *The History of the Persecution of Myanmar’s Rohingya*, CONVERSATION (Sept. 20, 2017, 8:15 PM), <https://theconversation.com/the-history-of-the-persecution-of-myanmars-rohingya-84040>.

<sup>5</sup> Eleanor Albert & Lindsay Maizland, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELS. (Jan. 23, 2020, 7:00 AM), <https://www.cfr.org/backgrounder/rohingya-crisis>.

<sup>6</sup> Abdelkader, *supra* note 4.

<sup>7</sup> *Myanmar Rohingya: What You Need to Know about the Crisis*, BBC NEWS (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-41566561>; *Instability in Myanmar*, COUNCIL ON FOREIGN RELS. (May 12, 2022), <https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar>.

<sup>8</sup> Patrick Greenwalt, *Factsheet Rohingya Refugees*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM (Oct. 2020), <https://www.justice.gov/coir/page/file/1327591/download>.

<sup>9</sup> *Instability in Myanmar*, *supra* note 7.

<sup>10</sup> *See generally* CONST. OF THE REPUBLIC OF THE UNION OF MYAN. (2008).

## II. Background

Myanmar has suffered from repressive military rule since it gained independence from British colonial rule in 1948.<sup>11</sup> Originally known as the Union of Burma, the newly independent Myanmar began as a parliamentary democracy.<sup>12</sup> However, the short-lived democracy ended in 1962, when General U Ne Win, Chief of Staff of the Burma Defense Forces, led a military coup and took control of the government.<sup>13</sup> Under General Win's rule, the nation lived under martial law as the military solidified its control over all parts of the government.<sup>14</sup> Moving to year 1974, General Win instituted a new Constitution based on isolationist policy and a socialist economic program that aimed to nationalize Burma's major enterprises.<sup>15</sup> The rapidly deteriorating economic situation resulted in a black-market economy.<sup>16</sup> By 1988, Myanmar was filled with widespread corruption, shifts in economic policy, and food shortages, which resulted in a huge student-led protest.<sup>17</sup> The military responded to the protest by killing at least three thousand protestors and displacing thousands more.<sup>18</sup> Although General Win resigned after the massacre, he continued to remain active as another military junta took power.<sup>19</sup> In 1989, the new military junta renamed the country "the Union of Myanmar" and Yangon became the new capital.<sup>20</sup> The Junta explained that "Myanmar" was more inclusive in comparison to "Burma," which represented the colonial era that favored the Burman ethnic majority.<sup>21</sup> In 1991, the military junta refused to transfer power to the NLD, who were favored in the national election.<sup>22</sup>

In 2008, as a result of international pressure and motivated by the desire to build foreign relations following the Saffron Revolution, the ruling military junta drafted a new Constitution.<sup>23</sup> Under the Constitution, the military retained wide-

---

<sup>11</sup> Lindsay Maizland, *Myanmar's Troubled History: Coups, Military Rule, and Ethnic Conflict*, COUNCIL ON FOREIGN RELS. (Jan. 31, 2022, 11:00 AM), <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>.

<sup>12</sup> *Id.*

<sup>13</sup> *1962 Military Coup in Burma*, GLOB. SEC., <https://www.globalsecurity.org/military/world/war/myanmar1.htm> (last updated June 30, 2021); see also Emily Ray & Tyler Giannini, *Beyond the Coup in Myanmar: Echoes of the Past, Crises of the Moment, Visions of the Future*, JUST SEC. (Apr. 26, 2021), <https://www.justsecurity.org/75826/beyond-the-coup-in-myanmar-echoes-of-the-past-crises-of-the-moment-visions-of-the-future/>.

<sup>14</sup> Ray & Giannini, *supra* note 13.

<sup>15</sup> Maizland, *supra* note 11.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; Ray & Giannini, *supra* note 13.

<sup>18</sup> Maizland, *supra* note 11; Ray & Giannini, *supra* note 13.

<sup>19</sup> Maizland, *supra* note 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Audrey Tan, *Myanmar's Transitional Justice: Addressing a Country's Past in a Time of Change*, 85 S. CAL. L. REV. 1643, 1646 (2012).

<sup>23</sup> Maizland, *supra* note 11.

## The Cyclical Military Takeover of the Myanmar Government

spread powers even under civilian rule.<sup>24</sup> For instance, the Constitution contained provisions such as a requirement that 25 percent of members of the parliament in both chambers must be army officers appointed by the military Commander-in-Chief.<sup>25</sup> Additionally, the Constitution gave the Commander-in-Chief a decisive say in the appointment of the President, Vice-Presidents, and certain key cabinet positions, such as Home Affairs, Border Affairs and Defense.<sup>26</sup> Therefore, those positions are usually filled by active military personnel.<sup>27</sup> Because of this provision, the military's proxy party, the Union Solidarity and Development Party ("USDP") maintained seats in the powerful Defense, Home Affairs, and Border Affairs Ministries.<sup>28</sup>

The Constitution also stipulated that during a state of emergency, which is declared by the President, the legislative, executive, and judicial powers of the Union are transferred to the Commander-in-Chief of the Defense Services.<sup>29</sup> Furthermore, through Article 445 of the Constitution, members of the former military government were given immunity for any act committed in the execution of duty.<sup>30</sup> In the adjudication of military justice, the Commander-in-Chief's decision is final and conclusive.<sup>31</sup> Also important to note, amendments of key provisions of the Constitution require the support of over 75 percent of parliament.<sup>32</sup> This means that without the support of the military members in parliament, changes to the Constitution are impossible.

Throughout the recent decades of its so-called independence, Myanmar has struggled with military rule and an internal civil war.<sup>33</sup> The 2010 election, won by the USDP, was backed by the military Tatmadaw, and dominated by ex-military personnel.<sup>34</sup> For a brief period afterwards, in 2011, the military junta dissolved, and a civilian parliament was established for a transitional period.<sup>35</sup> Under appointed President Thein Sein, a former general and prime minister and member of the USDP, a series of reforms took place, including granting amnesty to political prisoners, relaxing media censorship, and implementing economic policies to encourage foreign investment.<sup>36</sup> In 2015, Myanmar held its first na-

---

<sup>24</sup> Maizland, *supra* note 11.

