



Journal of Human Rights and Peace Studies

journal homepage: <https://www.tci-thaijo.org/index.php/HRPS/index>



Importance of Right to Fair Trial: Legal Analysis of Court Hearings of Political Activists in Myanmar after the 2021 Coup

Ei Yatanar Myint

Institute of Human Rights and Peace Studies, Mahidol University

Email: eym.yatanarmyint@gmail.com

ARTICLE INFO

ABSTRACT

Article History:

Received: 08-Aug-2024

Revised: 21-Jan-2025

Accepted: 05-Feb-2025

Keywords:

Fair Trial, Court Hearing System, Political Activists, Public Hearing, Coup

Political activists in Myanmar have faced significant challenges in accessing their right to a fair trial, particularly since the military coup in 2021. The right to a fair trial is guaranteed by the International Covenant on Civil and Political Rights, which ensures that individuals have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. However, following the military coup and the establishment of a special system of court hearings for politically motivated cases, political activists face significant challenges in securing their right to a fair trial during the court hearings. This research article analyzes the court hearing system for political activists in Myanmar from the perspective of the right to a public hearing. Using qualitative research methods and interviews with lawyers and detainees' family members, this study examines the challenges political activists face in accessing their right to a fair trial at their court hearings. This research indicates that a system of closed-door hearings for political cases may elevate the probability of wrongful convictions. This study investigates the implications of restricted public access to Myanmar's special courts for the right to a fair trial of political activists.

Introduction

Political activists face challenges in accessing fair trials in every political reform. Under these challenges, the lack of the right to fair and public hearings is common in most countries. A new court hearing system was established based on Martial Law Order 5/2021 in Myanmar, mainly for political activists. The Assistance Association for Political Prisoners has reported that a total of 27,031 individuals have been detained since the 2021 coup. Currently, 20,728 individuals remain in detention, with 9,305 serving sentences (The Assistance Association for Political Prisoners (Burma) [AAPP], 2024). Previous research indicates that all political activists face “closed-door court hearings” (The Assistance Association for Political Prisoners (Burma) [AAPP], 2023), “challenges in accessing witnesses for their legal proceedings” (Ochab, 2022, pp.16-17) and “violation of the right to a fair trial” (Frontier Myanmar, 2022) after they are arrested. Since the court hearing system is closed to the public, activists face several challenges regarding access to justice. In addition, courts face the problem of overcrowding, with an insufficient number of judges to handle the increasing caseload daily (International Commission of Jurists [ICJ], 2022). Some activists face the death penalty.

Scholars have extensively discussed the significance of fair and public hearings from various perspectives. Convening a fair and public hearing is essential in upholding the integrity of a fair trial as it enhances transparency and fosters accountability. Public hearings not only ensure the transparency of the judicial process by subjecting judicial functions to scrutiny but also afford the accused the right to receive an impartial opinion regarding their case (Hager, 2015). The public hearing concept involves court proceedings open to the general public, allowing anyone to attend and observe the legal process. This transparency serves several important purposes, such as ensuring judicial accountability, fairness, and impartiality, building trust in the legal system, and deterring misconduct (Jaconelli, 1997). Conversely, the conditions under which the public is excluded from hearings include situations where it is deemed necessary (1) for ethical reasons, (2) to protect minors involved in the proceeding, (3) to safeguard the individuals involved, and (4) to protect state or official secrets. Other than in these circumstances, court hearings must be open to the public, including members of the media (United Nations Human Rights Treaty Bodies, 2007).

Nevertheless, the introduction of a closed-door court system for political activists after the 2021 coup is a significant threat to the right to a fair trial. This study explores the adverse effects of the lack of public access on activists' ability to access their right to a fair trial by investigating

the impact of closed-door court hearings on political activists. To achieve this objective, the research will address the following question:

1. Why is accessing the right to a public hearing important for political activists in Myanmar?
2. How does the special court hearing system introduced after the 2021 coup impact activists' access to fair trials?

Objective

This paper investigates the accessibility of fair and public hearings for political activists in Myanmar after the 2021 military coup and the introduction of the closed-door court system. Specifically, the study will analyze the impact of the special court system on the right to a fair trial, drawing on the experiences of lawyers and detainees' family members.

Methodology

This study applies qualitative research methods and interviews to obtain the necessary data and information to address the research question. The primary data will be collected from 11 participants, including four experts (lawyers and paralegals), two scholars (law professors), three family members, one NGO member, and one CSO member. Due to data access limitations, the research area is focused on the Yangon Region. Therefore, this research will not analyze the special court hearing situations across all regions in Myanmar. The approach includes in-depth semi-structured interviews to facilitate qualitative data collection. Due to security concerns, all interviews were conducted online.

Literature Review

Importance of Rights to Fair Trial

The right to a fair trial is mandated by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which state, "Everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal established by law (ICCPR, Article 14(1))." In addition, there are legally binding and non-binding instruments on the right to a fair trial, including the Basic Principles on the Independence of the Judiciary (1985),

the Code of Conduct for Law Enforcement Officials (1979), the Guidelines on the Role of Prosecutors (1990), and the Basic Principles on the Role of Lawyers (1990) of the UN, and the ASEAN Human Rights Declaration.

This right is fundamental in preventing violating other human rights of arrested individuals. Historically, the concept of the right to a fair trial began by prioritizing the individual defendant over the trial process as a whole. In this framework, rights are considered almost like possessions of the defendant. The wording of fair trial laws demonstrates this shift by using terms like "enjoy," "have," and "be entitled to" to depict the rights of the accused. The concept of a fair trial in modern legal practice includes the idea of procedural fairness, which outlines a set of rights for defendants in criminal cases. For instance, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) guarantee rights such as a fair and public hearing, the presumption of innocence, the right to be informed of the accusation, the right to prepare a defense, the right to legal assistance, the right to examine witnesses, and the right to access an interpreter (Langford, 2009).

In almost every country worldwide, the principle of a fair trial is enshrined in its constitution. In addition, scholars also discuss different perspectives on the importance of accessing the right to a fair trial for the person accused of a crime. This right is guaranteed to the accused person and in the rule of law system. Becirovic-Alic (2018) emphasizes that legality and accountability are vital for ensuring a fair and impartial legal process. The author highlights that a fair trial is fundamental to the rule of law because it ensures that legal proceedings are conducted transparently, independently, and according to established norms and standards. The right to a fair and public hearing not only facilitates transparency but also enables individuals to observe the legal process, comprehend the functioning of the court system, and witness equity and due process in practice. Additionally, this right serves as a mechanism for holding judicial authorities accountable for their actions and decisions (Benesh, 2006, p 699). These rights play a crucial role in democracy by ensuring that the voices of the public are heard, promoting civic engagement, and fostering open dialogue between the government and the community (Darle, 2002).

The right to a fair trial is important because it safeguards the individual from arbitrary punishment, ensures justice is administered impartially, upholds the rule of law, and ultimately guarantees that everyone, regardless of their circumstances, can prove their innocence and be treated fairly in legal proceedings. This right is also recognized as a fundamental right of every

individual.

Although the right to a fair trial is fundamental for individuals accused of a crime, a politically motivated trial challenges the possibility of a fair trial. Scholars indicate that politically motivated trials lack a legal definition. Posner (2005) notes that authoritarian governments frequently implement laws restricting various political activities during political change. These laws may outlaw the establishment of political parties other than the ruling party, any form of political dissent against the government, subversive actions, promotion of policies conflicting with government directives, and similar activities. Christenson (1983) defines a politically motivated trial as a legal proceeding in which the primary motivation behind the prosecution is political rather than strictly legal. A political trial often involves charges brought against individuals or groups based on their perceived opposition to or defiance of the ruling government, its policies, or its ideology. Therefore, a political trial poses many challenges to judicial independence, fairness and due process, public perception and legitimacy, and complex legal and political dynamics.

The Right to Fair Trial under the Myanmar Judicial System

The 2008 Constitution of the Republic of the Union of Myanmar upholds the right to a fair trial, as enshrined in Article 14 of the ICCPR. This provision guarantees that citizens have the right to a public hearing before an independent court, the presumption of innocence until proven guilty, and the right to defend themselves or be represented by a lawyer. However, scholars have pointed out that in Myanmar, there have historically been concerns regarding the judiciary's independence and impartiality, which profoundly impact the effectiveness of these guarantees. These concerns include improving public confidence in the courts, ensuring the right to defense, allowing sufficient time and resources for defense preparation, addressing issues related to witness examination, and aligning court procedures with fair trial principles and international standards. According to Zaw et al. (2021), a case management program was implemented in the Myanmar courts in 2015 to ensure that cases were heard within a reasonable time and without undue delay. Nevertheless, challenges to the right to a fair trial for the accused, such as the right to a defense and access to witnesses, remain.

Indeed, Myanmar's judicial system is impacted by corruption, which significantly affects the delivery of justice. This problem leads to many human rights violations, especially around equality before the law and the right to a fair trial. Numerous scholars have engaged in extensive discourse regarding judicial corruption, addressing concerns such as "institutional interference"

(Crouch, 2009, pp. 8-10), "lack of legal awareness" (My Justice, 2018), and "abuse of power" (Khaing & Cho, 2021).

