

Briefing Paper

The legacy of mass torture and the challenge for reform in Myanmar

A joint paper by AJAR, WVG, and LCM



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About AJAR

AJAR (Asia Justice and Rights) is a regional human rights organization based in Jakarta. AJAR works to increase the capacity of local and national organization in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and a willingness to learn from the root causes of mass human rights violations in Asia Pacific region.

Please visit: www.asia-ajar.org

About LCM

Legal Clinic Myanmar (LCM) is a rights and justice-based organization, playing a unique role not only in promoting and strengthening the rule of law, democracy and human rights in Myanmar by providing legal awareness trainings and paralegal trainings but standing for violated and unjustly treated people, especially women, in the court and providing social support for them by strengthening the cooperation with other legal organizations or law firms since 2011 are also as the unique role of LCM. As Myanmar is in her transition towards democratization, its constitution grants the rights of citizenship, but most citizens are unaware of their rights and how to protect their rights using legal mechanisms. Thus, LCM decided to promote citizens' awareness regarding their legally protected rights and to provide legal aid services and break the silence of citizens whose rights have been violated and treated unjustly in the sectors of land, women, child, labor and internal displaced persons with the vision that *"every citizen's legal rights will be secured through the enforcement of the rule of law"*.

About WVG

Wimutti Volunteer Group (WVG) is a community based organization in Myanmar, which started by organising rehabilitation activities after cyclone Nargis. It was created on 8th May, 2009. Wimutti is a Pali word (Myanmar ancient literature), which means "freedom". WVG is an independent and non-profit making organization. All of WVG members are socially minded volunteers. WVG is very active in our communities doing social work, humanitarian support, and providing educational charity to children from the poverty-stricken families. WVG is directly engaging with vulnerable people to create a healthy societal environment through research, advocacy, networking, and improving their collective capacity development. WVG has a special program for strengthening women former political prisoners.

AJAR has been working with survivors of torture in Myanmar, with a special focus on women, since January 2014. For two years, AJAR and its partners, including Wimutti Volunteer Group (WVG) and Legal Clinic Myanmar (LCM), have worked to understand the legacy of torture and identify strategies for prevention, accountability and rehabilitation. That experience has produced information and analysis about torture and survivors, and about gaps in legal and judicial systems that allow torture to continue. This cumulative data and experiences inform our recommendations.

I. Historical Context: A pervasive practice

Torture has a long history in Myanmar and has been widely employed by the military regimes in power after 1962. State security forces and government officials committed torture with impunity in prisons, interrogation centers, police cells, immigration and detention facilities, and throughout conflict-affected ethnic areas. Authorities used torture not only to extract information and false confessions, but also to punish, degrade, humiliate, and instill fear among political dissidents, journalists, human rights activists, and anyone suspected of criticizing the state. Even after a shift to a pseudo-civilian government in 2010, civil society organizations continued to document the same practices by police and military, and the UN Human Rights Council continues to call on the government to end such violations.¹

AJAR has documented several patterns of torture and ill-treatment. Most documented cases of torture are of **political prisoners**. According to data collected by the Assistance Association for Political Prisoners (AAPP) on 1,621 of those imprisoned between 1962 and 2013, 72% reported physical torture and 75% reported psychological torture, while 90% had no medical treatment in

detention.² In our work with women who are former political prisoners, AJAR documented similar reports of ill-treatment and torture. In addition, several accounts suggested a pervasive sexualized violence in the treatment of women political detainees. However, entrenched cultural taboos make this form of psychological and physical abuse hard to document.



Photo: Kontras

“

I was harshly beaten in many, many ways by men. We told them to call the women wardens to beat us, because the men would hit us on all parts of our bodies, some of which were completely inappropriate. We could not endure the ferocity of the beating.