<sup>25</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. IV, art. 109 (2008).

<sup>26</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. I, art. 6, 60, 61 (2008).

<sup>27</sup> *Id.*; Maizland, *supra* note 11.

<sup>28</sup> Maizland, *supra* note 11.

<sup>29</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. XI, art. 418(a) (2008).

<sup>30</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. XVI, art. 445 (2008).

<sup>31</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. VII, art. 343 (2008).

<sup>32</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. XII, art. 436(a) (2008).

<sup>33</sup> Felix Heiduk, *Civil War in Myanmar: A Further Escalation of Violence Looms on the Horizon*, STIFTUNG WISSENSCHAFT UND POLITIK (May 2021), [https://www.swp-berlin.org/publications/products/comments/2021C35\\_Myanmar.pdf](https://www.swp-berlin.org/publications/products/comments/2021C35_Myanmar.pdf).

<sup>34</sup> Lee Jones, *Explaining Myanmar's Regime Transition; The Periphery is Central*, 21 DEMOCRATIZATION 780, 781 n. 5 (2014).

<sup>35</sup> Maizland, *supra* note 11.

<sup>36</sup> *Id.*; Jones, *supra* note 34.

## The Cyclical Military Takeover of the Myanmar Government

tionwide multiparty election.<sup>37</sup> The NLD party won the election, securing a majority in the upper and lower houses of parliament.<sup>38</sup> This gave hope to many citizens that a new transition in government would take place.<sup>39</sup> Many believed this to be the turning point that would lead the country away from a military rule to a democracy.<sup>40</sup> However, the military army force Tatmadaw continued to have dominance within the government as a result of the provisions requiring appointments in the parliament made by the military Commander-in-Chief.<sup>41</sup> Through the Constitution, the military retained the ability to take over the country during a state emergency, and were enabled to set up a National Defense and Security Council under Article 201 during a crisis with military representatives.<sup>42</sup>

In 2005, the NLD, led by Aung San Suu Kyi, won majorities in both chambers of the parliament.<sup>43</sup> The NLD is a Burmese political party founded in 1988, formed in the aftermath of a series of protests in favor of democracy.<sup>44</sup> The party won a substantial parliamentary majority in the 1990 Burmese general election, which the ruling military junta refused to recognize.<sup>45</sup> In 2011, the party won a landslide victory in Burma's Union Election.<sup>46</sup> According to the Council of Asian Liberals and Democrats, the party advocates a non-violent movement towards multi-party democracy, and supports human rights, the rule of law, and national reconciliation.<sup>47</sup> In 2015, Myanmar witnessed its first substantial free and peaceful election.<sup>48</sup> Despite the talk about ethnic peace and unity in the country, Suu Kyi adopted a pragmatic approach and did not choose a Muslim or Rohingya candidate for the NLD party.<sup>49</sup> In fact, the political and military discrimination against the Rohingya continued to be deeply entrenched in Myanmar.<sup>50</sup> Even after Suu Kyi won the election, she remained silent as hundreds of Rohingya were forced to flee due to military crackdown in October of 2016.<sup>51</sup>

On August 25th, 2017, the Arakan Rohingya Salvation Army ("ARSA"), a Rohingya militant group, attacked thirty police posts and an army base on the

---

<sup>37</sup> Maizland, *supra* note 11.

<sup>38</sup> *Id.*

<sup>39</sup> Hanna Ingber, *Before Elections in Myanmar, Citizens Express Desire for Change*, N.Y. TIMES (Nov. 7, 2015), <https://www.nytimes.com/2015/11/08/world/asia/myanmar-elections.html>.

<sup>40</sup> Maizland, *supra* note 11.

<sup>41</sup> *Id.*

<sup>42</sup> Amit Rajan & Kaveri, *Myanmar Polls: Here's Why the Rohingya Have No Reason to Celebrate Suu Kyi's Victory*, THE WIRE (Nov. 19, 2020), <https://thewire.in/south-asia/myanmar-election-aung-san-rohingyas-military>.

<sup>43</sup> Maizland, *supra* note 11.

<sup>44</sup> *National League of Democracy*, COUNCIL ASIAN LIBERALS & DEMOCRATS, <http://cald.org/members/observer-parties/national-league-for-democracy/> (last visited Dec. 2, 2022).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Rajan & Kaveri, *supra* note 42.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

## The Cyclical Military Takeover of the Myanmar Government

northern side of the Rakhine state.<sup>52</sup> Soon after, soldiers responded by burning the home of around three thousand Rohingya, gang raping women and girls, and displacing approximately thirty thousand ethnic Rakhine Buddhists and Hindus.<sup>53</sup> The military indiscriminately killed civilians.<sup>54</sup> Since August of 2017, more than 656,000 Rohingya have fled Myanmar into Bangladesh.<sup>55</sup> In the aftermath of this ethnic cleansing and genocide, Suu Kyi sided with the military, and ARSA was declared a terrorist organization.<sup>56</sup> The ARSA attack was used to justify the military's violent behavior toward the Rohingya.<sup>57</sup> As such, Suu Kyi, acting as State Councilor, rejected the claim that ethnic cleansing of the Rohingya occurred and supported the military against the human right violations alleged in the International Court of Justice in December of 2019.<sup>58</sup>

In the recent 2020 election, the NLD conveyed three main election agendas in its thirty-four-page election manifesto.<sup>59</sup> The first two agendas addressed the ethnic concerns, and the goal was to achieve internal peace and a constitution that ensured a genuine democratic federal union.<sup>60</sup> While Suu Kyi proposed amendments to limit the role of the military through a Constitutional amendment, this proved to be unsuccessful.<sup>61</sup>

As mentioned, the Constitution is the key which maintains the military state in Myanmar.<sup>62</sup> Through the Constitution, Myanmar's armed forces organized the "military's role in governance, embedded the ideology of the military state in the national discourse, and consolidated the centralized political structure of the state."<sup>63</sup> In 2008, the country transitioned to a limited form of a democracy, the NLD, led by Aung San Suu Kyi, who filled the majority of the seats. Despite this transition to democracy, no national measures to address the massive human rights abuses were taken.<sup>64</sup> There were no criminal prosecutions, no reparations to the victims, nor acceptance that a human rights violation occurred.<sup>65</sup>

---

<sup>52</sup> Rajan & Kaveri, *supra* note 42.

<sup>53</sup> *Id.*

<sup>54</sup> Jeffrey Hallock, *Surge in Violence against Myanmar's Rohingya Spurs World's Fastest-Growing Refugee Crisis*, MIGRATION POL'Y INST. (Dec. 19, 2017), <https://www.migrationpolicy.org/article/top-10-2017-issue-2-surge-violence-against-myanmars-rohingya-spurs-worlds-fastest-growing-refugee-crisis>.

<sup>55</sup> Rajan & Kaveri, *supra* note 42.

<sup>56</sup> *Id.*

<sup>57</sup> Hallock, *supra* note 54.

<sup>58</sup> Indu Saxena, *Myanmar's Military Coup: Security Trouble in Southeast Asia*, AIR UNIV. J. INDO-PAC. AFF. (Aug. 26, 2021), <https://www.airuniversity.af.edu/JIPA/Display/Article/2747554/myanmars-military-coup-security-trouble-in-southeast-asia/>.

<sup>59</sup> Rajan & Kaveri, *supra* note 42.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> MELISSA CROUCH, *THE CONSTITUTION OF MYANMAR: A CONTEXTUAL ANALYSIS 3* (Oxford Hart Publishing 2019).

<sup>63</sup> Khan, *supra* note 2.

<sup>64</sup> Catherine Renshaw, *Myanmar's Genocide and the Legacy of Forgetting*, 48 GA. J. INT'L. & COMP. L. 425, 432-33 (2020).

<sup>65</sup> *Id.* at 433.

## The Cyclical Military Takeover of the Myanmar Government

However, this could be a politically influenced decision for not acting in favor of human rights. That is, the military controlled the transition and through the Constitution, still had the ability to destabilize the political situation and take over the government once more.<sup>66</sup> Even the United Nations, along with key members of the international community, including the United States and Great Britain, supported the pursuit of demi-democratization without accounting for the human rights violations.<sup>67</sup> In the early years of the transition, the United Nations Special Rapporteur on the Human Rights Situation suspended the call for establishing a UN Commission of Inquiry into crimes against humanity carried out by the military.<sup>68</sup>

Despite the transition to a so-called democratic government, it provided little change for the Rohingya.<sup>69</sup> For instance, the 1983 Citizenship law was neither amended nor did the NLD field a single Muslim candidate.<sup>70</sup> Despite the efforts of opposition groups and Western countries, the military junta remained strong and resisted all domestic and international pressures to undertake meaningful political reform.<sup>71</sup>

After gaining independence in 1949, the Myanmar government set up its first form of national identification and issued registration cards to all citizens, including the Rohingya.<sup>72</sup> In the three general elections held between 1951 and 1960, all citizens including the Rohingya had the right to vote.<sup>73</sup> Voters even elected a Rohingya as member of the Parliament.<sup>74</sup> In 1974, the Myanmar's military-run government passed the Emergency Immigration Act, which required all citizens to carry an identity card.<sup>75</sup> However, the Rohingya nationals were not deemed eligible.<sup>76</sup> In 1978, the military-run government launched Operation Naga Min, where the government registered and verified the status of citizens and people viewed as foreigners.<sup>77</sup> During Operation Naga Min, soldiers assaulted and ter-

---

<sup>66</sup> Renshaw, *supra* note 64, at 433.

<sup>67</sup> *Id.*

<sup>68</sup> Reports calling for the Commission of Inquiry include: UN Human Rights Council, Tomas Ojea Quintana (Special Rapporteur on the Situation of Human Rights in Myanmar). Progress Rep. of the Special Rapporteur on the Situation of Human Rights in Myanmar, P122, U.N. Doc. A/HRC/13/48 (Mar. 10, 2010).

<sup>69</sup> Renshaw, *supra* note 64, at 434.

<sup>70</sup> *Id.*

<sup>71</sup> Kyaw Yin Hlaing, *Setting the Rules of Survival: Why the Burmese Military Regime Survives in an Age of Democratization*, 22 PAC. REV., 271-291, 272 (2009).

<sup>72</sup> *Burma's Path to Genocide Timeline: A Chronology of Key Events in Burma's History with an Emphasis on Those Impacting the Rohingya*, U.S. HOLOCAUST MEM'L MUSEUM, <https://exhibitions.ushmm.org/burmas-path-to-genocide/timeline> (last visited Dec. 2, 2022) [hereinafter *Timeline*].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*



## The Cyclical Military Takeover of the Myanmar Government

rorized the Rohingya. Throughout the Rakhine State, they destroyed Rohingya's homes and property.<sup>78</sup>

Further, in 1982, the Parliament passed a citizenship law, which intentionally excluded Rohingya from being recognized as Myanmar citizens.<sup>79</sup> Additionally, during the Clean and Beautiful Nation 1991 Operation, soldiers executed, raped and assaulted the Rohingya as well as destroyed their homes and properties, while Myanmar citizens continued to protest for democratic reforms.<sup>80</sup> The government even created a special border security force to harass and persecute Rohingya.<sup>81</sup> This violence and inequitable treatment was followed by more State-sanctioned violence against the Rohingya in June 2012.<sup>82</sup> In April of 2014, the government excluded the Rohingya from the first national census conduct in thirty years.<sup>83</sup>

In October of 2016, the military launched a clearance operation. In this operation, the military killed people, raped women, and destroyed Rohingya villages as a response to the small group of Rohingya men who attacked several Burmese police posts in the Rakhine States.<sup>84</sup> The next big event occurred on August of 2017.<sup>85</sup> The government launched a disproportionate attack on the entire Rohingya population after Muslim insurgents of ARSA attacked thirty police posts and an army base.<sup>86</sup> The commanding officer ordered: "shoot all you see and all you hear."<sup>87</sup> The military destroyed about twenty Rohingya villages and more than 700,000 Rohingya fled.<sup>88</sup> It is estimated that over nine thousand Rohingya were killed.<sup>89</sup> Allegedly, the military not only opened fire on fleeing civilians, but they "planted landmines near border crossing used by the Rohingya to flee to Bangladesh."<sup>90</sup> This military attack was "a textbook example of ethnic cleansing."<sup>91</sup>

---

<sup>78</sup> *Burma's Path to Genocide, Chapter 2: Targeted*, U.S. HOLOCAUST MEM'L MUSEUM, <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-2/targeted> (last visited Dec. 2, 2022).

<sup>79</sup> *Timeline*, *supra* note 72.

<sup>80</sup> *Driving out Foreigners, Chapter 2: Targeted*, U.S. HOLOCAUST MEM'L MUSEUM, <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-2/driving-out-foreigners> (last visited Dec. 2, 2022).

<sup>81</sup> *Timeline*, *supra* note 72.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Reuters Staff, *Timeline: Three Years on, a Look at the Rohingya Crisis*, REUTERS (Aug. 30, 2020), <https://www.reuters.com/article/myanmar-rohingya-timeline-idINKBN25H08E>.

<sup>86</sup> *Timeline*, *supra* note 72.

<sup>87</sup> Hannah Beech et al., 'Kill All You See': In a First, Myanmar Soldiers Tell of Rohingya Slaughter: Video Testimony from Two Soldiers Supports Widespread Accusation that Myanmar's Military Tried to Eradicate the Ethnic Minority in a Genocidal Campaign, N.Y. TIMES (Oct. 19, 2021), <https://www.nytimes.com/2020/09/08/world/asia/myanmar-rohingya-genocide.html>.

<sup>88</sup> *Id.*; *Timeline*, *supra* note 72.

<sup>89</sup> *Timeline*, *supra* note 72.

<sup>90</sup> Albert & Maizland, *supra* note 5.

<sup>91</sup> Reuters Staff, *supra* note 85.

### III. Discussion

On February 1, 2021, when the newly elected Parliament was supposed to be sworn in, the military junta took over the government.<sup>92</sup> The military-nominated Vice President U Myint Swe declared a state of emergency for one year after the military detained the elected president and other NLD-member senior government officials.<sup>93</sup> The military also seized control of telecommunications, suspended telephones and internet access in major cities, cancelled flights, and shut down stock markets and banks.<sup>94</sup> The military justified the coup by quoting the Constitution provision, which allows the military to take control of the government in a state of emergency.<sup>95</sup> The state of emergency was the November 2020 election results, which the military maintained were fraudulent and thereby legitimized its actions.<sup>96</sup> In the November 2020 election, the NLD won, securing 396 out of 479 Parliamentary seats, in contrast to the 33 seats won by the USDP, the military's proxy party.<sup>97</sup> The election results posed a threat to the military's influence in the government. In response, the USDP claimed that early voting showed evidence of widespread violation of laws and procedures, and therefore, invalidated the election results.<sup>98</sup> After the coup, the military formed a new cabinet with former or current military generals.<sup>99</sup>

Under this military-controlled government, Senior General Min Aung Hlaing is currently serving as the head of government.<sup>100</sup> NLD leader, Aung San Suu Kyu, and elected president, U Win Myint, were charged with "obscure" criminal violations.<sup>101</sup> Since the coup, the military junta has changed laws in a way that allows the military to act as they want, without repercussions. According to Special Rapporteur Tom Andrews, since the power grab, the junta has "murdered more than 1,100 people, arbitrarily detained more than 8,000, and forcibly displaced more than 230,000 civilians."<sup>102</sup>

One of the new provisions in law makes it a crime to use unconstitutional means to overthrow the Myanmar government under Article 121 of the Myanmar

---

<sup>92</sup> U.N. Human Rights Office of the High Commissioner, South-East Asia Regional Office, Myanmar in Crisis: Human Rights Situation, February 2021, OHCHR Myanmar Team (Feb. 11, 2021), <https://bangkok.ohchr.org/5902-2/> [hereinafter Myanmar in Crisis]; Jack V. Hoover et al., *Military Coup in Burma Draws International Condemnation and Pressure*, 115 AM. J. INT'L L. 558, 558 (2021).

<sup>93</sup> Raja & Tann Asia, *State of Emergency in Myanmar- Six Months On*, LEXOLOGY (Aug. 21, 2021), <https://www.lexology.com/library/detail.aspx?g=6fd46085-424b-49ac-9c08-8bfa4272f996>.

<sup>94</sup> Hoover, *supra* note 92, at 560.

<sup>95</sup> Myanmar in Crisis, *supra* note 92.

<sup>96</sup> *Id.*

<sup>97</sup> Hoover, *supra* note 92, at 559.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 558.

<sup>101</sup> *Id.* at 559.

<sup>102</sup> *Myanmar: UN Expert Says Current International Efforts Failing, Urges 'Change of Course'*, U.N. NEWS (Sept. 22, 2021), <https://news.un.org/en/story/2021/09/1100752> [hereinafter *Myanmar: UN Expert Says*].

## The Cyclical Military Takeover of the Myanmar Government

Penal Code, which defines high treason.<sup>103</sup> Another change was to Article 124A, which allows for “a 20 year prison sentence for anyone seeking to bring into hatred or contempt or excite disaffection toward the government, which now prohibits contempt toward the Myanmar Military, or Tatmadaw, and its personnel.”<sup>104</sup> One of the new provisions created, Article 124C, states that sabotage or obstruction of the Defense Services or other law enforcement authorities engaged in preserving the stability is punishable by up to twenty years.<sup>105</sup> Additionally, Article 124D carries a seven year prison sentence for anyone who hinders any Defense Services personnel or government worker from carrying out their duties.<sup>106</sup> “It specifically criminalizes any effort to hinder, disturb, damage the motivation, discipline or health of government workers.”<sup>107</sup> A new clause added to Article 505A, targets “anyone who causes fear to a group of citizens or to the public or who speaks false news or agitates a criminal against a government employee.”<sup>108</sup>

These new provisions are seemingly “aimed at arming the new ruling junta with a legal veiling for the crackdown on the Civil Disobedience Movement.”<sup>109</sup> The junta-controlled military forces have killed protestors, murdered civilians in their homes, and have beaten and tortured people to death while in detention with the use of weapons such as bombs, rocket-propelled grenades, and automatic weapons.<sup>110</sup> The revisions of the Penal Code also enabled the new government rulers to criminalize peaceful protests.<sup>111</sup> The military began using lethal force against protestors in mid-February and has since escalated its use of force.<sup>112</sup> In addition to new provisions to the Penal Code, the military junta has suspended sections of the Law Protecting the Privacy and Security of Citizens, which was enacted in 2017.<sup>113</sup> This removes basic protections guaranteed to Myanmar citizens, such as the right to be free from arbitrary detention and the right to be free from warrantless surveillance, search and seizure.<sup>114</sup>