The public nature of hearings is fundamental to ensuring a fair trial. Myanmar courts have failed to uphold this rightfully. According to researchers, logistical constraints, such as the limited size of courtrooms (averaging 4.6 by 4.6 meters), present significant barriers to realizing public hearings within Myanmar's judiciary. This spatial limitation restricts the public's access to hearings and underscores broader issues of accessibility and transparency within the legal system (Justice Base, 2017).

Scholars have examined access to a fair trial for the accused person from various perspectives before the 2021 coup. The challenges involve a lack of judicial independence and impartiality, widespread corruption, and logistical constraints within the court system. These issues erode public trust in the judiciary, impede the right to a fair trial, and hinder the right to a public hearing. Based on these perspectives, accessing the right to a fair trial was challenging before the coup.

The Situation of the Right to Fair Trial after the 2021 Coup

Myanmar's judiciary committed violations of the right to a fair trial even before the coup. Research shows that the 2021 military coup exacerbated the challenges of obtaining a fair trial for the accused, particularly for political activists. According to the Assistance Association for Political Prisoners (Burma) (2024), no one has been able to return home from prison since the Spring Revolution began in 2021. Activists across the country have been arbitrarily arrested and detained at police stations and interrogation centers for participating in multiple protests across Myanmar from 2021 to 2023 and have suffered fundamental rights violations, including physical and psychological torture. After the coup, the State Administrative Council revised the country's legal system to make protests a criminal offense, facilitate arbitrary arrests, and detain anti-coup demonstrators. As a result, peaceful protests have become criminalized through the amendment of laws and the removal of existing legal protections (Human Rights Watch, 2023).

Furthermore, Martial Law Order 5/2021 changed the court hearing system nationwide, including the implementation of special court hearings and military tribunals. Court hearings are not open to the public and occur inside prisons. Special courts are mainly held inside Insein Prison in Yangon, Taungoo Prison in Bago Region, Ohbo Prison in Mandalay, Hinthada Prison in Ayeyarwady Region, and other locations throughout the country. Military tribunals can impose

the death penalty or prison sentences with hard labor for an unlimited duration (Human Rights Watch, 2023).

None of these courts are accessible to the public, including witnesses and family members of the accused person. As emphasized by Free Expression Myanmar (Free Expression Myanmar [FEM], 2023), establishing a "special court" in Myanmar has posed significant challenges to the fair trial rights of individuals. This report outlines a situation where people accused in political cases encounter uncertainty from the time of arrest to their court hearings. Special court proceedings are usually closed to the public, including family members, the media, and civil society organizations. Several media sources have indicated that all the accused in the special court hearing system face issues such as being "denied the right to a lawyer" (Al Jazeera, 2023), "deprived of the right to defend themselves" (Reuters, 2023) and "being sentenced to life imprisonment" (VOA News, 2024). The absence of a public hearing can impact every criminal accused. Jackson and Summers (2018) note that the absence of public hearings impacts fair trial standards. According to scholars, in order to adhere to fair trial standards, it is recommended that court hearings be conducted in public, including the media. If a court hearing is not open to the public, it may violate fair trial standards. This right protects the accused within the legal system and is a critical component of fair trial procedures. Additionally, the right to a public hearing is essential for upholding the dignity of individuals while adjudicating their criminal proceedings.

This analysis of Myanmar's right to fair trials post-2021 coup highlights a severe decline in judicial fairness, particularly with regard to political activists. Before the coup, Myanmar's judiciary faced significant challenges, but the situation has worsened since then. Arbitrary arrests, detentions without due process, and severe violations of fundamental rights, including torture, are widespread. Martial Law Order 5/2021 established special courts and military tribunals that operate secretly and deny access to witnesses, family members, and the media. These practices violate international fair trial standards because public hearings are essential for transparency and justice. Furthermore, the lack of legal clarity in political cases and laws that criminalize peaceful protests undermine legal protections and have resulted in severe punishments for dissenters.

Conceptual Framework

The right to a fair trial ensures fairness for individuals accused of crimes and upholds trust and confidence in the justice system. Therefore, the right to a fair trial is important for

everyone involved in the justice system. However, politically motivated cases have resulted in legal proceedings that violate the right to a fair trial. This article aims to analyze Myanmar's special court hearing system and the access to fair trials for political activists. Previous research has indicated that special courts have raised concerns about potential violations of the right to a fair trial in political cases. Although the Constitution of Myanmar guarantees the right to a fair and public hearing, the special court hearing system still has challenges in upholding these rights. The following diagram illustrates the status of the right to a fair trial in political cases.