When we told them to ask the police women to beat us instead, they didn't listen. Many men would gather round and beat a woman mercilessly.’ ”

—Ma Thandar, detained as a political prisoner

1 “Situation of human rights in Myanmar”, Resolution adopted by the Human Rights Council, United Nations, 2 April 2015, A/HRC/RES/28/23.

2 “Burma’s silent struggle: ensuring mental health of tortured political prisoners”, Assistance Association for Political Prisoners, in “Police torture & crackdown on protest in changing Burma”, Article 2, Volume 14, N.2, June 2015.

Torture and ill-treatment are also common during police detention and interrogation for **ordinary crimes**. Vulnerable categories such as sex workers and LGBT people are at particular risk in detention, with sexual abuse by police reported. In addition, AJAR has documented abuse of authority, including torture and ill-treatment, in rural areas by local government officials acting in collusion with police.

In **ethnic areas**, in particular conflict and post-conflict zones with high levels of militarization, civil society groups have documented widespread abuses by the military. Civilians suspected of supporting ethnic armed groups face arbitrary arrest, during which torture is used to punish or to obtain information or false confessions. AJAR has documented cases where mistreatment by the military has led to the death of civilians in Kachin, and civil society groups also report forced labor and sexual violence in various ethnic areas. AJAR has also documented the use of rape as a form of torture, in Kachin State among other places, where members of the military or police sexually assault ethnic women as a means of coercion, intimidation or punishment against the civilian population. Non-state armed groups have also committed acts of torture throughout decades of armed struggle, although such violations are much less documented by civil society organizations.

II. Implementation of Transitional Justice Mechanisms

There are not yet any meaningful transitional justice mechanisms in Myanmar. The so-called Nationwide Ceasefire Agreement of October 2015 recognizes the need for “administering rule of law” and “taking action against perpetrators” and commits the parties to “avoid” acts of torture and other human rights violations. This language might give hope that these issues will be included in future political discussions on the peace process and national reconciliation. The National League for Democracy (NLD) has also indicated that rule of law will be one

of their priorities in leading the new government. However, comments from the new leadership about the need to focus on the future and on reconciliation, without seeking “revenge” for the past, have left some victims and advocates feeling marginalized and pessimistic about the prospects for transitional justice.

The current debate in Myanmar tends to confuse transitional justice and prosecutorial justice. It must be reaffirmed that transitional justice is not solely about prosecution and punishment of perpetrators. Justice is equally about providing reparations and rehabilitation to victims, as well as recognition and acknowledgment, in addition to legal and security sector reforms to guarantee non-repetition. The new NLD-led government should make these issues their priorities.

In the absence of government mechanisms to date, civil society organizations have begun organizing exercises in truth-telling, as well as the rehabilitation initiatives described below. For example, AAPP organizes commemoration events and operates a museum, while ND-Burma and its members conduct systematic documentation of human rights violations and small truth-telling events. Our partner Wimutti Volunteer Group has organized public events for torture survivors and their families to share their experiences. AJAR’s programs, which involve survivors in sustained participatory action research projects, provide a space to feel heard, recognized and supported by their peers.

III. Current legal context on laws on torture

Myanmar is not party to the UN Convention Against Torture, despite a 2014 announcement of an intention to sign. Under the Myanmar Penal Code some acts that can be considered torture are penalized, for instance under articles dealing with “hurt” and “grievous hurt”. However, torture itself is not recognized as a crime under domestic legislation, and the 2008 Constitution does not explicitly prohibit it. The **lack of a clear**

definition and unambiguous prohibition must be addressed.

