**EXPERT WITNESS CONCERNING THE LEGAL SYSTEM IN MYANMAR**

**AND THE RIGHT TO A FAIR TRIAL**

**SUBMISSION TO INDONESIA’S CONSTITUTIONAL COURT**

**Case Number 89/PUU-XX/2022**

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***Summary***

Thank you, Excellencies.

It is my great honour to appear before you and present evidence concerning the right to a fair trial in Myanmar; evidence which leads to the conclusion that a fair trial is impossible in Myanmar today.

I base this on three main avenues of argument:

1. Since the 2021 attempted coup in Myanmar, the military has increased its control over the justice system to the point where a broad range of local and international actors closely monitoring Myanmar’s courts are in agreement that it is now impossible to receive a fair trial.[[1]](#footnote-1)
2. I will show that all aspects of the legal process have been impacted by measures put in place by the regime after the attempted coup: from new unconstitutional laws, arrest, detention, the appointment of military officials to courts, court proceedings, through to sentencing and imprisonment. Torture and ill treatment before trials are common and frameworks pertaining to the right to a fair trial are routinely ignored.
3. Finally, I will argue that the coup itself was in violation of the 2008 constitution,[[2]](#footnote-2) which itself lacked legitimacy because it is widely regarded to have been imposed on the people of Myanmar without any democratic engagement. This undermines the very basis of Myanmar’s legal system.

***Sources***

Allow me to say that the evidence concerning Myanmar’s justice system captured in my presentation is based in part on publicly available information, but is also informed by over 7 years of trial monitoring and court observation in Myanmar, including of military courts set up inside prisons after the coup in 2021, as well as interviews with lawyers and detainees since April 2021. In order to safeguard the security of those involved in monitoring and analysing the judicial process, it is not possible to provide details of all sources.

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Your Excellencies,

Already before the attempted coup of 1 February 2021, the justice system in Myanmar had been impacted by structural and systemic problems, which make accessing a fair trial difficult if not impossible for defendants.

Embedded corruption has seen the routine appointment of ill-qualified, military officers to judicial positions, including to the Supreme Court, as has been investigated and substantiated by the Asian Human Rights Commission.[[3]](#footnote-3)

The 2008 constitution, drafted by the army and imposed on the people of Myanmar,[[4]](#footnote-4) entrenched impunity for the army. Indeed article 445 guarantees that no proceeding shall be instituted against any member of the government “in respect to any act carried out in the execution of their respective duties.”[[5]](#footnote-5) Moreover, the 2008 Constitution further grants the military the ultimate exercise of power over all judicial processes and article 343 gives the Commander-in-Chief – and I quote -- “final and conclusive authority” – end quote, over all cases and complaints, effectively allowing him to overturn convictions or commute sentences. [[6]](#footnote-6)

I should add, Excellencies, that though some progress was made in reforming the system between 2015 and 2021, according to the International Commission of Jurists in a recent report, these gains have since been systematically eroded.[[7]](#footnote-7)

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Your Excellencies,

I would now like to turn to some political background that elucidates the dynamics that underlie the subjugation by the military in Myanmar of the country’s legal system.

Myanmar’s national elections, held in November 2020, were won overwhelmingly by the National League for Democracy (NLD). Though not without concerns over access to voting, these elections were deemed to be free and fair by international observers, not least by Myanmar’s own Union Election Commission.[[8]](#footnote-8) Nonetheless, the Myanmar Military, the Tatmadaw, contested the validity of the election result. On 1 February 2021, when the new Parliament would have been sworn in, the military arrested key NLD leaders, including the State Counsellor, Aung San Suu Kyi, President Win Myint, and other senior figures.[[9]](#footnote-9) The Tatmadaw then dismissed the President and formed the State Administrative Council, the SAC. To be clear, the act of dismissing the President was in violation of the military-drafted constitution, which I will explain later in this testimony. The State Administrative Council then attempted to take control of all state institutions including the justice system in the following ways.

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Excellencies, I’d like to elaborate on the way that the military in Myanmar has exerted its influence over the justice system.

