

Unseen and Unheard: Violations of the Human Rights of Women Deprived of Liberty in Myanmar

Briefing Paper



Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Unseen and Unheard: Violations of the Human Rights of Women Deprived of Liberty in Myanmar Briefing Paper

© Copyright International Commission of Jurists

Published in June 2024

Disclaimer: The image on the cover is used for illustrative purposes only. It does not depict an actual woman deprived of liberty in Myanmar.

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to its headquarters at the following address:

International Commission of Jurists

P.O. Box 1740

Rue des Buis 3

CH 1211 Geneva 1

Switzerland

t: +41 22 979 38 00

f: +41 22 979 38 01

www.icj.org

**Unseen and Unheard:
Violations of the Human Rights of Women
Deprived of Liberty in Myanmar**

Briefing Paper

Table of Contents

- Executive Summary** 1
- I. Introduction**..... 4
- II. Brief Overview of the International and Domestic Legal Framework** 7
- III. Human Rights Violations of Women Deprived of Liberty**10
 - a. Inhumane Detention Conditions**10
 - i. Overcrowding and Other Detention Conditions*10
 - ii. Denial of Adequate Healthcare, Including Gender-Specific, Sexual and Reproductive Healthcare*.....11
 - b. Sexual and Gender-Based Violence**.....13
 - i. Physical Beatings and Threats Thereof, Sexual Violence and Other Forms of Ill-Treatment*14
 - ii. Intrusive Strip and Body Searches*15
 - iii. Medical Examinations Violating Privacy and Dignity*17
 - c. Overly Punitive Disciplinary Methods and Sanctions**17
 - i. Excessive Use of Force, Including by Male Prison Guards*18
 - ii. Solitary Confinement*18
- IV. Recommendations**.....19
 - a. To the military junta:**19
 - b. To relevant UN agencies and independent experts:**20
 - c. To UN Member States:**20

Executive Summary

"The chief jailer would enter the cells with prison staff in tow, brandishing a pistol, and give terrifying warnings: "As long as I am alive, don't consider leaving these cells alive! As long as I am alive, if you want to leave these cells, you will leave as dead bodies!""

Testimony from one of the ICJ's Interviewees

Context: Since the military *coup d'état* in Myanmar on 1 February 2021, the military junta has capitalized on its control over the judicial system to arbitrary arrest, detain and convict individuals for political reasons, and pursuant to sham charges founded on vague and overbroad criminal provisions under the Penal Code, Counter Terrorism Law and Unlawful Association Act. Those arrested and detained have included women and girls (hereafter referred cumulatively as women deprived of liberty, or WDLs for short). Between the *coup* and 20 June 2024, according to the Assistance Association for Political Prisoners (AAPP), at least 3,987 women were still in detention, including 1,528 women who have been convicted on spurious charges for political reasons.

Research Methodology: This briefing paper is based on a series of comprehensive interviews and engagements with former WDLs, lawyers representing WDLs and local civil society groups working with WDLs. These include 14 in-depth key informant interviews carried out by the ICJ. The environment in Myanmar to document human rights violations in interrogation and detention settings is immensely challenging, with very real risks of reprisals. In light of that, the ICJ has prioritized the safety and security of all interviewees: the identities of the interviewees have been anonymized, with any identifying details and personal information omitted.

Key Findings: The military authorities have targeted WDLs and subjected them to a multitude of serious human rights violations, including acts of gender-based violence amounting to crimes under international law, while arbitrarily depriving them of their liberty. The military authorities' practices against WDLs likely constitute torture or other forms of cruel, inhuman or degrading treatment or punishment, either in and of themselves or cumulatively, along with other violations to which WDLs have been subjected as part of a broader pattern of abusive practices in detention facilities across Myanmar. Access to justice and effective remedies for these gross human rights violations against WDLs is non-existent, despite attempts by lawyers to file cases complaining of instances of torture and ill-treatment in interrogation and detention settings. These violations include:

Inhumane Detention Conditions: WDLs in Myanmar are being held in prisons and other detention facilities in dehumanizing conditions contrary to international human rights law and standards governing the treatment of prisoners. WDLs from religious minorities, including Rohingya Muslim WDLs, appear to have been targeted with discriminatory treatment in detention facilities. Reports of overcrowding are rampant, with cells filled to double capacity, leading to severe health risks. Lack of access to sufficient toilets and a lack of privacy exacerbate the plight of WDLs in these conditions.

Denial of Adequate Healthcare: There are severe restrictions on WDLs' access to healthcare, which are often limited to over-the-counter medications. The denial or delay of proper medical treatment, even for serious conditions, is used as a method of punishment and retaliation. WDLs are denied access to gender-specific healthcare, including menstrual products, and sexual and reproductive healthcare. Pregnant WDLs have suffered miscarriages due to brutal interrogations and/or being denied proper prenatal care. Denial of access to other gender-specific medicine and timely medical interventions were also reported, such as access to a mastectomy for breast cancer, and treatment for the development of an ovarian cyst and kidney disease. All of the ICJ's interviewees reported psychological trauma due to the detrimental impact of interrogation and detention on their mental health.

Sexual and Gender-Based Violence: WDLs, especially political prisoners, have reported experiencing torture and other ill-treatment while being interrogated and also as a form of punishment. WDLs have been targeted with specific forms of sexual and gender-based violence, enduring acts and threats of rape, sexual assault, and sexual harassment, often to obtain “confessions” during interrogations. WDLs are sometimes made to witness the torture and other ill-treatment, and the aftermath of such cruelty, inflicted on other WDLs, presumably as a method of intimidation and to instill fear. Interrogators often threaten the life and safety of family members of WDLs, and make sexualized comments based on harmful gender stereotypes. Furthermore, intrusive strip and body searches, as well as medical examinations, are carried out in an unnecessarily and disproportionately humiliating and degrading manner that violate the dignity and privacy of WDLs, and may amount to ill-treatment or even torture. Menstruating WDLs are not spared from these unnecessarily intrusive strip and body searches, and searches are usually conducted without adequate privacy. There have been no known instance of investigations, prosecutions or sanctions of torture or other ill-treatment, despite international and national laws prohibiting such acts.

Overly Punitive Disciplinary Methods and Sanctions: Prison authorities employ harsh punishments, including through the intentional denial of basic needs and excessive use of force, to intimidate and silence dissent among WDLs. The disproportionate application of force, often by male guards, leads to severe injuries and psychological trauma among WDLs. Prolonged solitary confinement, exceeding the 15-day limit under international standards, has also been utilized as a means of punishment, which constitutes psychological violence and a form of abuse against WDLs.

Recommendations: The experiences of WDLs documented in this briefing paper represent just a small fraction of range of human rights violations experienced by WDL in Myanmar. These grave human rights violations take place against a backdrop of such violations being perpetrated, with impunity, across Myanmar, in a manner that is “widespread and systematic and likely constitute crimes against humanity”. In light of the above, the ICJ makes the following recommendations:

To the military junta:

- Immediately cease systematically violating human rights, including by ceasing the use of non-human rights compliant laws and by releasing all people arbitrarily arrested and detained;
- Immediately cease: the torture and other forms of ill-treatment of WDLs held in a range of detention facilities, including the denial of humane detention conditions; withholding of adequate healthcare (including gender-specific healthcare); perpetration of sexual and gender-based violence; and use of overly punitive disciplinary methods and sanctions;
- Order prompt, impartial, independent and effective investigations into all credible allegations of torture and other ill-treatment, including reports of sexual and gender-based violence, committed by detention authorities, and when the evidence so warrants, ensure that the alleged perpetrators be brought to justice in proceedings guaranteeing their right to a fair trial;
- Guarantee the right to an effective remedy for WDLs who are victims/survivors of human rights violations perpetrated by the military authorities, including by removing all *de jure* and *de facto* obstacles to WDLs’ access to justice;
- Guarantee a WDL’s right to address grievances without fear of retribution; and
- Comprehensively and expeditiously implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), and the United Nations Rules of the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) to address the gender-specific needs of WDLs, including by enacting or reforming policies on discipline and punishment, access to sexual and reproductive healthcare, strip and body searches and prolonged solitary confinement in line with these international standards.

To relevant UN agencies and independent experts:

- Continue efforts to investigate, document and highlight the human rights violations faced by WDLs in a gender-specific fashion, including in the work of the Independent Investigative Mechanism for Myanmar (IIMM), Special Rapporteur on the situation of human rights in Myanmar; Office of the United Nations High Commissioner for Human Rights (OHCHR) and the UN Secretary-General;
- Actively work and engage with civil society groups and individuals documenting human rights violations against WDLs to seek additional evidence or information based on existing gaps in data and evidence (e.g. underreporting in certain geographical areas, or of the intersectional discrimination faced by certain WDLs, such as ethnic or religious minorities, or persons of diverse sexual orientations, gender identities or expression);
- Put in place policies, strategies and implementation plans relating to gender and the investigation of sexual and gender-based violence, including in interrogation and detention settings, ensuring that such policies and strategies are designed in consultation with a range of relevant actors (including civil society and grassroots organizations, gender experts, and other accountability mechanisms) and make public and available in relevant Myanmar languages; and
- Conduct analysis on gender constructs in Myanmar, and their impact on the commission of crimes and harms experienced by survivors, including in interrogation and detention settings, taking into account the need to protect the rights of the victims and witnesses and possible suspects in future investigations and prosecutions and other accountability-oriented proceedings, for use by other actors engaged in accountability-related work, policy making or humanitarian intervention.

To UN Member States:

- Increase support for coordinated documentation and accountability efforts by ensuring that the Independent Investigative Mechanism for Myanmar (IIMM), Special Rapporteur on the situation of human rights in Myanmar and Office of the United Nations High Commissioner for Human Rights (OHCHR) be given adequate resources to continue their important functions as effectively as possible, including in relation to the human rights violations perpetrated against WDLs; and
- Hold perpetrators of serious crimes under international law accountable, including by effectively exercising universal jurisdiction over individuals reasonably suspected of grave human rights violations against WDLs that qualify as crimes under international law. Ensure that cases filed under the framework of universal jurisdiction integrate a gender analysis by including instances of gender-based crimes and human rights violations, including those perpetrated against WDLs.

I. Introduction

Since the military *coup d'état* that overthrew Myanmar's civilian government on 1 February 2021, the military junta has capitalized on its control over the judicial system to arbitrarily arrest, detain and convict individuals for political reasons, including former government officials, human rights defenders, lawyers, journalists and members of ethnic and religious minorities.¹

According to the Assistance Association for Political Prisoners (AAPP),² between 1 February 2021, when the *coup* took place, and 20 June 2024, 26,893 people had been arbitrarily arrested and detained, and 9,220 convicted³ on spurious charges, in proceedings that flagrantly violate essential fair trial and due process rights guaranteed under international human rights law.⁴ These criminal trials are typically carried out pursuant to sham charges founded on vague and overbroad criminal provisions,⁵ such as section 505-A of the Penal Code,⁶ sections 50(j) and 52(a) of the Counter Terrorism Law⁷ and section 17/1 of the Unlawful Association Act.⁸

Those arbitrarily arrested and detained by the military authorities have included women and girls (hereafter referred cumulatively as women deprived of liberty). As of 20 June 2024, at least 3,987 women were still in detention,⁹ including 1,528 women who have been convicted on spurious charges for political reasons.¹⁰ Many have been convicted as a result of their legitimate political activism and participation in protests and the Civil Disobedience Movement (CDM).¹¹

¹ ICJ, "Myanmar: Abysmal human rights and rule of law situation deteriorates further three years after the coup", 1 February 2024, available at: <https://www.icj.org/myanmar-human-rights-and-rule-of-law-situation-increasingly-abysmal-three-years-after-the-coup/>.

² The Assistance Association for Political Prisoners (AAPP) is a human rights organization advocating for the release of political prisoners in Myanmar, including through the documentation of human rights violations in Myanmar. AAPP has maintained a database of documented cases of arrests, charges, convictions, sentences and fatalities, amongst others, in relation to the *coup*.

³ Assistance Association for Political Prisoners, "Daily Briefing in Relation to the Military Coup", 20 June 2024, available at: <https://aappb.org/?p=28461>.

⁴ For more information about the fair trial violations that have occurred as a result of these criminal proceedings, many of which are carried out in courts located in prisons or military tribunals, see, ICJ, "Myanmar: Abysmal human rights and rule of law situation deteriorates further three years after the coup", 1 February 2024, available at: <https://www.icj.org/myanmar-human-rights-and-rule-of-law-situation-increasingly-abysmal-three-years-after-the-coup/>; *Mandate of the Special Rapporteur on the independence of judges and lawyers*, Ref.: AL OTH 74/2023, 30 June 2023, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28163>.

⁵ Among other things, these legal provisions fail to comply with international human rights law and standards guaranteeing the rights to freedom of expression, association and peaceful assembly, as they are not consistent with the principles of legitimate purpose, legality, necessity and proportionality. A detailed analysis of these provisions, however, is outside the scope of this paper, which, instead, focuses on violations of the human rights of women deprived of their liberty.

⁶ Section 505-A of the Penal Code criminalizes comments that "cause fear", spread "false news", or incite directly or indirectly a criminal offence against a Government employee, with a maximum sentence of up to three years in prison upon conviction.

⁷ Section 50(j) of the Counter Terrorism Law criminalizes "financing of terrorism", with a maximum sentence of life imprisonment or even the death sentence upon conviction. Section 52(a) criminalizes committing "acts of terrorism" with a maximum sentence of seven years' imprisonment on conviction.

⁸ Section 17(1) criminalizes membership in or association with an unlawful association, with a maximum sentence of three years in prison upon conviction.

⁹ The ICJ understands that this figure includes those women who are in pre-trial detention, as well as those who are serving sentences having been convicted.

¹⁰ Assistance Association for Political Prisoners, "Still Detained", available at: <https://airtable.com/appHDJLeiPsMGFJ7s/shrXiq3K1879QmNNB/tblC5yh720x2FBSJ5>; Assistance Association for Political Prisoners, "Sentenced", available at: <https://airtable.com/appHDJLeiPsMGFJ7s/shriEaQw2eWEEU7zr/tblDh7ajAunXjn6eP> (accessed 20 June 2024).

¹¹ The CDM, a non-violent civil disobedience movement, is a peaceful political movement of people defying the unjust law and order powers of the violent military *coup d'état* until their entire administrative system is stopped and a new federal democratic country can be built. This is an unofficial translation of the CDM as defined in a policy paper on CDM prepared by the Joint Coordination Committee (JCC) of the National Unity Consultative Council (NUCC). The paper was published in Burmese on 20 January 2023, on the NUCC's official Facebook page. The JCC's CDM policy paper served as the basis for the NUCC's adoption of a four-point CDM policy for civil servants on January 20, 2023. JCC-NUCC, "Policy Paper on Civil Disobedience Movement", 20 January 2023, available at: <https://www.facebook.com/photo/?fbid=169419932476237&set=pcb.169420295809534>

Definition of "women deprived of liberty"

"Women deprived of liberty" (WDLs) refers to women who are subject to "any form of **detention or imprisonment or the placement of a person in a public or private custodial setting** which that person is not permitted to leave at will by order of any judicial, administrative or other authority".¹²

For the purposes of this paper, WDLs primarily refers to women remanded in custody pending trial in detention facilities, such as interrogation centres and prisons; and to women who are imprisoned following criminal trial proceedings culminating in their conviction on criminal charges. In particular, this paper focuses on the treatment of WDLs in military-controlled interrogation and detention facilities, while noting that there are also reports of human rights violations and/or abuses being committed against persons deprived of liberty, including women, by other actors in Myanmar.¹³

The most prominent example of a WDL is the country's former State Counselor,¹⁴ Aung San Suu Kyi, who is serving a prison sentence of 27 years¹⁵ following her sham trials and convictions on numerous "offences", including "sedition", "the illegal possession of walkie-talkies", "incitement of public unrest" and "violations of COVID-19 restrictions".¹⁶

The military authorities have targeted women deprived of liberty (WDLs) and subjected them to a multitude of serious human rights violations, including acts of gender-based violence amounting to crimes under international law,¹⁷ while arbitrarily depriving them of their liberty.

These violations include:

- Inhumane detention conditions, resulting from severe overcrowding, and entailing lack of privacy and inadequate access to sanitary facilities;
- Denial of adequate healthcare, such as gender-specific, and sexual and reproductive healthcare, including but not limited to, pre- and post-natal care and menstrual products;
- Widespread perpetration of sexual and gender-based violence, including physical beatings and threats of the same, sexual violence and intrusive strip and body searches; and
- Excessive use of force, and the use of overly punitive disciplinary methods and sanctions, such as prolonged solitary confinement.

¹² Article 4(2), Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and UN General Assembly, *Women deprived of liberty: Report of the Working Group on the issue of discrimination against women in law and in practice*, UN Doc. A/HRC/41/33, 15 May 2019, paras. 10 – 16.

¹³ See, for instance, The Irrawaddy, "Abuse of Female Prisoners by Myanmar Resistance Police Covered Up", 15 April 2024, available at: <https://www.irrawaddy.com/news/investigation/abuse-of-female-prisoners-by-myanmar-resistance-police-covered-up.html>.

¹⁴ Aung San Suu Kyi was named as Myanmar's first State Counselor, a "position newly created by the legislature", with the post being "similar to that of prime minister and potentially more powerful than the president"; see, Britannica, "State councillor of Aung San Suu Kyi", available at: <https://www.britannica.com/biography/Aung-San-Suu-Kyi/State-counselor>.

¹⁵ As of the time of the preparation of this briefing paper, there is ambiguity over where Aung San Suu Kyi is being detained, with reports that she is still in Naypyidaw prison, and other reports that she has been moved to house arrest: Bangkok Post, "Son fears Suu Kyi being used as 'human shield'", 19 April 2024, available at: <https://www.bangkokpost.com/world/2778649/son-fears-suu-kyi-being-used-as-human-shield>.

¹⁶ ICJ, "Myanmar: Authorities must immediately quash convictions of Aung San Suu Kyi and Win Myint after sham trial and conviction", 7 December 2021, available at: <https://www.icj.org/myanmar-authorities-must-immediately-quash-convictions-of-aung-san-suu-kyi-and-win-myint-after-sham-trial-and-conviction/>. See, also, Rebecca Ratcliffe, "Aung San Suu Kyi's partial 'pardon' still means 27-year sentence", *The Guardian*, 2 August 2023, available at: <https://www.theguardian.com/world/2023/aug/02/aung-san-suu-kyis-partial-pardon-still-means-27-year-sentence>.

¹⁷ A detailed analysis of the extent to which the human rights violations to which WDLs have been subjected may amount to crimes under international law is beyond the scope of this paper. Nonetheless, at a minimum, the ICJ notes that the International Criminal Court's Office of the Prosecutor has defined "gender-based crimes" within the Court's jurisdiction as "sexual violence, reproductive violence, and/or other forms of gender-based violence". As noted by the Office of the Prosecutor, all "crimes under the [Rome Statute] (genocide, crimes against humanity, war crimes and aggression) may potentially involve gendered forms in their commission and/or result in gender-specific harms"; see, International Criminal Court, Office of the Prosecutor, *Policy on Gender-Based Crimes: Crimes involving sexual, reproductive and other gender-based violence*, December 2023, p. 19 – 20, available at: <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>. In this context, the ICJ notes also article 7 of the Rome Statute, which defines "crimes against humanity", and includes "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law"; "torture"; "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity"; and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health", if "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

Research methodology and limitations

This briefing paper is based on a series of comprehensive interviews and engagements with women formerly deprived of liberty, lawyers representing WDLs and local civil society groups working with WDLs. While conducting research for this briefing, **the ICJ carried out 14 in-depth key informant interviews**. The key informant interviews were conducted in a semi-structured way, with a set of open-ended questions, with follow-up probe questions to allow deeper analysis of the responses provided by the interviewees. All interviews were conducted in a trauma-informed and victim-centred manner, with information from these interviews being used for present purposes only with the full and informed consent of the interviewees.

Testimonies collected from these interviews were then corroborated and supplemented by a range of secondary sources, including desk research of media reports and reports by UN human rights experts.

The environment in Myanmar to document human rights violations in interrogation and detention settings is immensely challenging, with very real risks of reprisals against anyone who has contributed to this briefing paper, as well as their families and communities. In light of that, the ICJ has prioritized the safety and security of all interviewees: the identities of the interviewees have been anonymized, with any identifying details and personal information omitted.

As such, what follows does not purport to be an exhaustive and comprehensive account of the human rights violations suffered by WDLs in Myanmar. Instead, this briefing paper aims to give primacy to the individual experiences of WDLs who have been subjected to intense psychological and physical torment while deprived of liberty. The paper draws attention to incidents of abuse and violence which are suggestive of concerning trends, based on testimony collected by the ICJ, and analyzes these experiences in light of international human rights law, as well as domestic law.

The practices of the military authorities against WDLs likely constitute torture or other forms of cruel, inhuman or degrading treatment or punishment, either in and of themselves or cumulatively, along with other violations to which WDLs have been subjected as part of a broader pattern of abusive practices in detention facilities across Myanmar. They have been intentionally carried out to cause WDLs severe pain and suffering and as a tool for crushing dissent. Furthermore, the full extent of the torture and other ill-treatment of WDLs is likely to be severely underreported, due to cultural stigmas and ostracization that survivors of sexual violence face.¹⁸

WDLs have been targeted with specific forms of cruelty and abuse based on their gender, and experience gender-differentiated harms, including sexual and gender-based violence and denial of gender-specific healthcare. These practices constitute gender discrimination prohibited under international human rights law.

As noted by the UN Working Group on discrimination against women and girls, “the consequences of deprivation of liberty for women are gendered”,¹⁹ and WDLs experience differentiated harms as a result of their traumatizing experiences during interrogation and while in detention based on their gender,²⁰ with long-term repercussions for their mental health and well-being post-incarceration. This observation holds true for WDLs in Myanmar.

¹⁸ This point has been noted by the Independent Fact-Finding Mission on Myanmar in the broader context of gender-based crimes: see, Human Rights Council, *Sexual and Gender-Based Violence in Myanmar and the Gendered Impacts of its Ethnic Conflicts*, UN Doc. A/HRC/42/CRP.4, 22 August 2019, paras. 52, 70.

¹⁹ Human Rights Council, *Women deprived of liberty: Report of the Working Group on the issue of discrimination against women in law and in practice*, UN Doc. A/HRC/41/33, 15 May 2019, para. 13.

²⁰ The United Nations Office on Drugs and Crime has noted that, historically, “prisons have been designed for adult male offenders, and the deprivations and hardships of prison often bear disproportionate impacts on women offenders who are likely to already bear trauma, and significant health and mental health problems”: see, UNODC, “E4J University Module Series: Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System”, available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

Access to justice and effective remedies for these gross human rights violations against WDLs is virtually non-existent, despite attempts by lawyers to file cases complaining of instances of torture and other ill-treatment.²¹ The breakdown of the rule of law and guarantees of due process is a major barrier to access to justice. The military authorities thus have enjoyed and continue to enjoy complete impunity, which, in turn, is enabled by their control over the country's legal and administrative system.

Gross and systematic human rights violations and gender-based crimes against WDLs are reflective of the broader campaign of violence and terror that the military junta has been inflicting on women across Myanmar, and constitute a manifestation of "structural gender inequalities and power imbalances"²² in the country. Reports of sexual and gender-based crimes perpetrated by the military as a "tactic of war", including "rapes, gang rapes, mass rapes, genital mutilation, sexual slavery, forced nudity, sexual humiliation, and forced abortion", have been commonplace, and "[m]any patterns [of violations] have been repeated across decades and against different ethnic groups".²³ Indeed, in 2019, the Independent Fact-Finding Mission on Myanmar reported on its documentation of the high prevalence of gender-based crimes, including rape, against Rohingya women and girls, men and boys, and transgender women in northern Rakhine State during "clearance operations",²⁴ and found such crimes to constitute torture, war crimes, crimes against humanity and genocide.²⁵

In spite of the immense threats to their personal safety, women human rights defenders continue to fearlessly subvert patriarchal norms and defy the military junta's illegitimate rule by participating in the CDM and standing on the frontline of protests and resistance efforts.²⁶ Thousands have been arbitrarily arrested and detained, and are serving or have served sentences of imprisonment following convictions in sham criminal trial proceedings on spurious charges.

II. Brief Overview of the International and Domestic Legal Framework

The Myanmar authorities' duty to respect, protect and fulfill the human rights of WDLs is laid out in several international human rights treaties by which Myanmar is bound as a State party, including the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁷

While Myanmar is not a State party to either the International Covenant on Civil and Political Rights (ICCPR) or to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the right to life; the right to liberty and security of person;²⁸ the right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment;²⁹ and the prohibition on arbitrary arrest and detention,³⁰ among others, are norms of customary international law binding upon all States regardless of their treaty obligations.³¹

²¹ ICJ interviews with lawyers.

²² International Criminal Court, *Office of the Prosecutor: Policy on Gender-Based Crimes: Crimes involving sexual, reproductive and other gender-based violence*, December 2023, paras. 28 – 29, available at: <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

²³ Redress and Global Survivors Fund, *Myanmar Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence: Beyond Survival*, March 2023, p. 6.

²⁴ In August 2017, the Myanmar security forces launched a brutal and disproportionate response to the perceived "terrorist threat" from the Arakan Rohingya Salvation Army (ARSA), which they termed as "clearance operations", and targeted and terrorized the Rohingya population in northern Rakhine State. This resulted in thousands of Rohingya being killed or injured; gang rapes of women and girls; and burning of houses, among other widespread and systematic atrocity crimes. As a result of these "clearance operations" by the Myanmar security forces, 725,000 Rohingya were forced to flee to Bangladesh in 2017. Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN Doc. A/HRC/39/64, 12 September 2018, para. 33.

²⁵ UN Human Rights Council, *Sexual and Gender-Based Violence in Myanmar and the Gendered Impacts of its Ethnic Conflicts*, UN Doc. A/HRC/42/CRP.4, 22 August 2019.

²⁶ Naw Hser Hser and Maggi Quadrini, "Three Years After the Myanmar Coup, Women Human Rights Defenders Remain at the Forefront", *The Diplomat*, 31 January 2024, available at: <https://thediplomat.com/2024/01/three-years-after-the-myanmar-coup-women-human-rights-defenders-remain-at-the-forefront/>.

²⁷ Myanmar ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in October 2017, and acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in July 1997.

²⁸ Codified in, e.g. Article 3 of the Universal Declaration of Human Rights.

²⁹ Codified in, e.g. Article 5 of the Universal Declaration of Human Rights.

³⁰ Codified in, e.g. Article 9 of the Universal Declaration of Human Rights.

³¹ United Nations, *Draft conclusions on identification of customary international law, with commentaries*, 2018, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf; see also, Article 38, Statute of the International Court of Justice ("The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply [...] international custom, as evidence of a general practice accepted as law"), available at: <https://www.icj-cij.org/statute>.

Snapshot of some key definitions and obligations under international law

The **prohibition of torture and other ill-treatment** is absolute, in all circumstances, under international law. Article 1 of the CAT defines "torture", for the purposes of the Convention, as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."³²

States are required to, *inter alia*, take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction", and to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".³³

Article 12 of the ICESCR obligates States to recognize the right of all to the enjoyment of the **highest attainable standard of physical and mental health**, including by "refraining from denying or limiting equal access for all persons, including prisoners or detainees [...] [to] curative and palliative health services".³⁴ Sexual and reproductive health is an integral element of the right to physical and mental health, and States must take particular steps to ensure that those with "additional vulnerability by condition of their detention or legal status" have "access to sexual and reproductive information, goods and healthcare".³⁵

Gender-based violence, as a manifestation of gender-based discrimination, impairs or nullifies women's enjoyment of their human rights, including the right to life; the right to liberty and security of person; the right to equality before the law and to equal protection of the law without discrimination; and the right to the highest attainable standard of physical and mental health, as identified by, among others, the Committee on the Elimination of Discrimination against Women (CEDAW Committee).

Gender-based violence may also amount to torture or other cruel, inhuman or degrading treatment in certain circumstances, and "a gender-sensitive approach is required to understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex".³⁶

Additionally, the CEDAW Committee has also made clear that violations of women's sexual and reproductive health and rights, such as the "abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services", are forms of "gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment".³⁷

³² Emphasis added; article 1, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

³³ Articles 2, 12, CAT.

³⁴ Article 12, International Covenant on Economic, Social and Cultural Rights; and *CESCR General Comment No. 14: The Right to the Highest Standard of Health (Art. 12): Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4*, para. 34.

³⁵ Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/22, 2 May 2016, para. 31.

³⁶ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 26 July 2017 ("CEDAW Committee, General recommendation No. 35"), paras. 16, 17.

³⁷ *Ibid.*, paras. 18.

Various international instruments have been developed specifically to protect and promote the human rights of persons deprived of their liberty, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules);³⁸ the Basic Principles for the Treatment of Prisoners;³⁹ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁰ The United Nations Rules of the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) address specifically the treatment of WDLs.⁴¹ These rules are based on an obligation to treat all persons deprived of their liberty with respect for their inherent dignity and on the prohibition of torture and other ill-treatment, as well as on the right to humane detention conditions.

Nelson Mandela Rules and Bangkok Rules

The **Nelson Mandela Rules** include: the absolute prohibition on torture and other ill-treatment (Rule 1); accommodation standards (Rules 12 – 17); standard of health care and prompt access to health care (Rule 24, 27); legality and proportionality of disciplinary measures and sanctions (Rules 37, 39); restrictions on solitary confinement (Rules 43, 44); and appropriate alternatives to intrusive searches (Rule 52).

The **Bangkok Rules** articulate clear standards on the facilities and materials for women’s specific hygiene needs (Rule 5); carrying out medical examinations with privacy, dignity and confidentiality (Rule 11); protecting the dignity and respect of women prisoners during personal searches (Rules 19, 20); and providing “special accommodation for all necessary prenatal and postnatal care and treatment” (Rules 48 – 52), among others.

Several laws and regulations in Myanmar’s domestic law offer piecemeal protections for the rights of WDLs.⁴² Of particular relevance are The Prisons Act 1894 and the Prisoners Act 1900, which were enacted by the British colonial government, as well as the Burma Jail Manual, a manual of rules for the superintendence and management of jails in Myanmar.⁴³ Where relevant, reference will be made to the specific provisions in these laws and regulations, as well as the Myanmar Penal Code, although the collapse of the rule of law in Myanmar⁴⁴ has made seeking access to justice for human rights violations pursuant to these legal provisions elusive and challenging.

³⁸ UN General Assembly, *Resolution adopted by the General Assembly on 17 December 2015: 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc. A/RES/70/175, 8 January 2016 (“Nelson Mandela Rules”).

³⁹ United Nations, “Basic Principles for the Treatment of Prisoners”, 14 December 1990, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>.

⁴⁰ United Nations, “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”, 9 December 1988, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>.

⁴¹ UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc. A/C.3/65/L.5, 6 October 2010.

⁴² While these protections fall short of international human rights law and standards on the rights of WDLs, these provisions nonetheless provide some protection. A full analysis of the existing domestic legal framework under Burmese law is not within the scope of this paper.

⁴³ Liv S. Gaborit, *Royal, colonial and authoritarian legacies in Myanmar prisons of today*, Sage Journals, 25 April 2023, available at: <https://journals.sagepub.com/doi/full/10.1177/26326663231169887>.

⁴⁴ ICJ, “Myanmar: Abysmal human rights and rule of law situation deteriorates further three years after the coup”, 1 February 2024, available at: <https://www.icj.org/myanmar-human-rights-and-rule-of-law-situation-increasingly-abysmal-three-years-after-the-coup/>.

III. Human Rights Violations of Women Deprived of Liberty

a. Inhumane Detention Conditions

WDLs are being held in prisons and other detention facilities in dehumanizing conditions contrary to international human rights law and standards governing the treatment of prisoners. WDLs from religious minorities appear to have been targeted with discriminatory treatment in detention facilities.

i. Overcrowding and Other Detention Conditions

Virtually all the interviewees to whom the ICJ spoke described the deplorable conditions of detention facilities that fall far below the standards prescribed in the Nelson Mandela Rules, including Rules 12 – 17 on accommodation standards.⁴⁵ Overcrowding in detention facilities was the most commonly reported complaint,⁴⁶ such as in Hinthada prison (Ayeyarwady Region)⁴⁷ and a prison in the Magway Region.⁴⁸ Those detained in Insein prison (Yangon Region) to whom the ICJ spoke reported having only one square foot of space per person and barely any space for movement,⁴⁹ with not enough space for everyone to lie down on the floor.⁵⁰

As reported by the UN Special Rapporteur on the situation of human rights in Myanmar (“Special Rapporteur on Myanmar”):

“The mass influx of political prisoners since the *coup* has led to severe overcrowding in prisons, with some cells reportedly filled to double capacity. Prisons are poorly maintained, and prisoners are often exposed to the elements. Skin diseases and diarrhea are reportedly rampant. [...] [P]risoners suffer from grossly inadequate nutrition, receiving spoiled food or meals primarily comprised of low-quality, dirty rice.”⁵¹

Other reported deplorable conditions for WDLs include a “lack of access to sufficient toilets and no privacy”.⁵² As noted by the Special Rapporteur on Myanmar, the “lack of privacy in women’s prison facilities is so great that former political prisoners have suggested that State Administration Council officials arrange prison facilities to make women feel more vulnerable”.⁵³ A WDL interviewed by the ICJ recalled that in her cell in Insein prison (Yangon Region):

“There was both a local-style toilet and a Western-style toilet in the prison cell. However, the prison warden implemented a policy where a slip had to be purchased from them in order to use the Western-style toilet. Only those who had bribed the prison warden or were severely ill could use this toilet.”⁵⁴

⁴⁵ In particular, Rule 13 states: “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”; see, Rules 12 – 17, Nelson Mandela Rules.

⁴⁶ This overcrowding appears to have motivated the authorities to undertake a “vast programme of building prisons and labour camps”, according to new satellite analysis in January 2024: Mark Townsend, “Huge and secretive prison expansion in Myanmar revealed by satellite images”, 31 January 2024, available at: <https://www.theguardian.com/global-development/2024/jan/31/huge-and-secretive-prison-expansion-in-myanmar-revealed-by-satellite-images>.

⁴⁷ In Hinthada prison, over 70 women political prisoners were reportedly crammed into prison cells that were designed for 50 inmates; ICJ’s interview with Individual C.

⁴⁸ In a prison in Magway region, a cell held up to 60 people in a space meant only for 40 inmates; ICJ’s interview with Individual G.

⁴⁹ In Insein prison, a cell that was designed for a maximum of 80 occupants accommodated around 180 women inmates at one point; ICJ’s interviews with Individuals D and B.

⁵⁰ It was also reported by this interviewee that her cell was extremely crowded with almost 240 detainees; ICJ’s interview with Individual E.

⁵¹ UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc. A/78/527, 12 October 2023 (“Special Rapporteur on Myanmar, October 2023 Report”), para. 10 – 12.

⁵² US Department of State, “2022 Country Reports on Human Rights Practices”, 2022, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/burma/>.

⁵³ UN Human Rights Council, *Situation of human rights in Myanmar: Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN Doc. A/HRC/55/65, 15 March 2024, paras. 73.

⁵⁴ ICJ interview with Individual B. