



Constitution Brief

Interregnum Series

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About MyConstitution

The MyConstitution project works towards a home-grown and well-informed constitutional culture as an integral part of democratic transition and sustainable peace in Myanmar. Based on demand by Myanmar stakeholders, expert advisory services are provided to those involved in constitution-building efforts. This series of Constitution Briefs is produced as part of this effort.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

Interim Governance Arrangements

Comparative Principles and Practice for Myanmar

Introduction

The background to this brief is the context of the military coup in Myanmar in February 2021, and the declaration of a state of emergency by the military, which has effectively set aside the 2008 Constitution and the elections held under it. The coup has been rejected by the international community as illegitimate and has generated a strong civil disobedience and protest movement, and those elected in November 2020 have formed interim institutions aiming to move towards a democratic order. The military have also recently re-termed their post-coup regime as a 'provisional government'.

This brief sets out some comparative principles and practices of interim governance arrangements, which are a device often used to move on from crisis. It points to comparative experience in designing interim governance arrangements, including key issues that often need to be dealt with and the types of role the international community has played, focusing on issues that may have particular relevance in the Myanmar context.¹ The brief does not purport to offer direct advice as to the way forward in Myanmar, as that will be for all the relevant stakeholders in the country to agree. Rather, it seeks to support deliberation, and some questions for this purpose are provided at the end of the brief.

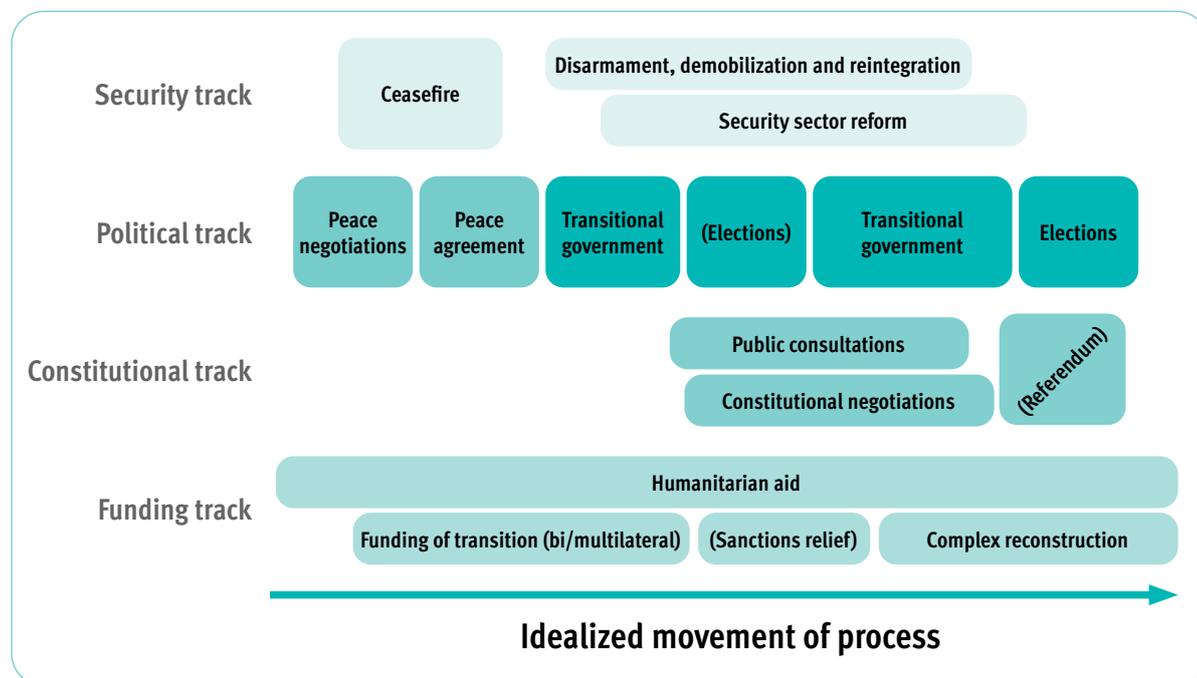
1. Interim governance arrangements: what are they?

Interim governance arrangements are temporary governance arrangements often put together as a response to social crisis or authoritarianism, or conflict of different types. The arrangements usually involve three elements: (a) a temporary body or bodies with social legitimacy, set up to govern during the interim period; (b) the reform processes to be overseen by those bodies to enable the institutional and constitutional development to end the transition; and (c) a specified transitional period often with clear time limits.