In addition, **repressive laws** permit the imprisonment of activists and dissidents, facilitating torture and ill-treatment. These old and new laws include the Unlawful Association Act 1908, media laws, the Association Registration Law, and the Freedom of Assembly and Procession Law. The UN Special Rapporteur on the situation of human rights in Myanmar called for the government to “remove the broad range of restrictions on the rights to peaceful assembly and freedom of expression.”³

IV. Situation of the survivors of torture

Torture survivors reported to AJAR profound physical and psychological consequences, similar to the findings of other civil society groups.⁴ Survivors report long-lasting **physical injuries**, including stomach problems, back pain, menstrual difficulties and hearing issues. Survivors and their relatives also suffer from **psychological trauma**, resulting in anxiety, difficulty sleeping, shame, guilt, depression and isolation. **Social exclusion** is common, in particular for former political prisoners, with some women finding families or friends cannot understand their experiences, and victims of sexual violence suffering from stigmatization in their communities.

Torture survivors widely struggle with the **socio-economic consequences** of their experience, including limited employment and education opportunities. The experience disrupts their livelihood and sources of material support, which exacerbates financial hardship in a

country with few economic opportunities. For example, women told AJAR they mortgaged houses to pay legal fees, and lost businesses because of harassment by authorities and fear or stigma from customers.



I was beaten with a stick, so now I feel pain in my left thigh and hip. Because of that I also have a problem with my knee.

I could have died, and if I had died, they would only know when they came to open the door in the morning. No one would know. So I could not die. I would only let them defeat me once.



—Cho Cho Aye, detained as a political prisoner

As they struggle to deal with these impacts, torture survivors largely **lack access to basic support services** such as health and medical care, psychological support, legal assistance, and livelihood opportunities. Because government services are almost inexistent, the few support services available are provided by local, mostly small, civil society organizations with few resources and capacities, and who are primarily active in urban areas. Groups like AAPP provide support to some survivors and their families, such as counseling, material support and help to access medical services. AJAR’s partner Wimutti Volunteer Group is a self-help group of former women political prisoners, while Legal Clinic Myanmar provides legal assistance. In ethnic areas, community-based organizations have gone a long way in providing basic services with very few resources. AJAR’s experience shows that small community-based trauma healing strategies that facilitate peer-to-peer support between survivors can go a long way where skills and resources are sparse or not accessible. In our project,

3 “Report of the Special Rapporteur on the situation of human rights in Myanmar”, United Nations Human Rights Council, 23 March 2015, A/HRC/28/72. Similarly, the UN Human Rights Council called for Myanmar to implement its obligations in this regard. “Situation of human rights in Myanmar”, Resolution adopted by the Human Rights Council, United Nations, 2 April 2015, A/HRC/RES/28/23.

4 See, for example, “Documentation Project Interim Report”, Assistance Association for Political Prisoners and Former Political Prisoners Society, February 2015.

women living in extreme conditions have shown an extraordinary capacity for resilience and self-help.

However, such provision of services by civil society groups remains **limited and risky** in cases of torture by military or police, in particular in ethnic areas. Existing services are often not reaching survivors of violence by the state, while impunity for perpetrators poses a significant barrier to effective response services. In cases of sexual and gender-based violence, reported interference by authorities constrains civil society as well as survivors' access to services, compounded by widespread beliefs and practices about gender.⁵

V. Analyzing gaps and negligence

In addition to the weak legal framework described above, the **lack of an independent, impartial and effective judiciary** is a root cause of torture. Unfair trials, where basic rights to due process are not respected, create an environment in which torture is neither prevented nor punished. In a December 2015 report, a parliamentary committee recognized the fact that the “judiciary remains one of the country’s most corrupt institutions” and noted the ability of the executive to “exert influence over the judiciary.”⁶ The UN Human Rights Council has repeatedly called on the government to “take the measures necessary to ensure accountability and to end impunity” and to “address the need for an independent, impartial and effective judiciary” and a self-governing professional organization of lawyers.⁷

The biggest challenge to the rule of law in Myanmar will be to ensure

- 5 “Violence Against Women (VAW) Prevention and Response Services and Access in Myanmar”, Educational Initiative (EI) and Asia Justice and Rights (AJAR), October 2015.
- 6 Judicial and Legal Affairs Complaints and Grievances Investigation Committee. See “Burma’s Judicial System Deeply Corrupt, Parliament Told”, The Irrawaddy, 9 December 2015.
- 7 “Situation of human rights in Myanmar”, Resolution adopted by the Human Rights Council, United Nations, 2 April 2015, A/HRC/RES/28/23.

accountability for security personnel.

The failure to hold State authorities accountable for serious human rights violations has been persistently highlighted by the UN Special Rapporteur.⁸ Article 445 of the 2008 Constitution is widely interpreted as an **amnesty** clause for members of the government and military.⁹ Also of concern, a recently released plan for legislation includes blanket immunity for actions by the president taken in office,¹⁰ which indicates that members of the old regime intend to maintain and consolidate their status above the law.

A related challenge is the **court martial system**, which gives military courts competence over all Defense Services personnel with no civilian oversight. The decision of the Commander in Chief on legal matters that involve the military is enshrined in the Constitution as “final and conclusive”. The military justice system is also closed to the public, making it almost impossible to obtain information about cases, while victims are often subject to intimidation. Transfer of a case to a civilian court is technically allowed when a soldier is accused of breaking a civilian criminal law, such as murder and rape. While such a transfer has happened very rarely, with only a handful of successful outcomes reported, this mechanism could be an opportunity to expand access to justice.

When police officers are accused of abuses against civilians, the Home Affairs Ministry largely uses opaque internal disciplinary **administrative sanctions** instead of investigating and trying them through the ordinary criminal process, thus denying justice to victims.¹¹

8 “Report of the Special Rapporteur on the situation of human rights in Myanmar”, United Nations Human Rights Council, 23 March 2015, A/HRC/28/72.

9 Article 445 of the 2008 Constitution states, “No proceeding shall be instituted against the said [former ruling] Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.”

10 See “Presidential Protection, Immunity Bill Put Forward”, The Irrawaddy, 21 December 2015.

11 “Torture by law enforcers: are Burma’s police the new military?”, Danilo Reyes, in “Police torture & crackdown on protest in changing

Compounding the problem, AJAR has found that those few who seek justice for acts of torture by police or military face threats, intimidation and retaliation. The UN Special Rapporteur has similarly reported that accusing the military often leads to criminal proceedings against the victim for defamation or providing false information.¹² The Myanmar National Human Rights Commission (MNHRC), a potential avenue for truth and justice for torture survivors, is viewed as lacking credibility, independence, transparency and capacity.

KO PAR GYI

Alleged torture and extra-judicial killing

Aung Kyaw Naing, aka Ko Par Gyi, was a freelance journalist and photojournalist in Mon State who was tortured and killed in military custody in October 2014. The Ministry of Defense claimed that he was shot dead while attempting to seize a gun from a guard and escape. Following local and international pressure, President Thein Sein requested that the Myanmar National Human Rights Commission (MNHRC) investigate. Witnesses to the exhumation reported that Par Gyi's corpse showed evidence of torture, including knife cuts on his chest and scars on his shins. The autopsy found that five gunshot wounds, including one on Ko Par Gyi's chin, two on his chest, and one each on his thigh and heel, caused his death.

One doctor told Ko Par Gyi's wife, a human rights activist named Ma Thandar, that he was shot point-blank through the chin, which conflicts with the army's version of events. A December 14 report by the MNHRC concluded that Ko Par Gyi died from five gunshot wounds, but that there was no evidence of physical or psychological torture. Ma Thandar and her lawyer rejected the report, as it overlooked key issues such as the signs of torture on his body and the inconsistencies between the autopsy and statements by the military. Throughout the MNHRC process, Ma Thandar faced considerable harassment.

In May 2015, an MNHRC press release stated that a summary court martial had acquitted two soldiers accused in the killing of any crimes, freeing them in November 2014. Ma Thandar and her lawyer continue their appeal to have the case handed over to the civilian judiciary and for a criminal case to be opened. The case demonstrates many of the root causes of torture, including a military justice system that is not transparent, a human rights commission that lacks credibility, failure to prosecute for torture despite physical evidence, and harassment of victims and their families.

For more information see [bit.ly/ JUSTICE4KOPARGYI](http://bit.ly/JUSTICE4KOPARGYI)

Burma", *Article 2*, Volume 14, N.2, June 2015.

12 "Report of the Special Rapporteur on the situation of human rights in Myanmar", United Nations Human Rights Council, 23 March 2015, A/HRC/28/72.

RECOMMENDATIONS



It will be very dangerous if we do not learn from the past about how to build the best systems and policies for our country. Human rights violations are still ongoing and widespread. If we do not solve the root causes of the problems, how can we go through national reconciliation? How can we reform the country to move towards positive peace and democracy? We need to go through the process of transitional justice in order to solve the problems. This is why the new government needs to take action, to develop a transitional justice policy and include it in the budget.



—Khin Mi Mi Khine, former political prisoner and torture survivor, coordinator of Wimutti Volunteer Group

Reforming Myanmar's **legal and institutional framework** to prevent torture and end impunity will require a long-term sustained effort by the new government. However, there are also many shorter term initiatives that can provide justice to victims, by **acknowledging and repairing the harm** caused by the violation, as well as taking steps towards prevention. Future discussions around the peace process and related political dialogue will provide a significant opportunity to address these questions.

Improving Rule of Law through Legal and Institutional Reform

1. Sign the Convention Against Torture and other relevant international human rights instruments and incorporate them into domestic legislation.
2. Repeal repressive laws that permit the imprisonment of activists and dissidents, including the Unlawful Association Act 1908, media laws, the Association Registration Law, and the Freedom of Assembly and Procession Law.
3. Review and amend any other relevant laws, orders, directives, procedures, rules, regulations, by-laws and notification regarding to improve prevention, monitoring, and remedies.
4. Reform the Myanmar National Human Rights Commission's enabling law to ensure the MNHRC can discharge its functions fully and independently in accordance with international standards such as the Paris Principles. The MNHRC must become an effective and transparent tool for the promotion and protection of human rights in collaboration with civil society and victims' groups.
5. Undertake legal and institution reforms focused on creating an independent, impartial and effective civilian judiciary, as well as avenues and mechanisms to facilitate safe access to justice, in particular for victims of violations committed by state actors.
6. The UN Special Rapporteur has called for removing the military from its stand "above the country's judicial and legal framework, outside of civilian control and oversight."¹³ Myanmar must act to end the de facto impunity of military actors by opaque and partial military courts, including:
 - facilitating prosecutions of soldiers accused of criminal acts in civilian courts
 - changing the 2008 Constitution to ensure civilian control and

¹³ "Report of the Special Rapporteur on the situation of human rights in Myanmar", United Nations Human Rights Council, 23 March 2015, A/HRC/28/72.

- oversight of security forces, including military and police
 - ensuring transparency and accountability of military justice
7. The Myanmar Police Force and the Correctional Department must also be placed under civilian oversight, rather than under a Home Affairs Minister appointed by the Commander-in-Chief of the Defense Services.

Reparations: Acknowledgment, Truth-Telling, and Rehabilitation

Conceding that torture is occurring and is an important societal problem is essential to preventing reoccurrence, and a first step in providing justice for victims. Full recognition and acknowledgment will encourage individual healing and reconciliation at a societal level. Such measures should include the following:

8. The government should provide an initial form of reparations by publically recognizing past and ongoing violations against all victims.
9. For torture survivors imprisoned for political reasons, it is essential to provide an official definition and recognition of the category of political prisoners, accompanied by acknowledgement of wrongdoing.
10. Ensure inclusion of victims' voices in the high-level political dialogue. Discussions about "national reconciliation" and "forgiveness" must reflect the will of survivors, addressing victims' rights to truth, justice, reparations and guarantees of non-repetition (institutional reform), without being hijacked by political pragmatism.
11. Civil society groups have embarked on numerous local truth-telling projects to commence a healing process. Even before a formal truth commission becomes possible, the new NLD-led government could provide official recognition of the survivors' experiences through collaboration with civil society groups and acknowledgement of their work, as well as support to scale up their activities.
12. The government must develop a reparations policy with both short-

and long-term goals. In the immediate future, reparations can take the form of rehabilitation programs that address survivor's medical, psychological and material needs, whether implemented by the government or by civil society groups with official support. Over the longer term Myanmar should achieve a system of social services for all, combined with targeted programs to provide full remedy to survivors. Reparative measures for torture survivors must be included in peace process discussions and a final agreement. A reparations policy must be adopted by the government and reflected in the national budget, and must address the urgent needs of torture survivors, including:

- **access to health care** for injuries and illnesses resulting from torture.
- **psychosocial support** in the form of appropriate mental health counseling, including community-based trauma healing strategies that facilitate peer-to-peer support.
- **addressing the socio-economic consequences** of violations and livelihood needs, including access to education or vocational training, employment opportunities, and capital.

Prevention

13. Release of all political prisoners should be one of the first measures of the new government. The UN Human Rights Council urges the government "to fulfill its commitment to the unconditional release of all remaining political prisoners ... and to provide for full rehabilitation."¹⁴
14. Systematic monitoring of all types of detention facilities by an independent authority.
15. Promotion of education and awareness-raising activities regarding torture among the general population and law enforcement agencies.

¹⁴ "Situation of human rights in Myanmar", Resolution adopted by the Human Rights Council, United Nations, 2 April 2015, A/HRC/RES/28/23

Case study: Sexual Violence As a Form of Torture

Ah Nan is a strong, resourceful Kachin woman who supports her four children, her mother and her mother-in-law since her husband, a former soldier in the Kachin Independence Army, was arrested in 2013 for a drug-related offense. Not long after her husband's arrest, two men came to Ah Nan's house and raped her. She believes they were members of the police force. The older of the two men wore a cap and blue trousers that police officers usually wear.



The two men came to my house. I had closed the door with an iron bar but they pulled it with all their strength. In the past, since my husband was the village chief, I had a lot of guests. I thought they might be someone who was in trouble, so I opened the door.

I could not see them well as there wasn't much light. Once they came in, I thought they might be the police related to my husband's case. They took the knife that I keep on the wall in the corner. Then they told me to take off my longyi. I had three layers of underwear including tights. I told them, even if you want to check me, you should not do that. But they did not listen.



The older man then threatened Ah Nan with a knife. He pushed her to the ground and sexually assaulted and raped her, while his accomplice held her arms.

When Ah Nan complained to the authorities and attempted to identify the perpetrators, she was met with contempt, threats, and intimidation. She recalls, "The [authorities] shouted 'Where! Who!' But I was not scared and I tried to tell them what really happened. They were very angry."

She is still looking for the two perpetrators who abused her. With the help of community-based organizations, she sent a letter of appeal to the authorities, but she has only faced intimidation as a result. She wants to seek justice, despite the risks and difficulties, but the police refuses to open a case, claiming that they are not able to identify the perpetrators.

Ah Nan wants to tell the truth on behalf of others who have suffered from violence, and who dare not speak out. This case illustrates the use of rape as a form of torture in ethnic areas, where members of the military or police sexually assault ethnic women as a means of coercion, intimidation or punishment against the civilian population suspected of supporting ethnic armed groups. It also demonstrates the obstacles faced by victims in seeking prosecutions of crimes committed by state actors, with failure by police to act and harassment of victims.



Photo: Anne-Cecile Esteve for AJAR

Case study: Sexual Violence As a Form of Torture

Photo: Anne-Cecile Esteve for AJAR