Looking at the consequences of the coup, the military takeover does not look good for Rohingya life in Myanmar. The same commanders who oversaw the genocide committed by the military junta against the Rohingya population in

---

<sup>103</sup> Sebastian Strangio, *Myanmar Junta Arms Itself with Repressive New Laws*, THE DIPLOMAT (Feb. 15, 2021), <https://thediplomat.com/2021/02/myanmar-junta-arms-itself-with-repressive-new-laws/>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Myanmar: UN Expert Says*, *supra* note 102.

<sup>111</sup> *Myanmar: Post-Coup Legal Changes Erode Human Rights: Reverse Junta's Revisions to Penal Code, Other Laws*, HUM. RTS. WATCH (Mar. 2, 2021, 8:00 AM), <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights#> [hereinafter *Myanmar: Post-Coup Legal Changes*].

<sup>112</sup> Hoover, *supra* note 92, at 560.

<sup>113</sup> *Myanmar: Post-Coup Legal Changes*, *supra* note 111.

<sup>114</sup> *Id.*

## The Cyclical Military Takeover of the Myanmar Government

2017 are the same ones overseeing the military junta.<sup>115</sup> The new laws shielding the military and the commanders overseeing the military junta from accountability have put over 600,000 Rohingya in danger.<sup>116</sup> Additionally, in an interview with Chinese-Language Phoenix television, Myanmar's junta leader Min Aung Hlaing, who headed the army in 2017 as about 700,000 Rohingya fled the country, reiterated that the military junta did not recognize Rohingya is one of its ethnic groups:<sup>117</sup>

Major General Zaw Min Tun, spokesman for the ruling military council has said, “[w]e will abide by laws that do not supersede the Constitution. Many laws have to be taken into consideration in executing political process. We will not do anything that is not in accord with the law. . . . Police and other security personnel are carrying out their responsibilities in accordance with their manuals.”<sup>118</sup>

Under the new provisions and additions to previously existing laws, violent military actions are legalized, thereby justifying the military's actions.<sup>119</sup> This further puts the Rohingya at risk of violent atrocities. These laws also suppress human right defenders, activists, journalists, and protestors.<sup>120</sup> The restrictions placed on telecommunications laws legalized the military's ability to intercept all communications such as text messages and the use of social media.<sup>121</sup> Also, the addition to section 505(a) of the Code of Criminal Procedure enables the military to arrest anyone who speaks against the coup or the military and subject them to imprisonment.<sup>122</sup>

Since the military takeover, citizens have been subject to unwarranted searches and seizures that were previously deemed unlawful.<sup>123</sup> Citizens have been arbitrarily detained and held by the military or police for unspecified lengths of time without reason or charge.<sup>124</sup> The military and police seem to be free to act in any way they want without fear of government sanctions. Many of the elected representatives and civil society leaders were hunted by the military in the name of law enforcement.<sup>125</sup> The military used brute force against protestors and sexually

---

<sup>115</sup> *Myanmar: UN Expert Says*, *supra* note 102.

<sup>116</sup> *Id.*

<sup>117</sup> Matthew Tostevin, *Myanmar Junta Leader Casts Doubt on Return of Rohingya*, REUTERS (May 24, 2021, 5:17 AM), <https://www.reuters.com/world/asia-pacific/myanmar-junta-leader-casts-doubt-return-rohingya-2021-05-24/>.

<sup>118</sup> Pwint Htun, *Beyond the Coup in Myanmar: “In Accordance with the Law”- How the Military Perverts Rule of Law to Oppress Civilians*, JUST SEC. (Apr. 28, 2021), <https://www.justsecurity.org/75904/beyond-the-coup-in-myanmar-in-accordance-with-the-law-how-the-military-perverts-rule-of-law-to-oppress-civilians/>.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

## The Cyclical Military Takeover of the Myanmar Government

abused women.<sup>126</sup> Journalists were arrested and independent media had their licenses revoked for reporting these human rights violations in the “name of keeping peace.”<sup>127</sup> In the control of this military government, the laws are fluid in that they are utilized to legalize and justify the military’s violent and unjustifiable actions instead of upholding what is just and right.

### IV. Analysis

The analysis begins by briefly summarizing how the 2008 Constitution gave the military the ability to take over the government as well as the ability to amend and create new laws to help address the state of emergency. Then, it discusses the 2021 coup’s impact on Myanmar, followed by a brief exploration on how international pressure has not yet compelled the military to give up control or reinstate elected officials back into the government. Lastly, the analysis concludes by discussing what the 2021 coup means for the welfare of the Rohingya in Myanmar.

Before the military coup in February of 2021, the military retained its control in the Myanmar government through the 2008 Constitution.<sup>128</sup> The Constitutional provision allows the President to declare a state of emergency and transfer legislative, executive and judicial powers of the Union to the Commander-in-Chief of the Defense Service, thereby enabling the military to take over the government and justify the coup as legal.<sup>129</sup> After the 2021 military coup, the military-controlled government amended and created new laws, which shielded the military from being held accountable for its actions.<sup>130</sup> The military-controlled government took away its citizens’ basic human rights by changing legal provisions, thus giving the military more power.<sup>131</sup> For instance, provisions were enacted to enable and justify the use of violence when dealing with protestors.<sup>132</sup>

The 2008 Constitution, written by Myanmar’s military government, was supposed to represent the country’s establishment of a democratic government.<sup>133</sup> Instead, it maintained military control over Myanmar.<sup>134</sup> This retention of power through the Constitution disabled Myanmar’s chance to have a true democracy

---

<sup>126</sup> Htun, *supra* note 118.

<sup>127</sup> *Id.*

<sup>128</sup> CONST. OF THE REPUBLIC OF THE UNION OF MYAN., ch. XI, art. 410, 418 (2008); Yin Hlaing, *supra* note 71.