1. The report draws on the thinking elaborated in a number of publications by International IDEA and the University of Edinburgh through the Political Settlements Research Programme, whose main findings with links to the underlying research papers on which this one draws, are here: <<https://www.politicalsettlements.org/key-findings/interim-transitions/>>.

The precise form of interim government is largely dictated by events on the ground, and the relative power of the different groups seeking to govern the country and/or using violence—there is therefore no uniform model. However, interim governance arrangements often follow some or all of a set of reform processes (see Figure 1), which can mean that comparative learning is useful to techniques of institutional design and to navigating the types of challenge that tend to emerge.

Figure 1. Different reform processes possible in a transition, which inter-relate in political ways



Source: Reproduced from Forster, R., *Interim Governance Arrangements in Post-Conflict and Fragile Settings* (Stockholm: International IDEA, 2020), <<https://doi.org/10.31752/idea.2020.48>>.

2. Who should be the government in an ‘interim governance arrangement’?

The most critical issue is perhaps *how* the government is put together and who is in it in terms of past and future power-holders. The main ways in which interim governments are set up are listed here by way of overview, even though these are not all relevant to the current context in Myanmar:

1. An agreed **caretaker government** consisting of elites from the preceding regime who pre-commit to managing an incumbent-led transition process, as occurred in Egypt following mass demonstrations against President Hosni Mubarak in 2011. This option involves actors whose claim to govern lies in their capacity to guarantee ‘stability’ in the interim. They often have to show that they have broken from the authoritarian past government, despite probably having been part of the old order. They often give a commitment to ‘exit’ the political scene once the transition is complete and elections can take place (although this is not always honoured). In Egypt, the military itself played a role in managing the transition, while in Sudan a mixed military–civilian government had a civilian head. While Myanmar’s military junta has recently proclaimed itself to be a ‘provisional’ government, in these other cases, unlike in Myanmar, there had been a clear break with the authoritarianism of the past symbolized by the demittal (leaving of power) of the key authoritarian leader. For caretaker governments to have credibility and legitimacy they need to work together with civilian actors with a clear commitment to civilian democracy.
2. A **political–military elite-agreed power-sharing executive and/or legislature** between those in power and those in opposition political parties or rebel groups, as in Yemen after the signing of the Implementation Mechanism for the Transition Process in November 2011, or in Zimbabwe in 2008, or Sudan in 2019. This formulation establishes the interim

government itself as a multi-stakeholder forum for ongoing management of the transition. It typically involves a compromise between all the key military and political stakeholders. There does not seem to be any current desire for this type of arrangement in Myanmar, where it would in effect be a reversion to the power-sharing arrangement that characterized the status quo. This arrangement was already viewed, even before the coup, as transitional to a more deeply democratic arrangement that would not include un-elected representatives in the parliament. However, there are elements of power-sharing between Myanmar's civilian and ethnic stakeholders in the National Unity Government (NUG) arrangements and proposals.

3. A **provisional revolutionary government** emerges when a former government is ousted by force, as was the case in Libya in 2011–2012, when the National Transitional Council toppled the government of Muammar Gaddafi and replaced it with a temporary government including those at the heart of the revolution. Often such a government does not avoid the need to accommodate military actors or power-sharing, because its aim is to completely replace the old order and inaugurate a new constitutional beginning. Sometimes there is a period when the old and the new order co-exist in competition, in a situation that either resolves, or creates, ongoing competing governments within the one territory (see Section 2.1 below). This also has some relevance to the NUG arrangements in Myanmar.
4. An **internationally administered transitional government** can be implemented after the use of force by external actors, even in the absence of an agreement, as was the case with the Coalition Provisional Authority in Iraq in 2003. This is unlikely to be relevant to Myanmar, but is mentioned as the fourth use of interim governance arrangements, and because it often involves replacement of the old order with a new one, in a move that tries to avoid any negotiating with a past unjust order.