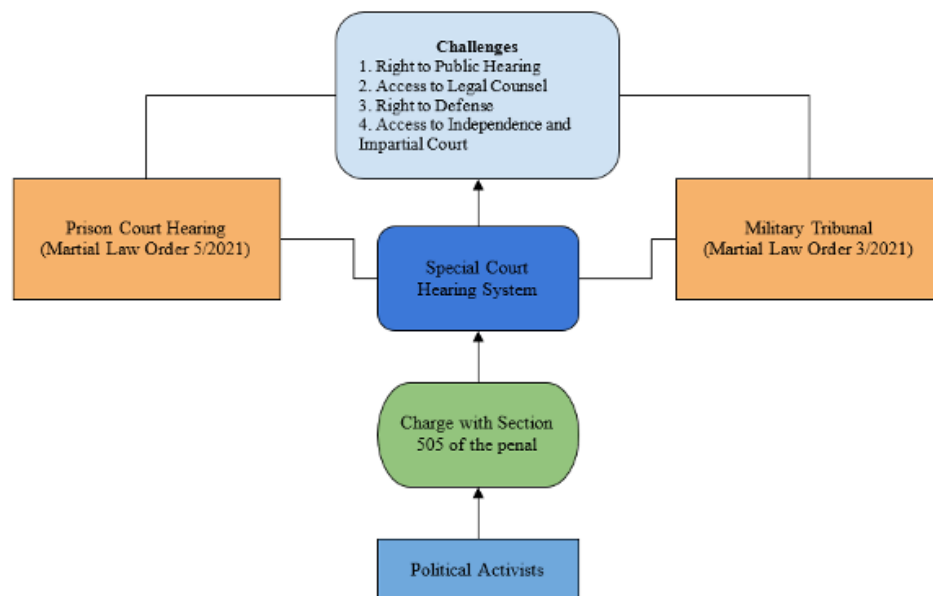


Figure 1: Conceptual Framework for the Special Court Hearing System in Myanmar

The existing literature suggests that public hearings are a powerful tool for the courts (Krehbiel, 2016, p. 991). They contribute to improved deliberation (Sombra, 2019) and play a crucial role in enhancing the legitimacy of legislation (Mikuli & Kuca, 2016). Public hearings can help prevent undue influence from government institutions and support better decision-making for the accused. When hearings are not public, it can impact the accused person's access to justice. During the coup, it was discovered that political activists were systematically denied their right to a fair trial. This denial included the right to a public hearing and legal counsel before and after the trial. The lack of public hearings made it difficult for them to defend themselves, seek bail, and access witnesses, leading to further injustice. Additionally, some individuals were sentenced to death after being convicted. According to AAPP data in 2024, 168 people have been sentenced to death since the legal changes in Myanmar. This study aims to investigate the right to a fair

trial for political activities, focusing on the role of public hearings. Additionally, it will examine the impact of court proceedings against political activists conducted in prison in the Yangon Region after the coup in Myanmar.

Interview Design

This study applied a qualitative research method to investigate the impact of Myanmar's special court hearing system following the coup. Semi-structured interviews were conducted with 11 participants, as shown in the table below. During the interviews, the main focus was on analyzing the impact of the court hearing system and ensuring access to fair and public hearings for activists.

Interviewee	Type of Sample	Interview Date	Remark
Respondent 1	NGO Representative	3 January 2024	NGO with experience in research on access to fair trials
Respondent 2	CSO Representative	20 December 2023	A CSO that is working to access a fair trial project
Respondent 3	Legal Aid Lawyer	4 January 2024	Expert
Respondent 4	Legal Aid Lawyer	20 January 2024	Expert
Respondent 5	Paralegal	5 January 2024	Expert
Respondent 6	Paralegal	11 January 2024	Expert
Respondent 7	Law Professor	5 January 2024	Scholar
Respondent 8	Law Professor	31 December 2023	Scholar
Respondent 9	Family Member of Detainee	4 January 2024	Key informant
Respondent 10	Family Member of Detainee	5 January 2024	Key informant
Respondent 11	Family Member of Detainee	9 January 2024	Key informant

Figure 2: Interview list

Research Findings

The special court hearings, based on Martial Law Order 5/2021, do not meet fair trial standards. Respondents indicated that "the court hearing is not easily accessible" and "the court does not allow a fair and public hearing," so this court does not meet the standard of independence of the accused person. As part of the concept of a fair trial, court hearings must be conducted by independent and impartial tribunals established by law. These rights are enshrined as judicial principles in the constitution of the Union of Myanmar.

