



Syllabus/Programme

Navigating the Path to Transitional Justice in Myanmar

Nan Kham Mai and Yin Yin Win

When & Where: **Thursdays 14:00 CET** | **Off University Moodle**

Hosted by: **Humbolt University with 3 ECTS Certification***

Department **Institute for Asian and African Studies**

***How to count your Off university course towards credit?**

Successful completion of a course at Off University is certified by the host university. This means that you are able to use these credits at any university in the EHEA in a programme you are enrolled in, or you may count this as previous knowledge in a future study programme. In order to be sure that you can transfer the credits, we suggest you get written confirmation by your home university's students' office. And if you are not enrolled in any university programme: You are very welcome to join! All our courses are free of charge and open to anyone: students, scholars, activists.

Description:

The course is distinct in its singular focus on the enduring conflict in Myanmar and the challenges and endeavours to secure justice for the victims from the transitional period (i.e., the partial civilian government during 2011-2021) to post-coup Myanmar (Feb 2021-present). It provides a comprehensive grasp of transitional justice and its implementation, with a specific spotlight on the prosecution process and a case study of Myanmar. This course is crafted to give participants the knowledge and skills to navigate the intricate terrain of transitional justice in Myanmar despite the legal and political hurdles.

The course is structured to inspire hope as it delves into the nature and causes of conflict in Myanmar and its local and global impacts. It offers a practical approach to understanding the concept of TJ and how it can potentially resolve the deep-rooted issues in Myanmar. By drawing lessons from the successes and failures of TJ implementation in various countries, we aim to provide you with the tools to explore practical solutions for a more promising future for post-conflict Myanmar.

The course is designed to be highly interactive, with sessions led by both instructors in a virtual classroom environment. Participants are strongly encouraged to come prepared by studying the assigned materials before each seminar. Active participation in the exercises during the session is not just expected but also a vital part of the learning process.

Digital Self Defence

Our platform is dedicated to spread knowledge threatened by authoritarian and right-wing populist regimes and to put measures in place that enable people to practice digital self-defence.

We encourage all users to sign up for the platform anonymously and respect others' preferences for staying anonymous. **Please do not force anyone to share personal information or take screenshots of others without their knowledge.**

The courses take place on Off University's Moodle. The platform includes an encrypted video-call option, a cloud storage, as well as a messaging system. We would like to remind all users that communication with other users outside of the platform (i.e. e-mail, Instagram, Facebook, Whatsapp or other video conferencing tools) may put them at risk.

Timeline of the Course Schedule

Week 1 October 17		Introduction to the Course
Week 2 October 24		Introduction to the Concept of Transitional Justice (TJ)
Week 3 October 31		Background of Conflict in Myanmar
Week 4 November 7		Legal Framework: Myanmar Legal Framework for Transitional Justice: Past, Present, and Future
Week 5 November 14		Legal Framework: International Legal Framework for Transitional Justice
Week 6 November 21		Challenges in Navigating Justice I
Week 7 November 28		Challenges in Navigating Justice II
Week 8 December 5		Challenges in Navigating Justice III
Week 9 December 12		Seek Justice through the International Justice System (I)
Week 10 December 19	Note the winter break from 23.12.2024 - 04.01.2025	Strategy I: Seek Justice through the International Justice System (2)
Week 11 January 9	Pick the topic of your presentation	Strategy II: Seeking Justice through Universal Jurisdiction



Week 12 January 16		Strategy III: Seek Justice through a Hybrid Court/ National Jurisdiction
Week 13 January 23	Watch movies beforehand (listed below)	Lesson Learned from Unsuccessful TJ
Week 14 January 30	The students who want to get credit must present.	Presentation about any topic related to TJ. (Optional)

Aimed Outcomes

The general understanding about:

- the concept of transitional justice and its implementation processes
- investigation of the transitional justice system through case studies
- the underlying causes of prolonged conflict in Myanmar and its impacts
- the discussions of the issues of human rights violations during conflicts and the efforts of seeking justice through the international justice system
- finding possible solutions for post conflicts in a country like Myanmar

The skills to be gained upon active participation:

- able to understand the concept of transitional justice and its implementing processes
- able to analyze the pros and cons of the transitional justice system
- able to investigate the underlying causes of the conflict in the Myanmar political context and propose potential solutions
- able to relate the concept of transitional justice and the human rights issues and conflicts
- able to assess whether the Transitional justice system can be used as the best way to seek justice in the Myanmar context

The final grade (3 ECTS) for the course will be based on the following:

- Following the reading/visual materials
- Participating actively in the discussions and brainstorming
- Presentation of the selected topic related to Transitional Justice

Organization of the course

Participants/students are expected to read the materials before the sessions for interactive interactions.