2.1. A word on interim civilian governments of national unity in parallel with authoritarian governments

The situation in Myanmar at the time of writing does not clearly fit the above models/examples, as there are competing governance structures that do not recognize each other's legitimacy and have different proposed destinations, and there is no detectable appetite for compromise. As noted above, in some fast-moving political situations, there have been moments where largely civilian national unity governments were set up in order to begin a transition, even though they did not have effective control of the whole country and conflict and crisis were ongoing. In Libya, for example, the Constitutional Declaration (or Draft Constitution of the Transition) was established by a National Transitional Council (NTC)—a body which represented the then rebels against the Gaddafi regime. Somewhat like the draft Federal Democracy Charter in Myanmar, the Libyan Constitutional Declaration established new principles for the state, and also established the NTC as the interim government (Libya 2011). This *de facto* government was recognized as the legitimate representative of the Libyan people by a majority of states, including the United States and the United Kingdom,² prior to Gaddafi's government being toppled and defeated, and therefore prior to the NTC having effective control of the country, and at a point where the Constitutional Declaration was a statement of intent as much as being constitutive of a *de facto* government. In contrast to Libya, where the past constitutional order was in essence replaced, in Myanmar the Committee Representing Pyidaungsu Hluttaw (CRPH)—comprising the majority of elected politicians—claims continued legitimacy, both from the 2008 Constitution, which it referred to in its first declaration, and from the popular mandate expressed in the 2020 elections. The CRPH—and the NUG it created—therefore represent both continuity and a revolutionary rejection of the old order at the same time.

However, absent international force-based intervention, such as was used in Libya, countries in turmoil must often try to navigate former power-holders out of power, incrementally, in processes that involve dialogue and forms of compromise. These compromises can be temporary and related

2. In this, the UK departed from a view it had stated in 1980: that it would no longer recognize governments, only states (see Warbrick 2012).

to how best to manage military exit from power, or part of a more permanent type of political accommodation between competing power-holders.

2.2. Key areas of contention in the formation of governments

The following tend to be the main areas of contention in comparative examples. These are dealt with in outline, but draw on the fuller analysis in the pieces cited in the [References](#) from which the paper has been drawn. The Federal Democracy Charter already anticipates and addresses many of these issues. However, they are set out here by way of comparative information (for further detail, see Forster 2020).

Who is head of the interim government: what type of system will be set up (presidential, parliamentary or other)? Will an element of power-sharing be incorporated in the head of state position or positions?

The following are some of the modalities for who will be head of state, in arrangements that have often tried to create forms of national unity across the political spectrum. The examples are not necessarily similar or applicable to Myanmar but are useful to give a sense of the variety of forms of interim governance possible and the different ways in which they accommodate a range of stakeholders.

Presidential systems

Sometimes used in a power-sharing formula to ensure that the head of the strongest party is president, and the head of the opposition is made vice president. This was the arrangement in South Sudan between Salva Kiir and Riek Machar. When there are multiple groups to be incorporated into government, there is regularly more than one deputy or vice president in place. In the Democratic Republic of the Congo, the 2002 Pretoria Agreement provided for four vice presidents from each of the major armed groups.

In a federal republic, presidents may be selected on a rotational basis from different regions. The 1999 Accords d'Antananarivo in the Comoros sets out a three-year rotational presidency between the three major islands. Lebanon's confessional system, on the other hand, is centred around the three major religious sects, with the president a Maronite Christian, the speaker of the parliament a Shia Muslim, and the prime minister a Sunni Muslim.

Semi-presidential systems

A key strong party often appoints the head of state (president), while other parties (often the opposition) appoint the head of government (prime minister). Both parties therefore form the cabinet by consensus or it is agreed through prior negotiations. This occurred in Afghanistan in the 1993 Islamabad Agreement, and somewhat similar proposals were made in the Central African Republic Libreville Agreement in 2013.

The precise modalities agreed, and their effectiveness in practice, depend on the balance of power.

Presidential or similar councils

These can be used in both presidential and semi-presidential systems. They usually involve a number of people working together, in effect as a collective head of state, and sometimes also as an executive—including a head, deputies and members. The number of members in a presidential council is meant to ensure consensus decision-making by the executive; however, it is often disputed how many members there should be and how to divide power. The usual number is 3–9 members, although there is no clear reason for this.

- **Libya (2015):** The Presidential Council included nine members affiliated with the two major blocs, as well as technocrats (Libya 2015). The legitimacy of the council was called into question and members of the eastern bloc were fired after failing to come to work. The shape of the council was subsequently one of the main points of contention until a vote to unanimously reform the council in late 2018 (Libya 2017).