In the week following the coup, the SAC removed four incumbent judges from the Union Supreme Court and appointed three new officials.[[10]](#footnote-10) Today, all but one judge on the ten-member Supreme Court has a military background or was appointed by the military.[[11]](#footnote-11)

Military domination over the Supreme Court cements the army’s control over lower-level courts, because the Supreme Court determines the appointments, promotions and transfers of lower-level judges.[[12]](#footnote-12) In addition, the State Administrative Council also took control of the Union Attorney General’s Office, and the General Administrative Department, both key administrative bodies for the justice system.[[13]](#footnote-13) For further details, I reference footnotes 12 and 13 of my written submission to the court.

An early action by the State Administrative Council was the appointment of Daw Thida Oo, previously Permanent Secretary of the Union Attorney General Office (UAGO), to the position of the Attorney General (AG) of the Union. This indicates that the control of the legal and justice sector was a priority for the military regime. At a coordination meeting held on February 4th— the first departmental meeting after the coup—Daw Thida Oo declared openly that the Union Attorney General’s Office would be performing its duties in accordance with the leadership and guidance of the State Administrative Council.[[14]](#footnote-14)[[15]](#footnote-15)

One of the duties of the Attorney General, and prosecutors or law officers at various levels, is to prosecute criminal cases in accordance with the law.[[16]](#footnote-16) The Attorney General also has the duty to scrutinize cases and charges brought before them to determine whether or not there are sufficient grounds for bringing a case to trial.[[17]](#footnote-17) The Attorney General’s Office has yet to address widespread unlawful detentions, evidence of mistreatment and torture, including people who are known to have died in police or military custody.[[18]](#footnote-18) Instead, the Attorney General’s Office and its law officers appear to continue to bring cases to conviction without scrutiny, reinforcing the ongoing influence of the military and the police on the judicial system.[[19]](#footnote-19)

Excellencies,

The State Administrative Council also retransferred the General Administration Department (GAD) from the Ministry of the Office of the Union Government to the SAC’s Ministry of Home Affairs on 5 May 2021 (SAC Order No 119/2021). The GAD is unparalleled in outreach capacity, serving as the backbone of state administration and local governance in Myanmar.[[20]](#footnote-20) Acting as the main interface between the government and the people, the GAD’s Ward and Village Administrators also wield an immense amount of power over the daily life of ordinary public.[[21]](#footnote-21) Ward and Village Administrators are also expected to monitor development activities, oversee birth and death registration, and work closely with the local police to maintain law and order in their respective wards and villages. They also have the power to prohibit activities that could damage the rule of law and stability and to crack down on illegal gatherings.[[22]](#footnote-22) With this level of power at the village and township level, the GAD has widespread capacity in government-controlled areas to intervene in any kind of public gathering or protest, simply by deeming it as illegal or damaging the rule of law and stability.

Excellencies,

The SAC also amended the Penal Code, introducing sweeping new measures.[[23]](#footnote-23) The Law Amending the Penal Code (Law No. 5/2021) and the Law Amending the Criminal Procedure Code (Law No. 6/2021) were enacted by the SAC on 14 February 2021. These two pieces of legislation amended the existing criminal law to broaden the scope of crimes, including high treason, sedition and criticism of the military (specifically under Article 505(a)) and increased their penalties. These expanded laws have been the primary tools, along with charges under the Anti-Terrorism Act, for charging opposition members, protestors and anyone publishing content (including journalists, and private citizens on social media) critical of the regime or which appears to support the opposition. 505(a) is the most commonly used charge, which criminalises attempts to “cause fear, spread false news, and agitate directly or indirectly against a government employee.” No warrant is required for arrest under 505(a) and it is punishable by up to 3 years imprisonment. Because the provision is so broadly drafted, it is routinely used in response to any activity deemed to be counter to the interests of the regime.[[24]](#footnote-24)

The SAC has charged numerous people, including teachers, lawyers, doctors, celebrities, journalists, and members of the student unions under Section 505(a). Indeed, the daily military-controlled newspapers, Myanmar Ahlin and Global New Light of Myanmar, frequently publishes lists of people charged under Section 505(a) since 3 April 2021.[[25]](#footnote-25) Section 505, especially 505(a), is actively being applied to suppress independent media and freedom of expression, thus assisting and enabling violations of basic human rights.

