Lived experiences of lawyers, courts, and trials after the coup

“တရားစီရင်း” မိန့်:
MYANMAR MILITARY’S
“JUSTICE” SYSTEM
Introduction ........................................................................................................................................... 2

Launching criminal investigations ........................................................................................................... 5

Searches .................................................................................................................................................. 6

Detention and arrest ................................................................................................................................. 7

Interrogations and confessions .................................................................................................................. 9

Torture .................................................................................................................................................... 11

Charges .................................................................................................................................................. 12

Courts ..................................................................................................................................................... 14

Judges ..................................................................................................................................................... 16

Evidence and witnesses ............................................................................................................................. 17

Defence lawyers and defences .................................................................................................................. 19

Conclusion ............................................................................................................................................ 22
Introduction

The military has detained, arrested, charged, tried, and sentenced thousands of people since the February 2021 coup started, including protesters, journalists, politicians, human rights defenders, and online users punished for exercising their right to freedom of expression. FEM’s earlier report, 505A Act of Revenge, documented almost four thousand of these cases.¹

Each person has faced the military’s tyrannical “justice” in the military’s draconian “system”. Some people have been fortunate enough to be supported by a few brave defence lawyers intent on trying to uphold some element of fairness, due process, and humanity. FEM has produced two legal defence toolkits on incitement and false news to support their legal defence.²

This mini report summarises the lived experiences of those caught up in the military’s “justice system”, comparing the legal standards that existed, at least on paper, before the coup, and outlining the current conditions. No names or identifying information are included to protect those involved.

A clearer understanding of the lived experiences within the military’s “justice system” will enable improved support to defendants as well as stronger advocacy for the protection of human rights.

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Background

The military has always sought to control Myanmar’s justice system. After the 1962 coup, the military detained the Supreme Court Chief Justice, replaced courts with kangaroo courts, and enfeebled legal training. Lawyers who were deemed “political” because they stood up for justice were disbarred, prosecuted, and jailed.

The democratically-elected National League for Democracy (NLD) government introduced some limited reforms, including allowing the Supreme Court to develop its own reform plan and freeing lawyers to create independent associations. However, lawyers were still jailed under anti-democratic laws simply for their legal work.

The military repeated its past approach to “justice” in all subsequent coups, including since 2021. In the years after the 2021 coup started, the military appointed new judges and threatened others, closed down courts, targeted lawyers with long prison terms, and established martial “law”. In 2023, over 40 million people were living under the military’s justice system, with a further 7.8 million people across 47 townships living under the military’s even more repressive martial “law” system.3

3 Based on township population statistics found on https://themimu.info/erp-dashboard
“Military” and “police”

The report uses the term “military” to refer to the institution led by coup instigator, Min Aung Hlaing, and his governing body, the State Administration Council (SAC). Any references to individual members of the military refer to individuals operating under the instructions - or legally accountable negligence - of Min Aung Hlaing and the SAC.

The “police”, while a separate institution on paper, operates under the direction of the military as per the military’s amended “law”.4 Furthermore, since the coup, the police often work closely with the military. For example, an arrest made by police officers may have also involved members of the military.

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The investigative and criminal justice due process in Myanmar is regulated under several laws including the Code of Criminal Procedure, Police Manual, Courts Manual, and Myanmar Police Force Maintenance of Discipline Law. Many of these due process rules have been ignored since the coup started.

Prior to the coup, the police had to prepare a First Information Report (FIR) after receiving information, usually from a victim although anybody can complain, about the commission of a cognisable offence. An FIR was the start of the criminal justice process and police only started investigating after preparing one.

Since the coup, the police often launch investigations before preparing an FIR. They launch the investigation without having received information containing a specific allegation, or having suspicion of an exact crime. The police search property, conduct interrogations, and seek out witnesses before preparing an FIR. The police then prepare an FIR on the basis of what they discover during searches, interrogations, and witness reviews.
Prior to the coup, the police were supposed to follow regulations on conducting searches included in the Code of Criminal Procedure, Courts Manual, Law Protecting the Privacy and Security of Citizens, Police Manual, and case law. Searches were usually conducted in at least some accordance with the regulations.