- **Madagascar (2009):** Not an official presidential council, but the appointment of two Co-Presidents in addition to the President himself, after a unilateral attempt to form a government. This arrangement was not implemented.

Who holds what executive offices, how is power distributed between stakeholders, and how can deadlocks be broken?

Whatever the form of government, interim governance arrangements often involve a negotiation over who will hold cabinet positions, as this is central to whether the cabinet itself is representative of key stakeholders, a matter that will also impact on its perceived legitimacy with different communities. Involving a range of political forces together in government will also mean that some sort of procedures for joint decision-making will need to be agreed, including agreement on how any deadlock in joint decision-making is to be dealt with.

Whether a legislature is in place during the transition and what its make-up is, in particular if new elections are not immediately possible

Some very time-limited transitional governance arrangements do not have legislatures, but if the transition is considered likely to take some time, and there have been past elections, the following are the main options:

1. The legislature from the pre-transitional period continues in its current or slightly altered form, to reflect the distinctive transitional role, and the need for greater inclusion of multiple stakeholders (e.g. Somalia 2008; Angola 1994).
2. A transitional legislature is put in place, based on a selection mechanism that ensures greater diversity (e.g. Afghanistan 2001).
3. Another elected body is converted into the legislature, for instance by converting an elected constituent assembly into a temporary parliament (Bosnia and Herzegovina 1994).
4. A transitional legislature is elected (Libya 2011).

These options may be changed and mixed as institutional context allows. Often interim political institutions are changed over time, to be increasingly inclusive and representative.

Judiciary and protection for human rights in the interim

What rights have been at issue and how will these be protected in the interim period—what courts will be involved and against what rights framework? Can particular problems that will reignite conflict be adequately addressed in a direct and immediate manner, and what institutions would work to protect rights and how? These issues often connect to whatever process has been established to deal with the past (amnesty and justice addressed below).

Amnesty and justice for crisis-related events

This relates, in particular, to the release of those unjustly imprisoned for social protest or holding particular political positions. The transition must often deal with the immediate past, because people will have been imprisoned for offences of opposition to authoritarianism and need to be offered the chance to return to ‘normal life’ and full democratic participation. Leaders of democratic movements will often be imprisoned or in exile, and will need to be guaranteed physical and legal security. However, there will also be a need to address the reality that the conflict has created victims of human rights abuses, whose families need information and redress. These issues present a range of technical challenges: what period the mechanism is to cover; what types of offence will be covered; will the investigations be run by the police, the judiciary or others; what will the remit of the investigation be—individual responsibility or social ‘root causes’ or both; how will it relate to criminal law processes; what types of recommendations will it cover; and what types of public participation and access will be offered. However, each of these questions will be coloured by a very political debate as to what type of accountability for which main activities will be covered.

3. Constitutional context and challenges

Another main issue relates to how best to construct the interim government with reference to the existing constitution and any past elections. The main options include (a) within the existing constitutional framework, where there is some mechanism to do this; (b) by formal amendment of the existing constitution to provide for the interim government; (c) by ignoring the constitution and ‘starting afresh’; and (d) by using another legal instrument—such as a piece of legislation or an executive order in council—either within the constitutional framework, or without making its connection to the constitution.

In Myanmar, questions have arisen as to how the position of any new interim government would relate to the 2008 Constitution, not least because constitutionality is often understood to connect to legitimacy. However, the precise relationship with the Constitution will depend on exactly how the parties agree to construct any transition. At present, the CRPH, which has created the NUG, partly relies on the 2008 Constitution for claims of electoral legitimacy to represent the people in any transition, while by necessity working somewhat outside it—to establish transitional governance as having a broader participative legitimacy and because it is not possible to maintain the 2008 provisions in the context of the coup. As claims to constitutional continuity themselves have political salience, being clear as to the position and arguments for the legal basis of the interim governance arrangements can be important.