<sup>129</sup> *Id.*

<sup>130</sup> *Myanmar: Post-Coup Legal Changes*, *supra* note 111; see generally *Myanmar Amends Legislation on the Privacy and Security of Citizens Amid State of Emergency*, TILLEKE & GIBBINS (Feb. 23, 2021), <https://www.tilleke.com/insights/myanmar-amends-legislation-on-the-privacy-and-security-of-citizens-amid-state-of-emergency/>.

<sup>131</sup> *Myanmar: Post-Coup Legal Changes*, *supra* note 111.

<sup>132</sup> Russell Goldman, *Myanmar’s Coup, Explained*, N.Y. TIMES (Nov. 29, 2021), <https://www.nytimes.com/article/myanmar-news-protests-coup.html>; see also Htun, *supra* note 118.

<sup>133</sup> *The Vote to Nowhere: The May 2008 Constitutional Referendum in Burma*, HUM. RTS. WATCH (Apr. 30, 2008), <https://www.hrw.org/report/2008/04/30/vote-nowhere/may-2008-constitutional-referendum-burma> [hereinafter *The Vote to Nowhere*].

<sup>134</sup> *Id.*

## The Cyclical Military Takeover of the Myanmar Government

because the military in essence always has the ability to obstruct any meaningful changes and block any transformation it does not agree with.<sup>135</sup> As it currently stands, it is unlikely to have a civilian democratic government when the military has retained such power and control.

When the 2008 Constitution was drafted, the State Peace and Development Council refused to allow any meaningful public discussion and debate of the draft constitution.<sup>136</sup> It had arrested those who expressed opposition to its contents.<sup>137</sup> Even journalists who wrote in opposition were imprisoned and convicted on charges, such as engaging in anti-government propaganda and publishing information that makes people lose respect for the government.<sup>138</sup> People were not allowed to engage in peaceful protests and were instead detained for their participation in such protests.<sup>139</sup> Furthermore, the Constitution itself, as written, demonstrates that the document's purpose is to continue military dominance and to deny political parties the right to govern freely.<sup>140</sup> An example of this is the requirement that one-quarter of the seats in both houses of the parliament be filled by military officers, which does not limit military officers from running for other open seats of the parliament.<sup>141</sup> The Constitution also requires more than three-quarters of the votes of the parliament to make any amendments in the Constitution.<sup>142</sup> Consequently, the military essentially holds an effective veto power by holding one-quarter of those seats.<sup>143</sup>

As such, “[a] future peaceful Myanmar can only be based on both an entirely different conception of its national identity, free of the ethnonationalist narratives of the past, and a transformed political economy.”<sup>144</sup> Since the coup, over nine hundred people have been killed and nearly five thousand people have been arrested.<sup>145</sup> The military cracked down mercilessly on civilians with the use of lethal force.<sup>146</sup> Soldiers fired indiscriminately in residential neighborhoods, setting off grenades, breaking doors and hauling people away.<sup>147</sup> Myanmar's history of denying human rights such as basic freedom of expressions<sup>148</sup> does not make this military use of force surprising. Recently, changes in legal provisions have

---

<sup>135</sup> *The Vote to Nowhere*, *supra* note 133, at 2.

<sup>136</sup> *Id.* at 3.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Yin Hlaing, *supra* note 71; Crouch, *supra* note 62, at 3.

<sup>141</sup> Yin Hlaing, *supra* note 71, at 289.

<sup>142</sup> Kimana Zulueta-Fülscher, *Looking Back at the Myanmar Constitution Amendment Process*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (Aug. 4, 2020), <https://www.idea.int/news-media/news/looking-back-myanmar-constitution-amendment-process>.

<sup>143</sup> Yin Hlaing, *supra* note 71, at 290.

<sup>144</sup> Thant Myint-U, *Myanmar's Coming Revolution: What Will Emerge from Collapse?*, 100 FOREIGN AFFS. 132, 133 (2021).

<sup>145</sup> *Id.* at 132.

<sup>146</sup> *Id.* at 140.

<sup>147</sup> *Id.*

<sup>148</sup> *The Vote to Nowhere*, *supra* note 133.

## The Cyclical Military Takeover of the Myanmar Government

led to arbitrary arrests and detainment and intimidation of the political opposition and general populace, creating widespread repression and fear.<sup>149</sup>

It is difficult to have a democracy when there is fear of retaliation and takeover. Looking at the military government's escalated response to the protestors and the general public, these incidents will only continue until the next short-lived civilian government. Since the military coup, many protestors have turned to armed insurrections.<sup>150</sup> The result: more violence. While the armed insurrections can lead to a shift in government rule, the power of the Myanmar military makes that result unlikely.<sup>151</sup> The military has no problem reacting with violence.<sup>152</sup> Unless the military-controlled government is concerned about its economic condition or its relationship with international countries, who oppose their action, the violence seems ongoing.<sup>153</sup>

This makes China a key player in restoring a civilian government in Myanmar, which is to be discussed below. So far, international pressure from many countries has had no significant impact on Myanmar, nor does it compel the military to give back control to the elected candidates.<sup>154</sup> It seems that the only way Myanmar is going to be a true democracy is to limit the military's powers. A transition towards a democracy is a hopeful outcome only if the military is disabled from seizing control of the government whenever it wants. Despite the citizen's protests and outcry against the military's coup, the military-controlled government has not budged.<sup>155</sup> Without limiting the military's power and influence in the government, Myanmar is on the verge of becoming a failed state<sup>156</sup> as it continues to rotate between military rule and a make-shift government.<sup>157</sup> China is the only country that is so deeply involved in Myanmar's economy.<sup>158</sup>

With an over seventy years diplomatic relationship, China has domestic and foreign policy interest in Myanmar.<sup>159</sup> China has many infrastructure investments in Myanmar, such as the "China-Myanmar Economic Corridor," which is an infrastructure route aimed to connect the Indian Ocean oil trade to the Yunnan

---

<sup>149</sup> *The Vote to Nowhere*, *supra* note 133.

<sup>150</sup> Myint-U, *supra* note 144, at 141.

<sup>151</sup> *Id.*

<sup>152</sup> Goldman, *supra* note 132.