Law on searches

You have a right to be treated respectfully by the police (Police Manual, para. 1056).

Police searches require a search warrant issued by a court. Police must give you a receipt for seized items, although this is sometimes used to show you consented to a search (Code of Criminal Procedure, Arts. 96-103; Police Manual, para. 1064; Courts Manual, para. 401; the military “suspected” Law Protecting the Privacy and Security of Citizens, Art. 8).

Since the coup, searches are conducted by either police officers or members of the military or both. Informants and local administrative staff may also participate. It is unclear whether there is ever a search warrant. FIRs are not produced prior to the search. Searches are not conducted in public, with the required minimum of two witnesses, or in sight of the person being investigated.

Searches are not truthfully documented by the police. The police never supply the required documentation of the search to the person being investigated. The police force the accused to sign a search form later while in the police station, and not in front of the required minimum of two witnesses.

Lack of documentation or accountability means that the police seize property without recording it, without submitting it to the court, and without returning it. In some cases, the police destroy the property of an accused individual and their family. Police, including junior and senior officers, seize anything of value, regardless of whether it is related to the investigation. Electronic devices including phones and laptops as well as gold and cars are taken.
The police demand access to any electronic devices found, including phones and laptops. The police demand passwords to the devices and any apps.

Failure to facilitate searches or to provide items and information as requested may result in the police carrying out violence toward the accused individual including torture.

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Prior to the coup, the police were supposed to follow regulations on detention and arrest included in the Constitution, Code of Criminal Procedure, Penal Code, and case law. Detentions and arrests were usually conducted in at least some accordance with some of the regulations.

You have a right not to be unlawfully detained (Constitution, Arts. 21(b) and 376; 339-342, and 348; Code of Criminal Procedure, Arts. 61, 100, 167, and 491).
You have the right to claim damages from the police for unlawful detention, and to petition the Supreme Court to challenge the lawfulness of detention (Constitution, Art. 378; Penal Code, Art. 330; Code of Criminal Procedure, Arts. 80 and 491).

You have a right to go before a court if detained over 24 hours (Constitution, Art. 376; Code of Criminal Procedure, Arts. 81 and 167).

You have the right to be released if insufficient evidence is found during the investigation (Code of Criminal Procedure, Art. 169).

You have the right not to be treated with excessive force or undue restraint when being arrested (Code of Criminal Procedure, Art. 50).

Police must get permission from a judge to extend detention beyond 24 hours (Code of Criminal Procedure, Art. 167).

You must be present in the court for any extension (Code of Criminal Procedure, Art. 167).

Police must show the judge why further investigation is necessary and why further detention is necessary (Code of Criminal Procedure, Art. 167).

You have a right to oppose further detention (Court Manual, para. 403).

You have the right to request bail (Constitution, Arts. 376-378; UDHR, Art. 9; ICCPR, Art. 9).

The police or the court shall allow bail for bailable offences. (Code of Criminal Procedure, Art. 496).

When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such offence be released on bail. (Code of Criminal Procedure, Art. 497).

Since the coup, a person accused of a crime can be detained by either the police or the military. It is unclear whether there is an arrest warrant. Detentions and arrests are always violent or include a disproportionate threat of violence. A majority of those detained are taken to
Prior to the coup, the police were supposed to follow regulations on interrogations and confessions included in the Code of Criminal Procedure, Evidence Act, and Myanmar Police Force Maintenance of Discipline Law. Interrogations and confessions were usually conducted in at least some accordance with the regulations.

**Law on interrogations and confessions**

You must be informed that you are not obliged to confess (Code of Criminal Procedure, Art. 164).

You have the right not to be induced by threat or promise (Code of Criminal Procedure, Art. 343).

You have a right not to be forced to confess (Evidence Act Art. 24; Myanmar Police Force Maintenance of Discipline Law, Art. 13; ICCPR, Art. 14(3)).
Your confession can only be used as evidence if it is made voluntarily (Code of Criminal Procedure, Art. 164). You should avoid making coerced, false, or unwise confessions.

You have the right to not self-incriminate (Code of Criminal Procedure, Art. 342(1)(a); ICCPR Art. 14(3)(g)).