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These amendments essentially empower the security forces to conduct brutal crackdowns on dissent, particularly protestors and the civil servants joining the Civil Disobedience Movement (CDM). It allows the regime’s forces to act with impunity while also wielding the law to punish those who oppose them.

Excellencies,

The Fourth Amendment of the Ward or Village Tract Administration LawNo. 3/2021) on 13 February 2021, Sections 13(g) and 17 of the Amendment, reintroduce the provision that requires all residents to inform their respective ward or village administrator of the arrival and departure of overnight guests who come from other wards and are not listed in their family units.21 A key rationale behind the amendment is to prevent those hiding from authorities to find refuge, by criminalizing housing others without the consent of the local authorities. The amending law is not only an assault on basic human rights, including freedom of movement, but it marks the return of night time raids led by security forces. The purpose of night time raids are twofold: to catch political dissidents as swiftly as possible with little scrutiny while at the same time sowing fear and sense of insecurity in the general populace, even in their own homes at night. The law has been enacted at a time when security forces have begun stepping up late-night arrests of civil servants who have joined the Civil Disobedience Movement, anti-coup protestors, and politicians they associate with the protest movement.

Your Excellencies,

I’d like to turn to the issue of military courts.

Ostensibly for security reasons, in the months following the coup, Special Courts were set up inside prisons across Myanmar, to try people arrested following the coup.[[26]](#footnote-26) These Special Courts are closed to the public, and the only external persons able to access them are defence lawyers who are often intimidated and placed under restrictions, such as gagging orders.

Township court Judges preside over the Special Court hearings, which are routinely held in areas within prisons where multiple matters are heard simultaneously in an open space. There is little privacy for the defendants and ample opportunity for defence witnesses to be monitored and intimidated. Witness intimidation is a routine problem and, according to anonymous sources, many defence witnesses are reluctant to attend court at all.

Using restrictions imposed due to Covid-19 and security as a pretext, family members are given little or no access to detainees in most parts of the country, but can sometimes send food, often having to pay a bribe to facilitate this.

Over the months between February and May 2021, martial law was declared in eleven townships (the primary administrative division in Myanmar) in Yangon and Mandalay regions.[[27]](#footnote-27) Defendants arrested in those townships are tried by military courts, which are held in secret, with the defendant permitted no access to a lawyer.[[28]](#footnote-28)

Military court cases are typically dealt with very quickly, in a matter of weeks, compared with months in the civilian court system. Most of the death sentences have been handed down by judges in military courts. There is no right of appeal from the military tribunals except for death penalty cases, and the Commander in Chief has the final decision.[[29]](#footnote-29) Military courts also try people *in absentia*, and 121 people have been sentenced *in absentia* by the courts, including 42 people given the death sentence.[[30]](#footnote-30)

You Excellencies,

On the question of arrest, interrogation and detention conditions I would like to draw your attention to the following:

The presumption of innocence is routinely denied,[[31]](#footnote-31) and according to one of Myanmar’s most authoritative human rights organisations, the Assistance Association for Political Prisoners, (AAPP), over 2,800 have been killed since the coup, some tortured to death in detention.[[32]](#footnote-32) Most people arrested allegedly for “political” offences are taken by security officials to interrogation centres (which are run by the police or the military or a combination of both) where they are interrogated and frequently subjected to cruel and degrading treatment and torture, prior to being charged.[[33]](#footnote-33)

Individuals are typically interrogated for between one night and several months,[[34]](#footnote-34) with treatment ranging from severe deprivation to physical and mental torture and sexual abuse.[[35]](#footnote-35) Often the family members of the detainee do not know of their location whilst they are in interrogation.[[36]](#footnote-36)

After interrogation, people are taken to prison where they eventually appear before a judge to be formally charged. An arrested person has no access to a lawyer in an interrogation centre, as lawyers can only assist a client once a Power of Attorney is signed, and this generally is not done until after interrogation, when the person is transferred to a prison and taken before a judge. If lawyers are granted access to their client, they are typically given only 10-15 minutes to take instructions, and often are not afforded adequate privacy to maintain lawyer-client confidentiality.[[37]](#footnote-37)

Treatment in detention facilities (police stations, interrogation centres and prisons), which are often overcrowded, is frequently cruel and inhumane with little or no regard to protection from Covid.