4. Other important issues to consider

The following issues also present challenges for the design of transitional arrangements:

- **Building a connection between efforts to produce a democratic constitution and the peace process:** In twin transition contexts, where there is a need for both a democracy transition and a conflict resolution process in parallel, attention has to be given to how to connect the transition to a more democratic frame of government with the ethno-geographic issues at the heart of the peace process. This is an issue in Myanmar, but other countries have grappled in different ways with bringing democracy and conflict resolution change agendas together. The recent transition process still under way in Sudan has seen a series of agreements, initially to reach a compromise between a competing Transitional Military Council and the opposition pro-democracy coalition known as the Declaration of Freedom and Change Forces, who agreed to share power in a Sovereignty Council (operating as a form of collective head of state), a power-sharing Council of Ministers and a power-sharing legislative council (Sudan 2019). Over time, this new power-sharing interim government agreed a series of deals with geographically based armed groups and political forces in sub-state regions, which provided for them to come into government or cooperate with the transitional government, in complex incremental additions to the transitional structures and the vision for the future governmental arrangements.³ In this way, an initial deal focused on displacing an authoritarian ruler was widened and connected by a set of deals with armed actors whose regional interests have an identity and geographic dimension.
- **Timing:** How long should the transition last, and what should its relationship be to past and future election timing? What is a long enough period that will enable reform processes to take place, without being so long that unelected government is indefinite? Typically, short timelines can enable a window of opportunity to be seized but may leave just a few experts in a drafting position in a process that can become disconnected from the social movements underpinning change. However, long timelines risk the window of opportunity closing.
- **Human resources for the transition:** Often the transition begins with key leaders in jail or exile, and new forms of leadership are created. This creates a set of human resource considerations for how the transition is to be managed, what the relationship between

3. These additional agreements (six in total) were brought together in the Sudan Peace Agreement (or Juba Agreement; Sudan 2020).

new and old leaders is, and where the authority and legitimacy for key long-term political decisions lies.

- **Security transition and military–civilian relations during the period of transitional government:** Even if questions of government are resolved, what process and timetable can provide for more normalized military and police sizes, functions, structures and oversight, and also deal with non-state armed actors? How will police and army functions be carried out in the interim period? How will issues of past culpability and membership of armed forces be dealt with? Armed/security actors need to be brought into a security transition. This requires thinking through how to construct relationships between civilian and armed actors during the transition. The current panoply of armed actors in Myanmar is complex. It includes, but is not limited to, the Myanmar military (that styles itself as the ‘Tatmadaw’), the police and intelligence service, armed opposition actors including ethnic armed organizations, and the new People’s Defense Forces.. Critical issues include how to institutionalize a civilian police service for functions undertaken by the military and armed actors, how to downsize and bring the military under civilian control and parliamentary oversight, and how to reintegrate armed actors through processes of security sector reform, and demobilization, disarmament and reintegration, without loss of state capacity, or splintering of armed opposition groups. However, many of these issues take time, and it is important to put in place some sort of security structure for the transitional period while broader longer reform processes can take place.
- **Electoral process:** How can the electoral process be reformed? What type of elections, if any, should be required to legitimize the transitional arrangements? How will questions of electoral design be determined (and what technical support is necessary)? What forms of election best fit in to the timescale of the transition? What types of regional devolution of power are to be factored in, and how do questions of group representation factor in to the electoral system chosen. Who appoints the election management body, and how can its independence be ensured? The same questions relate to possible referendums.
- **Constitutional reform, replacement or development:** Is a permanent constitutional revision clearly on the agenda for change, and what is the mechanism and consultation process by which it will be considered and proceed? What is the relationship of the interim structures to the past constitution, and how will any future constitutional reform project be institutionalized (with an amendment to the previous constitution, or a wholesale replacement)?
- **Poverty, humanitarian relief and economic development:** How can this be staged and financed, and who will be involved in delivery, against what benchmarks of accountability? How can a clear agenda be created on a continuum from immediate humanitarian relief (including management of Covid-19) through economic stabilization and financing of transitional government, and on to longer-term development objectives, such as reconstruction? When and how can economic recovery be financed?

5. International interests and involvement

The international community is not monolithic; however, all states have signed up to United Nations Charter standards, and are members of a system that (a) recognizes constitutionally held elections as the basis of government; (b) understands the concept of state recognition to be different from the question of who are the legitimate representatives of the people; (c) promotes peaceful settlement of disputes; and (d) supports the socio-economic development of people living in conflict and poverty as a common international goal. These principles should be as consistently applied as possible across very different countries and international organizations. It can be very important for domestic pro-democracy actors to have a clear strategy of international engagement that challenges external actors to engage with those best placed to claim representative legitimacy as the government.