Since the coup, most individuals arrested have confessed to a crime and written a statement of confession. After being arrested and held in the police station, the police often use harmful practices to interrogate the accused person and induce, threaten, and coerce them to confess. Harmful practices include cruel, inhuman, and degrading treatment and punishment, as well as torture.

Arrested individuals are often sent to military interrogation centres too. The military interrogation centres use more harmful practices to induce, threaten, and coerce the arrested individuals into confessing.

Arrested individuals may also face harmful practices as punishment for providing false confessions.

The police and military also interrogate to extract details about other individuals and networks.

Confessions extracted under force are commonly used and accepted in courts.

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Confessions extracted under force are commonly used and accepted in courts.
Prior to the coup, the police were supposed to follow regulations on torture included in the Constitution, Code of Criminal Procedure, Myanmar Police Force Maintenance of Discipline Law, Penal Code, and Police Manual. Cruel, inhuman, and degrading treatment and punishment, as well as torture, were rife.

Law on torture

You have the right not to be tortured or mistreated (Constitution, Arts. 44 and 353; Penal Code Arts. 330-331; Myanmar Police Force Maintenance of Discipline Law, Art. 17(g); UDHR, Art. 5).

You have the right not to be hurt during an interrogation (Penal Code, Arts. 330-331).

You have the right not to be physically and mentally sexually harassed (Penal Code Arts. 354 and 509; Union of Myanmar Vs. Thin Thein (and 3), 2002, M.L.R 36).

You have a right to report accusations of torture or misconduct to the investigating police officer, who must investigate them (Police Manual, para. 1693).

You must report police torture to the courts – not to the police – and should ask judges to record injuries during hearings (Code of Criminal Procedure, Art. 200).

Since the coup, those detained have reported facing at the very least systematic cruel, inhuman, or degrading treatment and punishment while being held and interrogated. Many detained individuals have reported facing torture, especially “political” prisoners.

Prisoners are often denied food and relentlessly beaten. Other forms of torture include electrocution, stress positions, stabbing, suffocation, mock executions, burnings, twisting of limbs, nail-pulling, drownings, sexual violence, and threats of all of the above.
Women and individuals from the LGBTIQ community often face sexual harassment and sexual violence.

Some people detained have been disappeared and others have reportedly been killed. Political prisoners also have less access to medical care.

Lawyers have raised allegations of torture before courts but the police deny the allegations and the judges dismiss them. Raising allegations of torture is risky for lawyers.

**Charges**

Prior to the coup, the prosecution was supposed to follow regulations on laying charges included in the Attorney General of the Union Law and Code of Criminal Procedure. Charges were usually laid in at least some accordance with some of the regulations.

Law on charges

You have the right to know what charges are against you (Code of Criminal Procedure, Art. 210; ICCPR, Art. 9(2)).
Since the coup, charges are laid without a proper review of the evidence. Prosecutors lay charges in accordance with the orders of the police or military.

There is no evidence to prove every element of the alleged crime. If there is any evidence, it is not accessible, legitimately admissible, or reliable. There are usually no independent witnesses. If there are witnesses, they are not credible. Accused individuals are told the charge but are not given specifics including the exact time and location of the alleged crime.

There is no public interest review. Prosecutors do not check the public interest, weigh up the nature and seriousness of the crime, or check the interests of the “victim” or community affected. Prosecutors that know the accused is innocent continue with the case regardless because they are instructed by or are fearful of the military.

Those individuals accused of criticising the military are charged under the Penal Code, facing a maximum sentence of three years imprisonment. Those individuals accused of encouraging or enabling the opposition NUG, CRPH, or PDFs, are charged under the Counter Terrorism Law and face a maximum sentence of the death penalty or life imprisonment.

Some arrested individuals reportedly pay bribes to have charges reduced in severity to avoid long prison sentences. For example, by shifting charges from under convicted charges reduced in severity to avoid long prison sentences. Those individuals accused of encouraging or enabling the opposition NUG, CRPH, or PDFs, are charged under the Counter Terrorism Law and face a maximum sentence of the death penalty or life imprisonment.