There are cases too of sexual violence against detainees. The (male) journalist working with Frontier Myanmar, Ye Mon, who was arrested in December 2021, was allegedly raped while in detention and has written on the record about his experiences.[[38]](#footnote-38)

Instances of torture are less frequently reported in prisons (as opposed to interrogation centres), though beatings of detainees are common. Lack of access to medical care, adequate sanitation, food and water are regularly reported by detainees in prisons. Political prisoners are not separated from the general prison population, and the United Nations Office for the High Commissioner for Human Rights has reported that non-political detainees are used by prison guards to harass and attack political prisoners.[[39]](#footnote-39)

The interrogation process is largely outside of the law, and fails to comply with the ostensible remand and bail procedures contained in Myanmar law, particularly that persons arrested should be released within 24 hours unless they are brought before a magistrate (Criminal Procedure Code, Sections 60 and Section 167), and that there should be no delay between the arrest of a person and their being brought before a court (Police Manual, Article 1352).

Bail hearings are no longer held as of right (for bailable offences – Criminal Procedure Code, section 496), and very few instances of people being granted bail at all have been observed since the coup.[[40]](#footnote-40)

These factors all undercut the presumption of innocence, which is a right enshrined in Myanmar law (Evidence Act 1872, sections 101 and 102).

Your Excellencies,

I’d like to turn to proceedings in court and sentencing.

Defence lawyers appearing in Special Courts are subject to surveillance, including questioning by plain-clothed officials,[[41]](#footnote-41) and are routinely subjected to threats and harassment.[[42]](#footnote-42) In court, lawyers have limited opportunities to cross-examine or otherwise question witnesses. Judges and court officials regularly refuse to allow questions to be put to witnesses, threaten to report lawyers to the authorities for asking particular questions, and interrupt or disrupt proceedings to avoid particular questions being asked.[[43]](#footnote-43) Evidence presented by defence lawyers of torture or ill-treatment in detention is often not taken into account, or is prohibited entirely.[[44]](#footnote-44) Lawyers who provide food or financial assistance to detainees (on behalf of their families or because their families cannot provide it) are regularly questioned and monitored by the authorities.[[45]](#footnote-45)

Cases proceed to sentence despite the burden of proof not being met by the plaintiff (usually a police officer), and numerous cases have been concluded to conviction and sentence where there was no evidence to substantiate the elements of the charge.[[46]](#footnote-46) Lawyers report that judges appear to be waiting for “instructions from their superiors in order to deliver the final sentences in most cases, rather than [making] their decisions independently based on evidence and law”.[[47]](#footnote-47) The maximum penalty for offences, particularly charges under article 505(a), are routinely given to all detainees regardless of their personal circumstances or the nature of the alleged offending.[[48]](#footnote-48)

139 people have been sentenced to the death penalty since the coup,[[49]](#footnote-49) and four people including two prominent members of the opposition were executed on 25 July 2022 – one a high-profile activist, and one a former member of parliament.[[50]](#footnote-50) They were the first people executed in Myanmar since 1988.

Excellencies,

I’d like to address the question of immunity of the military from prosecution.

As mentioned earlier, under the heavily disputed 2008 Constitution, members of the military have specific immunity from prosecution under Article 445. The 2008 Constitution was drafted by a previous military regime, in power before 2012, and was crafted in part to ensure the protection of the military from civilian oversight and to prevent any checks on military power.[[51]](#footnote-51) No members of the military have been held responsible for crimes committed prior to or since the 2021 attempted coup. Some senior military officers have been arrested and charged with offenses related to corruption, but independent observers are in agreement this is indicative of infighting within the ruling military clique.