Access to Lawyers in Special Courts

When one is arrested, one must have the right to defend themselves, including access to a lawyer. Access to a lawyer is crucial for the accused as it can help provide legal protection. Amnesty International (2014) states that anyone deprived of their liberty or facing a possible criminal charge has the right to have a lawyer to protect their rights and help with their defense. If the person does not have a lawyer of their own choice, they have the right to have effective and qualified assigned counsel when the interests of justice require. If the person cannot pay, assigned counsel must be provided for free. Detainees should have access to counsel from the beginning of their detention, including during questioning. Individuals must be given adequate time and facilities to communicate confidentially with their lawyers. By this principle, the accused person needs to have access to a lawyer.

Interview respondents reported that lawyers are permitted to be present only in the prison court and are not allowed to have private meetings with the accused. Additionally, they noted that comprehensive background information on the lawyers was required and that they were subject to surveillance during court proceedings and legal processes involving the accused person. Furthermore, the military tribunals did not allow lawyers for the accused. Interviews revealed that access to legal representation was restricted during the court hearings under the Martial Law Order. The establishment of courts in prisons has led to severe violations of the fundamental rights of accused individuals. Public hearings and access to witnesses, which are crucial components of fair trial standards, are consistently violated within this system. Witnesses are unwilling to testify due to political pressures, worsened by the court's closed-door policy. Defense lawyers in this environment face significant security risks and encounter obstacles in providing adequate legal assistance to their clients. The judicial authorities' lack of concern for the importance of legal assistance further adds to the challenges faced by accused persons. Any

efforts by defense lawyers to adhere to fair trial principles, including providing legal aid and facilitating witness access, put them at risk of arrest. As a result, defense lawyers mainly act as conduits between the court and the families of detainees, limited by fear of repercussions from advocating effectively. This analysis emphasizes the need for comprehensive reforms within the prison court system to uphold the rule of law and protect the rights of all individuals involved in legal proceedings.

According to Martial Law Order 3/2021, the accused individual may be refused access to legal representation. During the interviews, it was brought to light that while the case facts were the same for the three accused individuals, one was denied access to legal representation due to the constraints imposed by the martial law order. Martial Law Order 3/2021 has been enforced in six townships in the Yangon Region: Hlaingtharya, Shwepyitha, North Dagon, South Dagon, Dagon Seikkan and North Okkalapa. In interviews with family members, it was revealed that two defendants were arrested from the same building. Nevertheless, one lived in an area under martial law and faced difficulties getting legal representation for the court hearing, while the other received legal assistance. This difference highlights the unequal access to a fair trial due to the enforcement of martial law, even in similar cases.

Failure to access legal counsel may render individuals unable to defend themselves, leading to unsafe verdicts and more severe sentences. This failure is of particular concern under Section 505 of the 2021 Penal Code, where individuals face sentences of up to three years in prison and even the death penalty in martial law areas. When military tribunals adjudicate political cases, the accused may be exposed to penalties that exceed those stipulated in the law.

In conclusion, the analysis of access to legal representation in special courts, particularly within the context of martial law, reveals a stark erosion of fundamental legal rights. as evidenced by the interviews. Military tribunals and the constraints imposed by Martial Law Order 3/2021 have significantly compromised the ability of the accused to obtain adequate legal representation, by not only hindering the ability of defense lawyers to advocate effectively but also undermining the fundamental principles of justice and fairness.

The disparity in access to legal counsel demonstrates a troubling trend where martial law exacerbates inequalities and obstructs the legal process. The consistent denial of private meetings with lawyers, restricted access to public hearings, and the pervasive fear of political repercussions for legal practitioners contribute to a system where the accused are denied their fundamental rights. These challenges are compounded by the severe penalties associated with political cases, further amplifying the consequences of inadequate legal representation.

The Right to a Defense in Prison Courts

Upon arrest, individuals are entitled to adequate time and resources to prepare an effective defense, including the right to consult with legal counsel, a hearing within a reasonable time, and the right to procure witnesses. The right to defense is a cornerstone of criminal procedure, reflecting its status as a fundamental right. The judicial system in Myanmar guarantees the right to defense and appeal under the Union Judiciary Law and special laws such as the Legal Aid Law. However, following an amendment to the Penal Code and the declaration of Martial Law, a specific court system was established to handle political cases. As mentioned in the previous session, the court hearing system only permits the judges, prosecutors, and defense lawyers to have power of attorney over the cases. Furthermore, this court hearing prohibits access to witnesses for the accused person.

The media has reported that defense lawyers in the special court hearing system face significant challenges. It is claimed that the military is targeting these lawyers. Additionally, it has been reported that the police monitor lawyers' activities during special court hearings, including their interactions with activists and their legal representation of the activists. In addition, an unwritten court order that restricts the right to a defense also violates the right to a fair trial for political activists in various circumstances. The interviewees noted that as a result of the denial of the right to defense, there is a risk of the death penalty being imposed on political activists. Family members interviewed state that none of the detainees were afforded their fundamental legal rights according to fair trial standards. Notably, only two out of the three detainees whose family members interviewed had the opportunity to access legal counsel; but even this was inadequate due to the prevailing political situation and recent changes to the penal code. Furthermore, all detainees sustained injuries during their arrest and under interrogation. Family members reported they were not allowed to attend court hearings or access expert legal knowledge regarding the charges against the detainees.