Free Expression Myanmar - Page 13
Prior to the coup, criminal trials were conducted in civil courts at the township or district levels depending on the severity of the alleged crime, and were supposed to follow regulations included in the Constitution, Courts Manual, Evidence Act, Union Judiciary Law, and case law. Courts were usually conducted in at least some accordance with the regulations.

Law on courts

You have the right to be presumed innocent until proven guilty (Union of Burma v. U Aye Kyi, 1964 BLR 396; UDHR, Art. 11(1)).

You have the right to due process and a fair trial (Constitution, Arts. 19, 353, and 381; ICCPR, Art. 9(1)).

You have the right to a public trial (Union Judiciary Law 2010, Art. 3(b); Code of Criminal Procedure, Art. 352; UDHR, Art. 10).

You have a right to only pay fees consistent with the law (Union Judiciary Law, Art. 73; Courts Manual 1999, para. 76 and Art. 103(44)).

You have a right to a speedy trial without unjustifiable delays or postponement (Court Manual, paras. 22, 24, 466, 560; Maung Tin Ngwe Vs. The Union of Burma, (1966) B.R. 639; ICCPR, Art. 14(3)).

The trial should be completed within 6 months (Union Attorney General Rules, Rule 109(e)).

Stalled cases must be dismissed (Supreme Court Notification 114/424 PTC [2855/2015]).

You have a right not to answer a judge’s questions (Code of Criminal Procedure, Art. 342(2)(iii)).
In 2023, some defendants who are not facing Penal Code cases are reportedly proceeding down a third track in reopened civilian district courts.

Since the coup, accused individuals have proceeded down one of two tracks, both of which are secretive with decisions dictated by the military. Some individuals proceed down both tracks simultaneously, or face the same charge in different districts.

The first track is trial by a “special court” set up inside prisons. Special courts are closed courts and therefore journalists, civil society, and families are not allowed to attend. Special courts apply civilian criminal laws and judgements are made by ostensibly civilian judges. Fair trial rights are violated. Trials take about a year or one-three months if the defendant confesses.

The second track is trial by a military tribunal. Military tribunals are not “courts martial”, which are referred to in the constitution (Articles 293b and 319), are regulated in the Myanmar Military Act (Articles 110-193), apply only to military personnel, and include some fair trial principles, such as evidential standards, right to appeal, and legal advice (Myanmar Military Act Articles 136, 213(1), 220). Military tribunals instead apply to civilians and were last seen when the military previously imposed martial law in 1989.

Military tribunals have no constitutional basis and are therefore extrajudicial. Defendants are not permitted access to a lawyer. Little is known about their procedures and practices or whether they include any fair trial principles.

In 2023, some defendants who are not facing Penal Code cases are reportedly proceeding down a third track in reopened civilian district courts.

Military tribunals have no constitutional basis and are therefore extrajudicial.
Prior to the coup, judges were supposed to follow regulations included in the Constitution, Courts Manual, Evidence Act, Anti-Corruption Law, and Union Judiciary Law. Although corruption was high, judges operated in at least some accordance with the regulations.

**Law on judges**

You have the right to be treated with respect by the court (Court Manual, para. 13).

Since the coup, judges always enforce military orders, or the judges’ assumption of what the military wants. There is an almost 100% conviction rate. The most punitive sentence is almost always handed down to the convicted individual.

Some judges seem satisfied with enforcing the military’s orders. Other judges are fearful of the risk of not doing so. Several judges who did not initially enforce the military orders or who spoke out against the coup were themselves arrested.

Judges undermine and ignore due process in criminal cases. Judges often openly deny legal rights in court. For example, judges deny defence lawyers the right to recall witnesses to cross-examine them.

Judges also rush through criminal cases. Before the coup, each criminal case usually involved between 30 to 100 trial sessions, each lasting an average of an hour. Since the coup, judges have tried to complete trials in 10 to 15 sessions within two to three months. The judges are instructed on the result in advance of the sessions finishing, and have large backlogs of cases to complete.
Evidence and witnesses

Prior to the coup, courts were supposed to follow regulations on evidence and witnesses included in the Code of Criminal Procedure, Evidence Act, and case law. Court review of evidence and witnesses was usually conducted in at least some accordance with the regulations.

