



State and Region Parliaments

News Bulletin

Special Issue

Kayah State Political Clashes From Impeachment to Constitutional Tribunal



Photo: 7day News

Constitutional Tribunal

The constitutional tribunal sits in a hearing.

Beginning in August 14, 2020, an investigative team was formed to impeach Kayah State chief minister, and after the Chief Minister was ousted from office with the votes of parliament members in the hluttaw, the clashes between the state hluttaw and the chief minister continue to press on.

After the case between Kayah State Hluttaw Speaker U Hla Htwe and the former chief minister, now a parliament candidate of the NLD, was being heard on an e-Court, which was aired live, on October 6, the legal confrontation between the two continue to rage on amidst political campaigns during the global Covid-19 pandemic.

An investigative report was submitted to the state

hluttaw, and on September 1, the hluttaw voted and decided to remove the chief minister from office with a 16 to 4 votes.

On September 3, as the impeachment was successful, the President signed the dismissal of the chief minister.

On the day of his dismissal, U L Phaung Sho, however said "As the people know who's actingn rightly, this serves as a campaign for me."

U L Phaung Sho competed in the 2015 general election in Mese Township constituency (2) representing the NLD, and was later appointed chief minister of Kayah State.

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While in office, some of the issues the media covered U L Phaung Sho included what he said of putting the Tatmadaw in charge in handling the protest by the youth on putting up General Aung San's statue in Loikaw.

In the early days of forming an investigation team, impeachment, and eventual dismissal, the Auditor General's April-2016-to-May-2018 report mentioned that U L Phaung Sho appropriated 37,700,000 kyat from over 567,300, 000 kyats received from renting heavy machineries and from other sources as well as using 1.3 million kyat for party matters.

The investigative report also mentioned that the misuse of public money included a wedding gift of 200,000 kyat for U Win Htein's daughter.

As the clashes and confrontation continued to heat up, the resignation of U Thein Aung (aks) Se Reh from Demawso Township constituency (1) from the investigation team plays a role and cannot be ignored.

Since his resignation affected the hluttaw, he would be charged under at least 3 offences, U Hla Htwe said to reporters after an e-court session on October 6. However, he did not mention when and with what charges U Thein Aung would be sued.

He would do exactly as he had said, said U Hla Htwe. Therefore, it seems that he believes strongly the legality of the impeachment. From the part of U L Phaung Sho, he has taken the case to constitutional tribunal.

U Hla Htwe ran in the 2015 general election, presenting the NLD in Shadaw Township constituency (2), won and became the speaker. As a result of the clash, now U Hla Htwe had left the NLD and is running in the same place as an independent.

The impeachment of the chief minister and his submission to constitutional tribunal is the first of its kind happening in 2020.

Attorney Daw Min Min Soe represented U L Phaung Sho, and Hluttaw Speaker U Hla Htwe represented himself. If such a thing happened again in the future, the legal controversy and the redressing of the chief minister for self-image and that of the party by appealing to constitutional tribunal, an advocate U Kyaw Wanna Aung assessed.

Criticism on the argument of the constitutional tribunal emerged a little loudly. On October 6, a significant number of MPs said that if the constitutional tribunal rules on a decision that was in accordance with the constitution, that constitution would be useless.

The hearing was held on an e-court, and the final ruling was made on October 27, and according to constitutional tribunal by-law 19 (format 8), the ruling was published online.

Tribunal's Final Ruling

As the chief minister brought it up to the court over the dispute about whether the impeachment of the chief minister was constitutionally admissible, the constitutional tribunal defined the terms of the constitution.

After hearing from both sides, the tribunal passed its final ruling on three points, namely, whether U L Phaung Sho had the right to appeal to the court, whether the hluttaw's impeachment was legal given that one of the MPs resigned from the process, and whether it was constitutionally acceptable that three of the accusers were on the investigation body.



Photo: Mizzima

"U L Phaung Sho submitted his appeal while acting in office before his removal through the President Office. Therefore, it was legal," read the ruling from the tribunal with regard to the first point.

At a hearing on October 6, U L Phaung Sho's attorney had requested the court to define article 263 (b) which concerns the impeachment of the chief minister where one of the accusers backed out and whether that was legal.

The attorney had requested the tribunal to define the term for forming the investigation body, and that the investigation team was not to be formed with the decision of the hluttaw speaker but proposed as a motion in hluttaw and proceed with two thirds of hluttaw representatives.

According to article 263 (b), a charge signed by no less than a quarter of the total number of regional or state hluttaw representatives can be submitted to the Speaker of the Hluttaw concerned to impeach the Chief Minister or any Ministers, and there was no mention of a need for proposing a motion in the hluttaw.

In defining article 263 (b), the tribunal stated that any impeachment shall be signed by a quarter of hluttaw members and it shall be submitted to the hluttaw through the Speaker of the Hluttaw.

The continued investigation even after one MP had quit the investigation body was the right of the Hluttaw Speaker and although the tribunal had no authority to rule on the matter, it has the right to define the terms



An e-court passes a final ruling in a hearing on October 27.

for the sake of resolving possible future disputes, the tribunal said.