One defense lawyer reported numerous challenges concerning fair trial standards, particularly the provisions of Section 505 of the 2021 Penal Code. For example, lawyers' access to the prison court was restricted, and they were prohibited from entering the military tribunal for the township under Martial Law Order 3/2021. Furthermore, during court hearings at the prison court, the authorities closely monitored the lawyer's activities. Background checks are performed on lawyers seeking to represent defendants, requiring them to provide their phone number and home address and verify their address when attending special court hearings. One NGO

representative interviewed reported that, due to amendments to the Penal Code, political activists faced violations of fair trial rights from the time of the arrest to the court hearing system, including arrest without a warrant, detention for more than 24 hours, denial of legal aid, and denial of access to legal counsel in court. Furthermore, after the coup, the Special Courts often handed down the harshest penalties, including the death penalty under Article 505 of the 2021 Penal Code.

Amnesties can create false expectations for the accused. Due to a lack of lawyers and legal awareness, most accused individuals admit the charges. In practice, the court adds more charges instead of granting amnesty. One key informant reported that their daughter was arrested during a peaceful street protest and subsequently charged under Section 505A of the 2021 Penal Code. The informant alleged that, in exchange for a promised amnesty, the presiding judge coerced their daughter into confessing during the court proceedings. Following the coerced confession, the court unexpectedly introduced additional charges under the Weapons Act. This addition was done despite the informant's assertion that their daughter did not possess any weapons on the day of her arrest.

This article notes that "the determinations made by the special court or military tribunal are deemed as final" (Martial Law Order 5/2021, 2021). Furthermore, these judicial bodies impose severe restrictions on legal representation; individuals accused are deprived of essential defense rights, including access to witnesses and the right to appeal. Consequently, political activists are faced with the possibility of being sentenced to death due to a lack of defense rights.

Numerous media have pointed out how an increasing number of cases receive the death penalty because the accused do not have the right to defend themselves during their court hearings. For example, on 25 July 2022, the military executed four individuals, marking the regime's first use of capital punishment in over three decades. These individuals were convicted by military tribunals under charges including terrorism and murder. The junta has since sentenced at least 123 individuals to death, demonstrating the increasing severity of its actions.

Access to Public Hearings in Prison Courts

Individuals accused under Section 505 of the 2021 Penal Code Amendment face trial in prison courts. Authorities regard Section 505 as a means to target political opponents. When civilian courts operate under military jurisdiction, political activists face issues such as torture during interrogation and unlawful property seizures frequently, leading to violations of fundamental rights and democratic freedoms that are guaranteed by international law.

Since the military took control of the judiciary system, judicial autonomy has been lost in

a situation devoid of transparency and constitutional safeguards. Notably, the violation of judicial independence since 2021 has led to a significant decrease in transparency, exacerbating the decline of essential due process principles, such as the right to public hearings, legal defense, and access to counsel within Myanmar's legal framework. Therefore, the situation in Myanmar following the coup has led to a significant regression in the protection of fundamental human rights. This is particularly evident in disregarding the right to a fair trial and public hearings. Experts believe that public hearings are pivotal in ensuring transparency, accountability, and safeguarding individual rights in the legal process.

Right to a Fair Trial Since the Coup

Through the analysis of the interviews, it is evident that the accused faced a violation of the right to a fair trial during the court hearing. First, the lack of public hearings in their legal proceedings challenged their right to access witnesses and legal counsel at their court hearings. Secondly, there is a lack of right to defense brought by unfair judgment or the death penalty for political activists. The findings unequivocally demonstrate the severe challenges political activists encounter in exercising their right to a fair trial during legal proceedings at the special court hearings. Furthermore, the combination of the Penal Code amendments and martial law orders has eroded the right to a fair trial for political activists during the post-coup period.