You have the right to be presumed innocent until proven guilty (Union of Burma v. U Aye Kyi, 1964 BLR 396; UDHR, Art. 11(1)).

The burden of proof is on the prosecution, not on you (Evidence Act, Arts. 101-104).

The benefit of doubt is on you (Daw Tin Oo and U Aye Phe (3) v Union, 1966 BLR 129).

The standard of “proof” is defined (Evidence Act, Art. 3).

If you give an explanation which may reasonably be true, even though it is not believed by the Court, you are entitled to an acquittal (M. Muthiah Servai v. Union, 1955 BLR (HC) 175).

You have a right to hear the evidence (Code of Criminal Procedure, Art. 353).

You have the right to call your own witnesses (Maung Ant Bwe & One v. Union of Burma, 1948 BLR (HC) 863. Union of Burma v. Ah Shin & 2 Others, 1955 BLR (HC) 317.)

You have the right to cross-examine witnesses (Code of Criminal Procedure, Art. 208(2)).

Your lawyer has the right to know the facts of the case and argue vigorously (Ethics of the Legal Practitioners Duties and Rights Seventh Edition, Union of Myanmar Bar Council, Art. 141).
Since the coup, evidence has become unimportant and irrelevant within the justice system. An accusation alone is usually sufficient for laying charges and securing a conviction within a court.

Very little evidence is presented by the prosecution in criminal cases. In most cases, the only “evidence” presented by the prosecution is the First Information Report (FIR). Sometimes, search forms are presented, but these do not include credible evidence.

Property seized by the police during searches is rarely presented in court. Electronic devices such as laptops and phones may be presented in court but are not previously sent to the Criminal Investigation Department (CID) responsible for extracting credible evidence.

Defence lawyers often cannot challenge the “evidence” presented in court because doing so is risky. Challenging “evidence” or drawing attention from the judge or law officers increases the lawyer’s own risk of being detained and prosecuted.

Some trials are delayed because either the complainant or the prosecution’s witnesses fail to attend the court.

Defence lawyers often call the accused individual’s family members as witnesses so that they can access the court. This is often the first time that the accused individual has met their family since being detained by the police.

In most cases, the only “evidence” presented by the prosecution is the First Information Report (FIR).
Defence lawyers and defences

Prior to the coup, defence lawyers were supposed to operate under rights and regulations included in the Courts Manual, Code of Criminal Procedure, and Legal Practitioners Act. Defence lawyers usually operated in at least some accordance with some of the rights and regulations.

Law on defence lawyers

You have the right of defence (Constitution, Arts. 19 and 375; Union Judiciary Law, Art. 3).

You have a right to a lawyer (Code of Criminal Procedure, Art. 340; Courts Manual, Vol. II, para. 455; Legal Aid Law, Arts. 25-26, 31, and 43; ICCPR, Art. 14(3)(d)).

You have a right to a lawyer who loyally respects your interests and not negligent (Legal Practitioners Act, Art. 44; 1968, BLR (High Court) Page 264; UN Declaration on the Basic Principles on the Role of Lawyers, 12).

You have a right to access your lawyer (Constitution, Arts. 357; UN Declaration on the Basic Principles on the Role of the Lawyer, Principle 18).

You have the right to confidential communications with your lawyer, including during prison visits (Evidence Act, Art. 126; Prison Act, Art. 40).

You have the right to hear the evidence and the witnesses (Code of Criminal Procedure, Art. 353 and 360).
Your lawyer has the right to sufficient time to receive instructions and study documents (Courts Manual, Vol. II, Art. 457; ICCPR, Art. 14(3)(b)).

Your lawyer has the right to know the facts of the case and argue vigorously (Ethics of the Legal Practitioners Duties and Rights Seventh Edition, Union of Myanmar Bar Council, Art. 141).

You have the right to be heard equally with the complainant. You have the right to call your own witnesses (Maung Ant Bwe & One v. Union of Burma, 1948 BLR (HC) 863. Union of Burma v. Ah Shin & 2 Others, 1955 BLR (HC) 317).