The attorney representing U L Phaung Sho had urged the court to define the provision in 263 concerning the formation of investigation body since three accusers were in the body.

“The Speaker of the Hluttaw concerned shall form a body of investigation to investigate the charge. The term of the completion of the investigation shall be determined on the volume of the charge,” states article 263 (c), and whether accusers could be or not members of the investigation body is not mentioned.

In today’s hearing, in its interpretation of the article 263 (c) the tribunal defined it as ‘The Speaker of the Hluttaw concerned shall form a body of investigation with “suitable” hluttaw representatives and investigate the investigation’.

The inclusion of the accusers U The Reh, U Khin Maung Tun and U Soe Reh in the investigation body was the undertaking of the Speaker of Hluttaw and the tribunal did not have the right to scrutinise, the tribunal said. However, since regulations are needed for the formation of the investigation body, it had to define the terms, the tribunal maintained.

However, “suitable representatives” was given no further clarification.

With regards to the three rulings today, it was not about whether the actions of the Speaker was in accordance with the constitution but the defining of the two article as per appeal of U L Phaung Sho to the tribunal.

Tribunal Cannot Rule on Impeachment

The final ruling of the tribunal stated that it cannot rule on whether or not the impeachment of the Kayah State Chief Minister U L Phaung Sho was constitutionally legal, and that it was the action of the legislature.

The action of the Kayah State Hluttaw is in accordance

with the constitution, but the procedure was questionable. This dispute between the hluttaw and U L Phaung Sho is a battle over personal image and dignity, commented U Nay Win Naing, a constitutional expert and program director of The Fifth Pillar.

“These rulings will not have many impacts on what the Kayah State Hluttaw, which itself is the legislative body, has carried out so far. However, to look at it from the perspective of one’s name and image, the accused can have recourse to whether the charges against him was constitutionally legal. So, these cases became political issues,” said U Nay Win Naing.

The definition of terms at the tribunal can be referred to in future disputes and this should definitely be taken up when amending the laws, U Nay Win Naing added.

“This is a new case study for our country. A dispute of this kind has never occurred. This dispute between the Kayah State Hluttaw and the chief minister goes to show that governmental bodies are alive,” he continued.

Although the current constitutional tribunal had passed fourteen rulings on constitutional disputes, this is the first time it has received the submission of the impeachment of the chief minister.

Consequences of the Dispute

As a consequent of the dispute and confrontation, State representative U The Reh filed a complaint to Anti-corruption Commission to investigate the U L Phaung Sho’s alleged appropriation of public money for personal gain. The complaint letter was sent to the commission on September 8. The charges on appropriation for personal benefit rental fees received from state-owned machineries and the breaching of laws and regulations and corruption in the name of local developments are included in the letter.



U Hla Htwe, the Speaker of Kayah State Hluttaw, talks to the press after the hearing on October 6. (Photo: K Zon Nwe/Myanmar Now)

Arrived at Loikaw Police Station

On September 30, the Anti-Corruption Commission responded, saying that relevant departments have to carry it out in accordance with existing laws. U The Reh, a State MP representing Hpruso Township, took the statement of the Anti-Corruption Commission on October 10 to Loikaw police station to bring up the charges against U L Phaung Sho on financial abuses. However, the case is not open yet.

U The Reh is the chair of the investigation body which was formed by the Kayah State Hluttaw to impeach the former chief minister U L Phaung Sho.

On the other hand, the Hluttaw Speaker also said that he was going to take U Thein Aung, a State MP who backed out from impeaching the chief minister, to court.

"I have studied the quality of the MP for four years. He is not that capable. We've never pressured him to do things in certain ways. I've never said, 'U Thein Aung, sign here'. I can deal with him about this face to face. But him, he intentionally pressured us. I am sure that there are black hands behind this," said the Speaker of the Hluttaw on October 6 in a press release.

U Hla Htwe said that the contents in the resignation letter of U Thein Aung (aks) Se Reh, a State MP representing Demawso, marred the image of Kayah

State Hluttaw, and that he was going to take U Thein Aung to court on charges under three articles. U Hla Htwe said that he however did not want specify the three articles yet.

While interests are high on what articles would bring about what impacts as the dispute gets complicated twists from the constitutional tribunal to the police station, U L Phaung Sho is preparing to competing in 2020 general election from Mese Township constituency (2), and U Hla Htwe is campaigning as an independent in Shadaw Township.

What impacts the dispute from what began with individual dispute reaching the tribunal court could have on the political climate of Kayah State has yet to be seen.

Reference:

1. https://7day.news/detail?id=203453&fbclid=IwAR0AAo8fGh_Mu3loitoH_BtLW Dq- jV34MXp5rSCHlApZnKisL7tMiXISx4
2. <https://www.kantarawaddytimes.org>
3. <http://www.mizzimaburmese.com/article/74494>
4. <https://www.myanmar-now.org/mm/news/4816?fbclid=IwAR2yxxEOPiUxrKn-79 feg 8Li4rKKvkGFyH7-5MbKIVP1KDGX0pv7pouHXA>
5. <https://www.tachileik.net/2020/10/UHlaHtwe.html>