Week 1: Introduction to the Course

- Introducing the instructors, Off University, and course outline.
- Expectations and motivations for the semester

Week 2: Introduction to the Concept of Transitional Justice (TJ)

- The context of TJ
- The role of United Nations in Peacebuilding, Sustainable Peace and TJ

Expected Learning Outcomes:

- Understand the meaning and nature of Transactional Justice
- Know the Legal Principles of Transitional Justice
- Familiar with the International Practices
- Better understanding of the linkage between human rights, armed conflict and TJ

Reading materials:

- Yusuf, Hakeem & van der Merwe, Hugo. (2021). Transitional Justice: Theories, Mechanisms and Debates, pp.1-29. 10.4324/9781315760568.
- What is TJ? <https://www.ictj.org/what-transitional-justice>
- Thematic Paper of UN: Peacebuilding, Sustaining Peace & Transitional Justice https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/4_ohchr_thematic_paper_on_transitional_justice.pdf
- Guidance Note of the UN Secretary General: Transitional Justice: A Strategic Tool for People, Prevention and Peace, pp.2-12. https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf

Week 3: Background of Conflict in Myanmar

- Nature of Conflict: Civil and Ethnic Conflicts
- Political Transitions and the Coups
- Human Rights Violations Issues

Expected Learning Outcomes:

- Know the civil and ethnic conflict and better understand the Myanmar conflict
- Understand the causes and impacts of the conflict in Myanmar by learning from real cases
- Realize the underlying causes of the coups in Myanmar

Reading materials:

- Panglong Agreement 1947
https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf
- 1947 Constitution
- Latest Report on Myanmar Conflict
- <https://myanmar.iiss.org/introduction>
- <https://www.nytimes.com/interactive/2024/04/20/world/asia/myanmarcivil-war.html>

Recommended website: ISP Myanmar Peace Deck: <https://ispmyanmarpeacedesk.com/>

Week 4: Legal Framework: Myanmar Legal Framework for Transitional Justice: Past, Present, and Future

- The judicial system of Myanmar
- The status of courts-martial in Myanmar

Expected Learning Outcomes:

- Outline the Judicial Principles under the Constitutions of Myanmar
- Understand the Formation, Jurisdiction, Duties and Powers of Courts in Myanmar
- Analyze the judicial independence and effectiveness of judicial system in Myanmar

Reading materials:

- Kyaw Hla Win @ Md. Hassan Ahmed & Md. Ershadul Karim (2013). The Legal System of the Republic of the Union of Myanmar in a Nutshell. Available at: <https://www.nyulawglobal.org/globalex/Myanmar.html>
- 1947 Constitution of the Union of Burma (Chapter 8) <https://myanmar-law-library.org/law-library/laws-and-regulations/constitutions/1947-constitution.html>
- 1974 Constitution of the Socialist Republic of the Union of Burma (Chapter 7) https://myanmar-law-library.org/IMG/pdf/constitution_de_1974.pdf
- 2008 Constitution of the Republic of the Union of Myanmar (Chapter 6) https://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf
- The Union Judiciary Law, 2010 https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs18/2010-10-28-SPDC_Law2010-20_Union_Judiciary_Law-oag-en.pdf
- The Defense Services Act, 1959

Week 5: Legal Framework: International Legal Framework for Transitional Justice

- International Humanitarian Law
- International Human Rights Law
- International Criminal Law

Expected Learning Outcomes:

- Explain the scope of application of international law on TJ
- Understand how the three key international laws related to each other and complement each other

Reading materials:

- Melzer, N. (2021). International Humanitarian Law: A Comprehensive Introduction, pp. 15-34.
- Customary International Humanitarian Law, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1>
- The Four Geneva Conventions and Additional Protocols I and II
- The Rome Statute
- Core Human Rights Conventions

Week 6: Challenges in Navigating Justice I: Power sharing under 2008 constitution and its impacts

- Uncertainty of Power Sharing between state entities in the post-conflict before the coup
- Reluctant of States and self-administered States
- New Challenges: Self Governance Territories, ongoing conflicts and emerging inter-ethnic conflict

Expected Learning Outcomes:

- Identify the challenges for seeking TJ before the coup
- Discuss the new challenges in seeking TJ after the coup

Reading materials:

- 2008 Constitution of the Republic of the Union of Myanmar
- Nationwide Cease-Fire Agreement
- Myanmar Conflict Mapping website (ISP Myanmar) - <https://ispmyanmar.com/category/isp-mapping/>

- Transitional Justice: Myanmar Case Study, <https://asia-ajar.org/wp-content/uploads/2020/09/English-Myanmar-Case-Study.pdf>
- Renshaw, C. (2019). Myanmar's Transition without Justice. *Journal of Current Southeast Asian Affairs*, 38(3), 381-403.
<https://doi.org/10.1177/1868103419893527>

Week 7: Challenges in Navigating Justice II: Lack of Judicial Independent and Rule of Law

- Judicial Reform towards Judicial Independence
- Rule of Law and Law Reform, Legal mechanisms,
- Constraint of Human resources and the capacity of Judges and lawyers

Expected Learning Outcomes:

- Assess the success and failure of judicial reform during the partial civilian government
- Point out the lack of law implementing the TJ
- Identify the challenges of rebuilding the judiciary sector in the post-conflict

Reading materials:

- Melissa Crouch (2022) 'Judicial Loyalty to the Military in Authoritarian Regimes: How the Courts are Militarized in Myanmar' *Law & Social Inquiry* 1-28
- Janelle Saffin & Nathan Willis (2014) 'The need for a constitutional settlement to further the reform process in Myanmar (burma)' *Temple Int'l & Comp. L.J.* 253-284.
- The Judiciary Strategic Plan (2015- 2017), prepared with USAID support, sets an ambitious modernization course for the Myanmar court available at: https://pdf.usaid.gov/pdf_docs/PBAAK016.pdf
- The Judiciary Strategic Plan (2018- 2022), <https://www.unionsupremecourt.gov.mm/sites/default/files/pdf-file/2020-07/stplan2018eng.pdf>

Week 8: Challenges in Navigating Justice III: Non- governmental Organization Supports

- Legal aid organization and in seeking justice
- The constraints resources of Legal Aids Services
- The past experience

Expected Learning Outcomes:

- Know how the impact of inadequate human resources in legal aids on seeking TJ in Myanmar
- Reflect the past experiences and learn how to overcome the present challenges

Reading materials:

- The Legal Aids Law (2016)
<https://mlis.gov.mm/mLsView.do;jsessionid=8A2E6B90F83F1199F7453B49FBB58EDB?lawordSn=9674>
- Independent Investigative Mechanism for Myanmar (IIMM)- <https://iimm.un.org/>
- Ministry of Human Rights (NUG) <https://mohr.nugmyanmar.org/en/>

Week 9: Seek Justice through the International Justice System (I) -Gambia v. Myanmar case study before the ICJ

- The historical background of the conflict and human rights violations
- Efforts to implement the TJ process in Cambodia

Expected Learning Outcomes:

- Learn the International Justice System taking action on human rights violations
- Understand the complexity of the facts the case and the jurisdiction of the ICJ
- Evaluate of the current status of the case

Reading materials:

- <https://www.icj-cij.org/node/106180>
- Md. Rizwanul Islam (2022) 'The Gambia v. Myanmar: An Analysis of the ICJ's Decision on Jurisdiction under the Genocide Convention' ASIL Insight 26:9.pp.1-7. Available at: <https://www.asil.org/insights/volume/26/issue/9>

Week 10: Strategy I: Seek Justice through the International Justice System (2) - Bangladesh v. Myanmar case study before the ICC

- The facts of the case that makes Bangladesh brought the case to the ICC
- The jurisdiction of International Criminal Justice System

Expected Learning Outcomes:

- Criticize the international criminal justice system taking action on Human rights violations
- Understand the complexity of the facts the case and the jurisdiction of the ICC
- Evaluate of the current status of the case

Reading materials:

- Rome Statutes: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>
- Elements of Crimes: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>
- Lucas Alcici and Dr. Saba Pipia (2021) 'Displacement of the Rohingya Before the ICJ and the ICC: Same Conduct, Different Crimes in International Law', Asia-Pacific Journal of International Humanitarian Law, pp.116-142. Available at: https://apjihl.org/wp-content/uploads/2021/10/006-Displacement-of-the-Rohingya-Alcici_v1.2021.10.14.pdf

Week 11: Seeking Justice through Universal Jurisdiction

- Argentina Court (the court accept the complaint)
- Germany Court (the court refused to accept the complaint)
- The Philippine's Court (October 25, 2023)

Expected Learning Outcomes:

- Understand the nature and role of universal jurisdiction
- Point out the important of political will to fight injustice and human rights abuse by implementing the universal jurisdiction

Reading materials:

- Universal Jurisdiction: <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>
- Devika Hovell, The Authority of Universal Jurisdiction, European Journal of International Law, Volume 29, Issue 2, May 2018, Pages 427–456, <https://doi.org/10.1093/ejil/chy037>
- The Universal Jurisdiction Case Against Myanmar: <https://www.globaljusticecenter.net/the-universal-jurisdiction-case-against-myanmar/>
- The Philippine court: <https://thediplomat.com/2023/10/victims-of-myanmar-junta-file-war-crimes-charges-in-philippine-court/>

Week 12: Strategy III: Seek Justice through a Hybrid Court/ National Jurisdiction

- Case study: Cambodia and East Timor

Expected Learning Outcomes:

- Understand the TJ implementation through the hybrids court
- Evaluate the pros and cons of the system in seeking justice in Cambodia

Reading materials:

- AJAR and Transitional Justice Asia Network. (2021). Transitional Justice: Cambodia Case Study.
- ECCC: <https://www.eccc.gov.kh/en/node/39457>
- AJAR and Transitional Justice Asia Network. (2017). Transitional Justice: Timor-Leste Case Study. <https://asia-ajar.org/transitional-justice-asia-network/>
- https://pdf.usaid.gov/pdf_docs/PBAAD788.pdf
- Special Penal of Dili District Court: <https://hybridjustice.com/special-panels-of-the-dili-district-court/>

Week 13: Lesson Learned from Unsuccessful TJ

- Case-study on transitional justice in Nepal and South Sudan

Expected Learning Outcomes:

- Discuss on the challenges of TJ process that led to unsuccessful TJ

Reading materials:

- <https://www.icj.org/nepal-transitional-justice-mechanisms-have-failed-to-ensure-justice-for-victims/>
- Suggested: <https://www.justiceinfo.net/en/2864-opinion-transitional-justice-nepal-s-failure.html>
- Moving-beyond-transitions-to-transformation- (IDEA) Nepal _ P _ 77 to 84 <https://www.idea.int/sites/default/files/publications/moving-beyond-transitions-to-transformation.pdf>
- South Sudan: <https://www.cmi.no/publications/7748-pushing-too-hard-for-transitional-justice-lessons-from-south-sudan>

Movies:

JOURNEY TO JUSTICE (Part-I) - A Docudrama on Transitional Justice in Nepal (17:34 minutes) <https://youtu.be/7o-Hl2Op9WE?si=N3Lon1T7n3ADLC2f>

JOURNEY TO JUSTICE (Part-II) - A Docudrama on Transitional Justice in Nepal (16:41 minutes) https://youtu.be/XH_63wzieAc?si=mjE_qZUzeyxfpyrD

JOURNEY TO JUSTICE (Part-III) - A Docudrama on Transitional Justice in Nepal (10:49 minutes) <https://youtu.be/wjL4euGyotY?si=6kd36e58zUwqkB4E>

Week 14: Presentation about any topic related to TJ

- *The students who want to get credit must be present and it is optional for others who are not seeking grading.*