Additionally, corruption is a significant problem in the judicial system, impacting the accused's right to a fair trial even before the 2021 coup. Nevertheless, the coup intensified this predicament. An interviewed NGO representative reported that increased corruption within the judiciary following the 2021 coup has significantly influenced the interpretation and application of fair trial principles. The investigation revealed that individuals seeking to ascertain the charges against the accused must pay a fee of approximately MYK 20,000. Otherwise, cases experience delays, resulting in a lack of communication between lawyers, family members, and the detainees. The law professors interviewed also mentioned that the amendments to the penal code and the prevalence of corruption during and after the coup have significantly impacted both detainees and lawyers defending political cases. Changes in the law, especially to the penal code and special laws, along with widespread corruption within the judicial system following the 2021 coup, have led to increased monitoring of defense lawyers. Additionally, defense lawyers face more challenges due to demands for illegal bribes from court staff. For example, Section 41 of the Rules on the Copying of Cases states that the cost of copying cases per page should be just MYK 100. However, since the coup, court clerks have determined that the price for case copies ranges from approximately MYK 5,000 to 30,000. This high fee presents a significant obstacle

for defense lawyers, resulting in delays in court hearings if they are unable to meet these financial demands while representing their clients.

One of the main objectives behind the establishment of the Special Courts is to mitigate the impact of the COVID-19 outbreak. However, the courts lack the necessary framework to ensure procedural fairness. Additionally, the overcrowded nature of these courtrooms directly goes against public health guidelines, posing a significant risk of spreading infectious diseases.

In conclusion, systemic flaws and legal changes have significantly weakened the right to a fair trial for political activists following the coup. The lack of public hearings dramatically limits access to legal counsel and witnesses, while recent amendments to the Penal Code and severe penalties, including the death penalty, worsen the injustices faced by the accused. Corruption was already a significant issue before the coup, with bribery and inflated fees creating obstacles to justice. The Special Courts, set up to address COVID-19 concerns, do not ensure procedural fairness and pose a risk to public health due to overcrowding. These issues emphasize the urgent need for extensive judicial reform to restore the fundamental right to a fair trial and guarantee fair legal proceedings for all individuals.

Conclusion

This research highlights the violation of fair trial rights in Myanmar's judiciary, exacerbated by the 2021 military coup and martial law. It is revealed that the court hearing system for political cases is separated from other cases based on The Martial Law Order. As a result, every political case is heard inside a prison. The court hearing system raises concerns about the exclusion of the public, which may impact fundamental fair trial rights and result in an increase in death penalties for the accused. Scholars have indicated that the right to a public hearing and a fair trial is essential for maintaining the independence and impartiality of the legal system and preserving public trust. The findings from interviews reveal that within the prisons, the courts dedicated to political cases permit only police officers to fulfill the roles of judges, prosecutors, and witnesses. Consequently, this type of court hearing fails to adhere to fair trial standards.

Politically motivated trials, characterized by judicial manipulation, underscore the deviation from fair trial standards. The systemic denial of fair trial rights not only impacts individuals but also destabilizes democratic principles and undermines public trust in the judiciary. After the declaration of martial law, special court hearing systems were established in Myanmar, which has

significantly affected fair trial rights, particularly in political cases. Martial Law Orders 3/2021 and 5/2021 led to the creation of military tribunals and special courts within prison compounds to handle political cases. These measures have compromised the integrity of justice for individuals accused of political offenses. Furthermore, legal experts and scholars have highlighted the obstacles political activists face in obtaining a fair trial, such as lack of transparency, denial of legal representation, limited access to witnesses, and absence of judicial independence within these special court hearing systems. The lack of transparency and independence in these courts raises concerns about discrimination and bias, ultimately violating fundamental principles of fair trial rights.

References

- Al Jazeera. (2023, September 7). *Myanmar jails photojournalist for 20 years on first day of closed trial*. Al Jazeera. <https://www.aljazeera.com/news/2023/9/7/myanmar-jails-photojournalist-for-20-years-on-first-day-of-closed-trial>
- Amnesty International (2014, April 9). *Fair Trial Manual* (2nd ed.). Amnesty International. <https://www.amnesty.org/en/documents/pol30/002/2014/en/>
- Becirovic-Alic, M. (2018). The right to a fair trial as a part of the basic human rights and freedoms. *Journal of European and Balkan Perspectives*, (November), 38-55.
- Benesh, S. C. (2006). Understanding public confidence in American Courts. *Journal of Politics*, 68(3), 697-707. <https://doi.org/10.1111/j.1468-2508.2006.00455.x>
- Christenson, R., (1983). A political theory of political trials. *Journal of Criminal law and criminology*, 74(2), 547-577. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6373&context=jclc>
- Khaing, M. M., & Cho, Y. M. (2021). Judicial corruption as a violation of human rights in Myanmar. *Journal of Human Rights and Peace Studies*, 7(Supplemental), 212-237. <https://so03.tci-thaijo.org/index.php/HRPS/article/view/254327>

- Crouch, M. (2009). *Judicial power in Myanmar and the challenge of judicial*. Cambridge University Press.
- Darle, C. S. (2002). "I am moral, but you are deterred": Differential attributions about why people obey the law. *Journal of Applied Social Psychology*, 32(2), 375-405. <https://doi.org/10.1111/j.1559-1816.2002.tb00221.x>
- Free Expression Myanmar (FEM), 2023. *Myanmar military justice system: Lived experience of lawyer, courts, and trial after the coup*. FEM. <https://freeexpressionmyanmar.org/wp-content/uploads/2023/07/myanmar-militarys-justice-system.pdf>
- Frontier Myanmar. (2022, March 17). *No justice behind bars: the coup and the judiciary*. Frontier Myanmar. <https://www.frontiermyanmar.net/en/no-justice-behind-bars-the-coup-and-the-judiciary/>
- Hager, T. (2015). Publicity as one of the safeguard of fair trial. *Curentul Juridic, The Juridical Current, Le Courant Juridique*, 60, 200-215.
- Human Rights Watch. (2023, June 8). *Our numbers are dwindling: Myanmar's post-coup crackdown on lawyers*. Human Rights Watch.
- International Commission of Jurists (ICJ). (2022, February 10). *Myanmar: A year after military takeover, no rule of law or judicial independence*. ICJ. <https://www.icj.org/myanmar-a-year-after-military-takeover-no-rule-of-law-or-judicial-independence/>
- Jackson, J. D., & Summers, S. J. (2018). *Obstacles to fairness in criminal proceedings: Individual rights and institutional* (2nd ed.). Bloomsbur. <https://www.bloomsbury.com/uk/obstacles-to-fairness-in-criminal-proceedings>
- Jaconelli, J. (1997). Rights theories and public trial. *Journal of Applied Philosophy*, 14(2), 169-175. <https://www.jstor.org/stable/24353947>
- Justice Base (2017). *Behind closed doors: Obstacles and opportunities for public access to Myanmar's courts*. Open Society Foundations. <https://www.myjusticemyanmar.org/sites/default/files/Justice-Base-Behind-Closed-Doors.compressed-1.pdf>

- Krehbiel, J. N. (2016). The politics of judicial procedures: The role of public oral hearings in the German Constitutional Court. *American Journal of Political Science*, 60(4), 990-1005. <https://doi.org/10.1111/ajps.12229>
- Langford, I. (2009). Fair trial: The history of an idea. *Journal of Human Rights*, 8(1), 37-52. <https://doi.org/10.1080/14754830902765857>
- Mikuli, P., & Kuca, G. (2016). The public hearing and law-making procedures. *Liverpool Law Review*, 37, 1-17. <https://link.springer.com/article/10.1007/s10991-016-9177-z>
- My Justice. (2018). *Searching for justice in the law: Understanding access to justice in Myanmar*. British Council. https://www.myjusticemyanmar.org/sites/default/files/MJS%20Report_FINAL_online.pdf
- Ochab, E. (2022). Crackdown on human rights defenders, opposition, and the right to a fair trial in Myanmar. International Bar Association's Human Rights Institute.
- Posner, E. A. (2005). Political trials in domestic and international law. *Duke Law Journal*, 55(75), 76-150. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1266&context=dlj>
- Reuters. (2023, September 6). *Myanmar court jails photojournalist for 20 years*. Reuters. <https://www.reuters.com/world/asia-pacific/myanmar-court-jails-photojournalist-20-years-2023-09-06/>
- Sombra, T. L. (2019). Why should public hearings in the Brazilian Supreme Court be understood as an innovative democratic tool in constitutional adjudication? *German Law Journal*, 17(4), 657–690. <https://doi.org/10.1017/S2071832200021398>
- The Assistance Association for Political Prisoners (Burma). (2023). *The Flow of Injustice*. AAPP. https://aappb.org/wp-content/uploads/2023/07/Final_Prison-Situational-Report-10-Jul-2023.pdf
- _____. (2024, July 1). No return home: Those who no chance to go back home from behind bars. [PowerPoint slides]. *Bordermedia*. <https://aappb.org/?p=28574>
- _____. (2024, July 11). Daily briefing in relation to the military coup [PowerPoint slides]. *Bordermedia*. <https://aappb.org/?p=28676>

- United Nations Human Rights Treaty Bodies. (2007, August 23). *General comment no.32*. UN Treaty Body Database.
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F32&Lang=en
- VOA News. (2024, January 11). *Myanmar documentary filmmaker sentenced to life in prison*. VOA. <https://www.voanews.com/a/myanmar-documentary-filmmaker-sentenced-to-life-in-prison-/7436882.html>
- Zaw, M. T., Lwin, T. T. & Hayes, M. G. (2021). Fair trial elements in the implementation of the case management programme in Myanmar's courts. *Journal of Human Rights and Peace Studies*, 7 (Supplemental), 183-211.
<https://so03.tci-thaijo.org/index.php/HRPS/article/view/254008>