A transition should be supported to move from any unconstitutional rupture, on the basis of:

- the need to recognize and uphold government on the basis of the constitution and elections held under it;
- the need not to endorse unconstitutional regime change, such as the one the military has instituted;
- the need to ensure national, regional and international interests in peace and pacific resolution of disputes.

International actors can, in general terms, support interim transitions in the following ways (for further detail, see Salmon 2020):

- **Political support:** International political, financial and peacekeeping architectures lend aspects of sovereignty to national governments. International actors should reconsider how they can support the elected representatives committed to restoring democracy to do so in a concerted way. Political support can involve formal diplomatic efforts, such as the politics of governmental recognition (as occurred in Libya, even in the absence of state control, with the support of the US and UK); and it can involve supporting political development as an alternative to violence through a range of more informal mechanisms.
- **Technical assistance:** International actors are often a source of technical advice, knowledge and comparative experience in transition processes. The focus of this assistance is to build the capacity of national systems, institutions and staff. However, in key areas—from the security sector to fiscal management—this technical advice may also serve to ensure alignment with specific legal or regulatory requirements or standards. In specific circumstances, such alignment must be confirmed to allow transitional governments to integrate effectively into the international system—for example, for money to flow, travel to be allowed, or goods to be imported—and sometimes this can raise complicated questions where sanctions have been put in place, once an interim governance arrangement is established.
- **Financial assistance:** In many cases of transition, there is a need for financial assistance and this is a primary focus of international support. The largest sums of this support are reported as official development assistance (ODA), specifically targeting ‘the economic development and welfare of developing countries’. However, issues such as application of sanctions and control of state assets will need to be dealt with, and the processes these involve can mean that the immediate financing of the transition can be difficult, even when a sufficiently legitimate government structure exists to govern in the transition.

6. How do the options for constructing transition relate to the current structures in Myanmar?

As with any country, the current context in Myanmar is unique. Currently two competing interim governance mechanisms have been attempted.

The military have constructed a form of self-appointed governance structures, headed by what they term a State Administrative Council (SAC), to govern during the declared ‘emergency’ (stated initially to be for a year). These have no authority under the 2008 Constitution: even if one considers it to be technically in force, the Constitution does not provide for the new SAC structures, and the emergency declared is in violation of it. The SAC does not have interim legitimacy as part of a stakeholder consultation of all the country’s political forces either. The SAC has not mapped out a transition pathway in which wider representative forces could engage, but has instead set out three main areas for it to ‘focus on’ covering political, economic and social affairs, which include reconstituting and reconvening the Union Election Commission to re-check the elections; Covid-19 pandemic health and business measures; and a set of government objectives with development-type aims (Global New Light of Myanmar 2021).

It should be noted, however, that the military implausibly maintain that the 2008 Constitution remains in place and that there is therefore constitutional continuity with the situation prior to 1 February. They maintain that the declaration of the state of emergency was not a coup, but rather that they were acting within the bounds of the constitution. This is a position which International IDEA and other expert organizations have clearly shown to be untenable.

The CRPH was established with the mandate of 80 per cent of the elected Members of the Union Parliament in February 2021, locating its authority with reference to the 2008 Constitution and its declared intention to restore constitutional order. It has subsequently declared a need to replace the 2008 Constitution, and built an alliance with the protest movement and the ethnic armed organizations to set out a transitional goal and a mechanism in the form of an interim governmental structure and a broad reform trajectory for a transition. Part I of the [Federal Democracy Charter](#) sets out the four overarching goals of the transition, and a framework of guiding principles and policies. The goals are:

1. Eradication of dictatorship;
2. Ultimate abolishment of the 2008 Constitution;
3. Building a Federal Democracy Union; and
4. Emergence of a People's Government.

All of these objectives would require the adoption of a new constitution.

Part II of the Federal Democracy Charter sets out a detailed framework for interim governance. The interim government structure includes the NUG, the CRPH maintaining a legislative role, and the National Unity Coordination Council (NUCC) as a platform to negotiate the FDC's strategic development. The judiciary and the security sector are mentioned, but the institutional dimensions remain unclear. The interim government system is constructed to ensure broad representation and public legitimacy—without the involvement of the military, which has been declared illegal by the NUG.

These two different forms of interim authority aim at alternative visions of the transition—its direction and its outcome. While the military aims at preserving its own status of power and privilege, the democratically legitimate interim institutions envision a complete departure from the previous power-sharing formula with the military enshrined in the 2008 Constitution.

7. A moment for mediation or a moment for new constitutional thinking?

7.1. Mediation?

In times of crisis, international actors often focus on the compromises needed to enable some space from violence to address the root causes of what triggered it. Although military and authoritarian leaders lack the legitimacy needed to negotiate a democratic future, some kind of dialogue with at least parts of the military is often understood to be necessary at some point, because the army are often a powerful institution in their own right, who will not go away even if they agree to demit government and support the transition. States usually have standing armies, and managing and crafting reform involves reform of the entire security sector, which takes time and needs its own transitional modalities. Moreover, in many contexts involving violence and instability, even ones in which revolutions were largely successful, the creation of a new transitional government has had to secure some buy-in from those coming from very different conflicted perspectives on the direction the country should go in, including elements of the military that have indicated a willingness to reform.

7.2. Constitutional opportunity?

In the case of Myanmar, the move to negotiations is likely to be difficult for the military or wider democratic social movements to accept. Those in power in the military are likely to fear that talking to democratic actors will be the start of conceding power in ways that they will not be able to contain; the democratic movement and the interim institutions insist to replace the

military government and the past compromises of the 2008 Constitution, rather than negotiate something that would have similar military involvement to that settlement. Myanmar is also very diverse, and over the last few years—as noted in Section 4—has been engaged in a simultaneous democratic transition and a peace process with ethnic armed organizations, in ways that at times have accentuated divisions between the groups opposed to the military’s political power. The current crisis has brought these wider actors and many other social groups into a form of consensus over the need to create a process of constitutional development, in a new way. A key question is how this constitutional thinking, and the diverse processes and engagement needed to underpin it, can be given space to develop and be sustained. How can it be supported to provide an important set of ideas connected to wide public consensus on what change might look like and to build implementation modalities that can deliver on the expectations of peace and inclusive development.

8. Transitions as opportunities for charting agendas for change

Transitional governance arrangements are often understood as bridges to a destination, rather than a destination in their own right (Forster 2020). That is, they are temporary governance arrangements intended to enable constitutional, institutional and social development, so that a more permanent constitutional revision can be put in place.

However, perhaps a better image is that of the belay device, which a rock climber uses to attach a safety rope to the rock at each stage they reach on their climb.⁴ This belay means that, no matter what stumbles happen further up the rock, the climber cannot fall below a certain point. Transitions always have uncertain futures, and can perhaps be understood as a belaying exercise—pinning down the elements of constitutional change most needed in the moment, to secure a measure of constitutional development that can then be further amended and built upon.

The current context, however, is very challenging and fluid with competing transitions and governments rather than an agreed transition. Against this background (and in addition to human rights monitoring, humanitarian assistance and calling for an end to arbitrary detentions and excessive violence) international consensus could usefully articulate and support:

1. The creative thinking and dialogue of the people of Myanmar on their constitutional future, already evident as a response to the coup.
2. Engaging appropriately with domestic stakeholders, in ways that respect the legitimacy of the 2020 elections, and with those who hold a democratic mandate to govern, in ways that are consistent with respect for democratic participation and constitutional changes of government.

9. Key questions for deliberation

As this brief intends to support deliberation, we have suggested the following questions for consideration, which it provokes:

- In what ways is the situation in Myanmar similar to, or distinct from, other examples? How and with what implications?
- To what extent do the Federal Democracy Charter proposals and ongoing development provide for the issues raised in this brief regarding interim governance arrangements?
- What can be the possible trajectories for the current situation of ‘parallel governments’ and increasing violence?
- What types of practical positive action could international actors take with reference to the current situation?

4. This metaphor comes from UN Constitutional Focal Point, Sumit Bisarya, speaking in a personal capacity in discussions at the launch of Interim Governance Arrangements, University of Edinburgh.

- Are there any key confidence-building measures which could usefully serve to de-escalate the current situation, in however a minimal or even localized way?
- What ‘deeper dive’ into the above comparisons and issues is useful to support ongoing creative efforts to address the aftermath of the coup in Myanmar in very difficult circumstances?

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Colophon

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