Since the coup, defences are ignored in courts and the military and its courts actively repress defence lawyers. Defence lawyers are only allowed in “special courts” and are not allowed into military tribunals. There are not enough defence lawyers and therefore each lawyer will be simultaneously defending hundreds of accused individuals.

Often the accused individual’s reason for hiring a defence lawyer is simply to ensure that they can communicate with their family, friends, and colleagues outside of prison. Any communication between an accused individual and their lawyer that is allowed is always monitored, with armed police sitting threateningly inside meeting rooms.

Defence lawyers have been threatened, tortured, and arrested for fulfilling their role in defending their clients. Using a challenging defence argument in court is enough to raise unwanted attention from the judge, law officers, and military. For example, simply cross-examining a witness is regarded as too challenging. Requesting the opportunity to appeal a conviction may also be regarded as too challenging. A judge’s bad mood or bad feelings towards a defence lawyer can increase the lawyer’s risk.

Risks are often realised outside of the court. The military places defence lawyers under surveillance, taking their names, photographing them, visiting their offices and homes, intercepting their calls, and monitoring their electronic devices and online accounts.

Defence lawyers are also required to sign documents inside the court promising not to post on social media or contact journalists about the case, or inform the accused
individual about current affairs. Some lawyers are openly threatened inside the court.

As a result, many defence lawyers do not take on so-called “political” cases that involve defending the human rights of individuals, including those repressed for exercising their right to freedom of expression.

Defence lawyers that do take on these cases risk being associated with the accused individual. They are labelled “activist-type” lawyers and their risk of being repressed by the military and the courts increases.

Defence lawyers mitigate their risk by reducing the defence that they give to their clients. For example, they do not challenge evidence or processes that are illegal or procedurally problematic.

Using a challenging defence argument in court is enough to raise unwanted attention from the judge, law officers, and military.
Conclusion

After seizing power in 2021, the military tore down Myanmar’s nascent justice system which was already hampered by decades of oppression including under the military’s own 2008 constitution. Initial steps towards the rule of law, judicial independence, and improved legal defence were swept aside and replaced by legal tyranny.

FEM’s analysis of the military’s current “justice” “system” is based on in-depth work with defence lawyers and uncovers their lived experience. Every person involved in the system faces serious challenges and risks from the military and often from each other. Lawyers, prosecutors, judges, witnesses, and accused individuals are all at risk to different degrees.

The military’s destruction of the justice system was made easier by the lack of holistic reform delivered during Myanmar’s short political transition from 2012 to 2021. Successive governments failed to plan for and deliver sufficient reforms to make the system more effective and robust.

Future governments must learn from past mistakes. Myanmar needs not only reformed laws, but new ideas, reformed mindsets, democratic legal practices and behaviours, and the removal of all obstacles to achieving them.
Recommendations

To a democratic Myanmar government:

• Shut down all special courts and military courts, and void all military “laws” that establish and regulate them
• End all harassment, surveillance, threats, prosecutions, and convictions against lawyers, inside and outside the court
• Reform the entire justice system to bring it in accordance with international human rights standards and judicial best practices, ensuring open consultation with civil society throughout
• Reform all criminal laws relating to human rights, including by ratifying international human rights treaties that guide the reform of domestic laws

To international stakeholders, including the UN, foreign governments, and international lawyers’ associations:

• Condemn, criticise, and investigate Myanmar’s judicial system, as well as support civil society interventions to do so
• Place reform of the justice system at the heart of any future dialogue and interventions in Myanmar, providing support for civil society, legal experts, and broader stakeholders to encourage accordance with international standards
• Use international mechanisms, including UN institutions and sanctions, to surgically encourage reform of the justice system.
Acknowledgements

FEM wishes to thank all those lawyers and stakeholders involved in the project and who cannot be named for security reasons.

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About FEM

Free Expression Myanmar (FEM) is a national human rights organisation that is expert in free expression and information, engaging in legal reform, defending victims of violations, and promoting best international standards.

This report forms part of FEM’s objective to promote appropriate and needed reforms. See:

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Support

The report is funded by USAID. The views represented in this paper are those of the author(s) and do not necessarily represent the views of USAID.
Myanmar military’s “justice” system

Lived experiences of lawyers, courts, and trials after the coup

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