Your honours, I’d like to bring your attention to one high profile example of where another purported instrument of domestic accountability proved to be flawed and futile. This, I believe, will be of particular interest to audiences in Indonesia, the world’s most populous Muslim country. It relates to the genocide which took place against Myanmar’s Rohingya Muslim minority in 2017. Following the massacres which included extreme forms of gender-based violence such as mass rape according to the UN’s Fact Finding Mission, the authorities in Myanmar established the “Independent Commission of Enquiry” (ICOE). It was mandated to investigate crimes occurring in Rakhine State in 2017. Held up to the international community, particularly concerned Muslim states, by the Myanmar government as a positive step toward accountability, the Independent Commission of Enquiry, according to the Global Justice Centre which investigated the ICOE in depth, suffered from [critical failings](https://globaljusticecenter.net/files/20200203_ICOEfact_sheet.pdf). It was financed by the president’s office and one of its commissioners is on record before joining the Commission saying that the allegations of genocide were lies. According to the Global Justice Centre, there were also problems with the commission’s mandate, methodology, procedures, findings, and transparency that make clear that the real intention was to deflect and defer attempts by the international community to ensure justice and accountability for the military’s genocidal campaign against the Rohingya. The coup only further stymied efforts at thorough and credible investigation and adjudication for Myanmar’s Muslim population. As a result, to this day, not a single member of Myanmar’s Roningya community has received justice and due redress from the barbarities committed against them.

Your excellencies, I would now like to turn to the issue of the unconstitutionality of the coup and indeed the unconstitutional nature of the very basis for the current legal regime in Myanmar.

After the election in November 2020, the military claimed that the Union Election Commission (UEC) and the NLD government failed to address the complaints raised by the military and its allied political parties concerning allegations of electoral fraud.[[52]](#footnote-52) This alleged failure to investigate claims of electoral fraud was used as justification for a state of emergency declared by the military under Article 417 of the 2008 Constitution on 1 February 2021. [[53]](#footnote-53)Given the gravity of a state of emergency declaration under the Constitution, failure to investigate voter fraud is widely considered to be a thinly-veiled excuse for a military takeover. As I have stated, the takeover began with placing President Win Myint and State Counsellor Aung San Suu Kyi under house arrest in the early hours of 1 February 2021. With the President under detention, then Vice President Myint Swe, a retired general, assumed the position of Acting President and declared the entire country under a ‘state of emergency’ for a period of one year in accordance with Article 417 of the Constitution. In implementing the state of emergency, Acting President Myint Swe transferred legislative, judicial, and executive powers to the Commander-in-Chief of the Defence Services, Min Aung Hlaing under Article 418. However, under Article 417 of the Constitution, the President, in concert with the National Defence and Security Council, is the only person who can declare a state of emergency. Thus the military takeover was unconstitutional and the laws and military orders promulgated thereafter were also without a constitutional basis. Despite the fact that the steps taken to transfer power to the Commander-in-Chief were clearly unconstitutional, from the appointment of Myint Swe as Acting President after placing the President under house arrest to the manner in which the state of emergency was declared, the military repeatedly tries to invoke the 2008 Constitution to legitimize its political power, including its administration of the law.[[54]](#footnote-54)

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Your Excellencies,

I will conclude by stressing again, as this testimony sets out, it is not possible to receive a fair trial in the Myanmar justice system. All aspects of the system are under military control: from arrest and detention, to pre-trial procedures, trials, sentencing and imprisonment. A broad range of authoritative observers, including those with direct access to the judiciary for the past seven years with whom I am in close contact, are in agreement that the justice system is being used as a tool by the regime to prosecute its political opponents.

In this context – the widespread and systematic denial of the right to a fair trial – it is a matter of the utmost urgency that national, regional and international bodies take action to ensure justice for the people of Myanmar.

Thank you, your honours.

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2. Andrew Harding, “Constitutional Implications of Myanmar’s Coup on 1 February 2021”, [Constitutional implications of Myanmar’s Coup on 1 February 2021 | ConstitutionNet](https://constitutionnet.org/news/constitutional-implications-myanmars-coup-1-february-2021) (2021) [↑](#footnote-ref-2)
3. International Commission of Jurists, "Myanmar: Country Profile Prepared by the ICJ Centre for the Independence of Judges and Lawyers” (2014); Asian Human Rights Commission, “Yellow Ribbon Campaign to end military appointment to judicial position” (2015) <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-151-2015/>>; M Crouch, “Judicial Loyalty to the Military in Authoritarian Regimes: How the Courts are Militarized in Myanmar” (2022) <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/judicial-loyalty-to-the-military-in-authoritarian-regimes-how-the-courts-are-militarized-in-myanmar/8DCF7403AA7E67755582094E3331CC91>. [↑](#footnote-ref-3)
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6. Ibid., 149 [↑](#footnote-ref-6)
7. International Commission of Jurists, “Myanmar: A year after military takeover, no rule of law or judicial independence” (2022) https://www.icj.org/myanmar-a-year-after-military-takeover-no-rule-of-law-or-judicial-independence. [↑](#footnote-ref-7)
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9. Amnesty International, “Myanmar 2021” <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/myanmar/report-myanmar/>. [↑](#footnote-ref-9)
10. Anonymous, Justice Sector & Legislative Brief (February-May) (2021). [↑](#footnote-ref-10)
11. Anonymous, Justice Sector & Legislative Brief (February-May) (2021). [↑](#footnote-ref-11)
12. Anonymous, Justice Sector & Legislative Brief (February-May) (2021). [↑](#footnote-ref-12)
13. Anonymous, Justice Sector & Legislative Brief (February-May) (2021). [↑](#footnote-ref-13)
14. In the first coordination meeting of the UAGO, the AG stated that after the military has taken over the powers by declaring a State of Emergency on 1 February, we shall strive to implement the vision and duties of our department continuously under the leadership and guidance of SAC, Myanmar Ahlin Newspaper (Burmese Edition), 5 February [↑](#footnote-ref-14)
15. . Available at: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/mal\_5.2.2021.pdf [↑](#footnote-ref-15)
16. Attorney-General of the Union Law (2010), Sec. 12(f) [↑](#footnote-ref-16)
17. Id. [↑](#footnote-ref-17)
18. See, for example, Regen, H., Sidhu, S., Ward, C. & Salai, T. “‘I thought I would die.’ Myanmar protesters describe torture they suffered in detention,” CNN, 28 April 2021, Available at: https://edition.cnn.com/2021/04/27/asia/ myanmar-coup-detainees-torture-intl-hnk/index.html [↑](#footnote-ref-18)
19. There are many indications that the UAGO lacks independence from SAC. At a coordination meeting on 9th March 2021, convened by the AG to discuss the legal reforms needed under SAC, including whether the draft laws are in line with the nine objectives of SAC (three political objectives, three economic objectives, and three social objectives), the AG made clear that the meeting was held in accordance with the guidance of the Chairman of SAC; he guided “to select the teachers from the law departments [.....] in order to enact the laws as soon as possible.” See Union Attorney General’s Office website at: https://www.oag.gov.mm/?p=7141 [↑](#footnote-ref-19)
20. Kyi Pyar Chit Saw and Arnold, M. (2014) Administering the State in Myanmar: An Overview of the General Administration Department, The Asia Foundation, p.iii. [↑](#footnote-ref-20)
21. The lowest level of GAD bureaucracy is represented by the Ward Administrator (WA) or Village Administrator (VA). In turn, VAs report to the Village Tract Administrators (VTAs). [↑](#footnote-ref-21)
22. The GAD can also invoke Section 144 of the Criminal Procedure Code in their respective administrative areas, imposing curfews and restrictions on gatherings. For more discussion on GAD’s use of Section 144, see: Crouch, M. “Reigning in Emergency Powers in Myanmar.” East Asia Forum, 3 November 2016, available at: https://www. eastasiaforum.org/2016/11/03/reining-in-emergency-powers-in-myanmar/ [↑](#footnote-ref-22)
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24. Anonymous, Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022, sighted by the author, p 8. [↑](#footnote-ref-24)
25. See for example, “Those spreading news to affect State stability charged under Section 505-A.” The Global New Light of Myanmar, 6 April 2021, p.11. Available at:

https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2021/04/8uVf4sw8-6\_April\_21\_gnlm.pdf [↑](#footnote-ref-25)
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27. Human Rights Watch, “Martial Law in Myanmar a Death Knell for Fair Trials”, (2021) https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials. [↑](#footnote-ref-27)
28. Anonymous, Justice Sector & Legislative Brief (June) (2021). [↑](#footnote-ref-28)
29. Anonymous, Justice Sector & Legislative Brief (February-May) (2021). [↑](#footnote-ref-29)
30. Assistance Association for Political Prisoners, https://aappb.org/?p=23769. [↑](#footnote-ref-30)
31. International Bar Association, Human Rights Institute, “Crackdown on Human Rights Defenders, Opposition, and the Right to a Fair Trial in Myanmar”, [document (ibanet.org)](https://www.ibanet.org/document?id=IBAHRI-Myanmar-Report-2022) (2022) [↑](#footnote-ref-31)
32. Assistance Association for Political Prisoners, [Assistance Association for Political Prisoners » Blog Archive » Daily Briefing in Relation to the Military Coup (aappb.org)](https://aappb.org/?p=23809) (2022) [↑](#footnote-ref-32)
33. Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Myanmar since 1 February 2021” (25 February 2022) UNHRC 49th sess, Agn itms 2 and 4, UN Doc A/HRC/49/27, para 36. [↑](#footnote-ref-33)
34. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 15-18. [↑](#footnote-ref-34)
35. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 15-18; Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Myanmar since 1 February 2021” (25 February 2022) UNHRC 49th sess, Agn itms 2 and 4, UN Doc A/HRC/49/27, para 36 and 37. [↑](#footnote-ref-35)
36. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 17-18. [↑](#footnote-ref-36)
37. Anonymous, Justice Sector & Legislative Brief (June) (2021). [↑](#footnote-ref-37)
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40. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 13-14. [↑](#footnote-ref-40)
41. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p. 20 and p 24. [↑](#footnote-ref-41)
42. Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Myanmar since 1 February 2021” (25 February 2022) UNHRC 49th sess, Agn itms 2 and 4, UN Doc A/HRC/49/27, para 41. [↑](#footnote-ref-42)
43. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 20-23; Anonymous, Justice Sector & Legislative Brief (June) (2021). [↑](#footnote-ref-43)
44. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 23. [↑](#footnote-ref-44)
45. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 24. [↑](#footnote-ref-45)
46. Anonymous, Justice Sector & Legislative Brief (June) (2021); Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Myanmar since 1 February 2021” (25 February 2022) UNHRC 49th sess, Agn itms 2 and 4, UN Doc A/HRC/49/27, para 40. [↑](#footnote-ref-46)
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48. Anonymous, “Legal Report on Litigation Cases at Special Courts under the State Administration Council 2021-2022”, sighted by the author, p 14-15. [↑](#footnote-ref-48)
49. Assistance Association for Political Prisoners, https://aappb.org/?p=23769. [↑](#footnote-ref-49)
50. Amnesty International, “First executions in decades mark atrocious escalation in state repression” (25 July 2022) https://www.amnesty.org/en/latest/news/2022/07/myanmar-first-executions-in-decades-mark-atrocious-escalation-in-state-repression/>/ [↑](#footnote-ref-50)
51. G Shubin and A Radhakrishnan, “Beyond the Coup in Myanmar: A Crisis Born From Impunity” (19 May 2021) <https://hrp.law.harvard.edu/myanmar/beyond-the-coup-in-myanmar-a-crisis-born-from-impunity/>. [↑](#footnote-ref-51)
52. Order 1/2021 of the Office of the President, Republic of the Union of Myanmar. [↑](#footnote-ref-52)
53. Article 417 states that in order to prevent the “disintegration” of the Union or “national solidarity” or the “loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means,” a state of emergency may be declared. [↑](#footnote-ref-53)
54. See, for example, Senior General Min Aung Hlaing’s speech on 9 February 2021, which refers to the military’s role in protecting and adhering to the 2008 Constitution as the justification for the military takeover. “Republic of the Union of Myanmar State Administration Council Chairman Senior General Min Aung Hlaing makes speech to public.” Global New Light of Myanmar, 19 February 2021, p.1” https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/ uploads/2021/02/9\_Feb\_21\_gnlm.pdf [↑](#footnote-ref-54)