<sup>153</sup> Myint-U, *supra* note 144, at 142.

<sup>154</sup> Jason Tower & Priscilla A. Capp, *Myanmar: China, the Coup and the Future*, U.S. INST. PEACE (June 8, 2021), <https://www.usip.org/publications/2021/06/myanmar-china-coup-and-future>; *Myanmar: UN Expert Says*, *supra* note 102.

<sup>155</sup> Hannah Beech, *Inside Myanmar's Army: 'They See Protesters as Criminals'*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/03/28/world/asia/myanmar-army-protests.html>.

<sup>156</sup> Sumathi Bala, *Myanmar Is on the Brink of Becoming a 'Failed State,' Says Expert from Think Tank*, CNBC (Mar. 29, 2021), <https://www.cnbc.com/2021/03/30/myanmar-is-on-the-brink-of-becoming-a-failed-state-says-expert-from-think-tank.html>; Myint-U, *supra* note 144, at 142.

<sup>157</sup> Maizland, *supra* note 11.

<sup>158</sup> Tower & Capp, *supra* note 154.

<sup>159</sup> Lucas Myers, *The China-Myanmar Economic Corridor and China's Determination to See It through*, WILSON CTR.: ASIA DISPATCHES (May 26, 2020), <https://www.wilsoncenter.org/blog-post/china-myanmar-economic-corridor-and-chinas-determination-see-it-through>.

## The Cyclical Military Takeover of the Myanmar Government

Province.<sup>160</sup> Not only has China constructed a natural gas and oil pipeline, but China has also dominated Myanmar's electricity sector through many hydro-power and coal projects.<sup>161</sup> Furthermore, China is Myanmar's largest trading partner.<sup>162</sup> Myanmar imports large quantity of goods such as machinery, metal products, vehicles, and telecommunication equipment from China.<sup>163</sup> Myanmar exports needed goods such as refined tin, rare earth metal, oil, and gas, to China.<sup>164</sup> As a result, China occupies the largest share in both Myanmar's exports and imports.<sup>165</sup> According to Sumanth Samsani, as of 2021, China's investment forms 28 percent of Myanmar's Gross Domestic Product.<sup>166</sup>

What does this mean for the Rohingya? Since gaining independence from Britain, Rohingya Muslims have been denied citizenship<sup>167</sup> and have been subjected to violence at the hands of the military.<sup>168</sup> Since 2016 and 2017, over 700,000 Rohingya Muslims fled.<sup>169</sup> The same military generals who inflicted violence upon the Rohingya now control the government.<sup>170</sup> Considering the indiscriminate treatment of Myanmar's citizens in lieu of this coup with violence and the changes in legal provisions, the Rohingya continue to face a threat of violence. Since the coup, many crimes against humanity have occurred such as murder, enforced disappearance, torture, rape and other sexual violence, severe deprivation of liberty, and other inhuman acts.<sup>171</sup> Now, even if Rohingya Muslims are considered citizens, which is very unlikely, they would still be in fear of violence.<sup>172</sup> The new legal provisions give the military a lot of discretion to utilize violence and arrest citizens at its whim.<sup>173</sup> These changes in the law do not benefit the Rohingya, and they would continue to live in fear and suffer violent atrocities as they did before the coup.

---

<sup>160</sup> Myers, *supra* note 159.

<sup>161</sup> Sumanth Samsani, *Understanding the Relations between Myanmar and China*, OBSERVER RSCH. FOUND. (Apr. 26, 2021), <https://www.orfonline.org/expert-speak/understanding-the-relations-between-myanmar-and-china/>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Amal de Chickera, *Stateless and Persecuted: What Next for the Rohingya?*, MIGRATION POL'Y (Mar. 18, 2021), <https://www.migrationpolicy.org/article/stateless-persecuted-rohingya>.

<sup>168</sup> *MSF: At Least 6,700 Rohingya Killed during Attacks in Myanmar*, DRS. WITHOUT BORDERS (Dec. 14, 2017), <https://www.doctorswithoutborders.org/what-we-do/news-stories/research/msf-least-6700-rohingya-killed-during-attacks-myanmar>; Gaston Federico Blasi, *Rohingyas' Exodus Continues to Oblivion*, 20 IND. INT'L. & COMP. L. REV. 163 (2020).

<sup>169</sup> Myint-U, *supra* note 144, at 134.

<sup>170</sup> Jen Kirby, *What Myanmar's Coup Could Mean for the Rohingya and Other Persecuted Minorities*, VOX (Feb. 2, 2021), <https://www.vox.com/22260213/myanmar-coup-rohingya-genocide>.

<sup>171</sup> *More Than a Thousand Killed in Myanmar as Repression of Activists Continues Unabated*, CIVICUS (Aug. 26, 2021), <https://monitor.civicus.org/updates/2021/08/26/more-thousand-killed-myanmar-repression-activists-continues-unabated/>.

<sup>172</sup> Julhas Alam, *Rohingya Refugees Fear Returning to Myanmar After Coup*, AP NEWS (Feb. 2, 2021), <https://apnews.com/article/rohingya-myanmar-coup-9506980524e748baf577a085ae0f4d30>.

<sup>173</sup> *Myanmar: Post-Coup Legal Changes*, *supra* note 111.



## V. Proposal

Considering Myanmar's history of military governance and its resistance to democratic reform, sanctions by international nations will most likely not have a significant impact unless China imposes sanctions on Myanmar too.<sup>174</sup> To become a true democracy, the military must give up their extensive control in the government. This can be achieved by amending the Myanmar Constitution. The 2008 Constitution contains many provision that enable the military to retain its power,<sup>175</sup> as explored above. The military used Constitutional provisions to legally justify its coup.<sup>176</sup> It alleged that the fraudulent 2020 elections gave cause to declare a state of emergency.<sup>177</sup>

The obstacle in amending the Constitution and limiting the military's vast power is that currently the military has no incentive to give up its power. The 2008 Constitution was written by military leaders to maintain power in the government while alluding to the people as a transition into democracy. While Myanmar held elections and its people believed the Constitution to be the beginning of a democracy,<sup>178</sup> it was anything but that. The military still controls the country.<sup>179</sup> Many provisions in the Constitution were dedicated to help the military keep its influence and control in the government.<sup>180</sup> However, it is probably undoubted that the military should not have such control of the Myanmar government. What life under a military government looks like is very evident through its actions following the coup. At this point, even if civilian unrest forces the military to give back the government to its elected officials, which is highly unlikely, it is not going to undo the atrocities suffered by the Rohingya Muslim and Myanmar citizens. Nor would it guarantee that the military will stand aside and allow the elected officials to run the government or not stunt another coup when faced with opposition.

Thus far, the ruling military has resisted the international pressure to relinquish power.<sup>181</sup> While the United States and its European allies continue to impose economic sanctions, the military has continued to stronghold the country's government.<sup>182</sup> In response, China has refused to impose an arms embargo or sanction the military junta<sup>183</sup> and instead supports the military regime.<sup>184</sup> How-

---

<sup>174</sup> Van Tran, *To Understand Post-Coup Myanmar, Look to Its History of Popular Resistance- Not Sanctions*, BROOKINGS (Feb. 9, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/02/09/to-understand-post-coup-myanmar-look-to-its-history-of-popular-resistance-not-sanctions/>.

<sup>175</sup> *The Vote to Nowhere*, *supra* note 133.

<sup>176</sup> Myanmar in Crisis, *supra* note 92.

<sup>177</sup> *Id.*

<sup>178</sup> Yin Hlaing, *supra* note 71, at 272; Crouch, *supra* note 62, at 3.

<sup>179</sup> Tran, *supra* note 174.

<sup>180</sup> Yin Hlaing, *supra* note 71, at 272.

<sup>181</sup> Colum Lynch, *Myanmar Pressure Campaign Stalls at the United Nations*, FOREIGN POL.'Y (June 4, 2021), <https://foreignpolicy.com/2021/06/04/myanmar-sanctions-campaign-united-nations-stalls/>.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> Saxena, *supra* note 58.

## The Cyclical Military Takeover of the Myanmar Government

ever, China may be the key necessary to end this military control. Myanmar relies on China for diplomatic support, arms, weapons, trade, and commerce.<sup>185</sup> The military junta needs only China's support to maintain its rule over the country.<sup>186</sup> If China backs the UN Security Council's demand for a transition to an elected civilian government, the international pressure on Myanmar will likely be more meaningful.<sup>187</sup> "Myanmar has more to lose should the relationship sour: a protector in the Security Council, support from a large neighbor amid international isolation, a key economic partner and a source of investment."<sup>188</sup> Additionally, not only should international pressure push for a transition to an elected civilian government, it should encourage reform on Myanmar's human right abuses,<sup>189</sup> specifically the human right abuses suffered by the Rohingya.

The question is then how to force China to impose economic sanctions and pressure on the military junta to stop the violence, and then restore Myanmar to some semblance of a civilian government and address the human right violations. Recently, China blocked a UN Security Council statement condemning the military coup.<sup>190</sup> China maintained that sanctions or international pressure would only make things worse in Myanmar.<sup>191</sup> However, China stands to economically benefit from Myanmar's alienation.<sup>192</sup> Therefore, China's stance could be biased by such gains. A method to gain China's cooperation could be to apply international pressure and impose sanctions on China until it joins the UN Security Council and withdraws its support of the military junta.<sup>193</sup> In turn, China does stand to benefit from an elected civilian government. It is more likely that China would work better and have a more positive relationship with the NLD government than it currently does with the military leaders.<sup>194</sup> Before the coup, the NLD cultivated a friendly relationship with Beijing.<sup>195</sup> Further, the military coup has destabilizing impact on major Chinese-backed projects.<sup>196</sup> Therefore, if China withdraws its support, the military junta may be more likely to restore the civilian government. With time, reduction of the military's influence in the government, and constitutional amendments, there is an opportunity for Myanmar to be a true

---

<sup>185</sup> Saxena, *supra* note 58; Myint-U, *supra* note 144, at 134.

<sup>186</sup> Myint-U, *supra* note 144, at 133.

<sup>187</sup> *Id.* at 144.

<sup>188</sup> *China's Myanmar Dilemma*, INT'L CRISIS GRP. (Sept. 14, 2009), <https://www.crisisgroup.org/asia/north-east-asia/china/china-s-myanmar-dilemma>.

<sup>189</sup> *Id.*

<sup>190</sup> *Myanmar Coup: China Blocks UN Condemnation as Protest Grows*, BBC NEWS (Feb. 3, 2021), <https://www.bbc.com/news/world-asia-55913947>

<sup>191</sup> *Id.*

<sup>192</sup> *Myanmar Coup*, *supra* note 190.

<sup>193</sup> Simon Tisdal, *A Child Screams in Myanmar. . . and China Pretends Not to Hear*, THE GUARDIAN (Mar. 14, 2021), <https://www.theguardian.com/commentisfree/2021/mar/14/a-child-screams-in-myanmar-and-china-pretends-not-to-hear>.

<sup>194</sup> Timothy McLaughlin, *China Is the Myanmar Coup's 'Biggest Loser'*, THE ATLANTIC (Feb. 22, 2021), <https://www.theatlantic.com/international/archive/2021/02/what-myanmars-coup-means-china/618101/>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

## The Cyclical Military Takeover of the Myanmar Government

democracy. After that time, it can work to address the country's violent history towards the Rohingya.

### VI. Conclusion

Myanmar's path to true democracy is a long road ahead, as is reparations towards the Rohingya. As it currently stands, Myanmar is on the verge of becoming a failed state.<sup>197</sup> Unless the military permanently relinquishes its control in the government, it may only be a question of when the military will end the state of emergency and when the military will take over the government in another coup. Therefore, international pressure on China to sanction Myanmar's military for their actions could help Myanmar citizens.<sup>198</sup> Myanmar's military junta's reliance on China makes China more influential than countries in the west.<sup>199</sup> A transition to a true democracy will likely only occur if the military loses its stronghold on the government through a constitutional amendment. Additionally, an elected civilian government without the military influence will likely be the only chance to make reparations to the Rohingya and finally end the long history of violence of Myanmar.

---

<sup>197</sup> Bala, *supra* note 156.

<sup>198</sup> Myint-U, *supra* note 144, at 144.

<sup>199</sup> Tisdal, *supra* note 193.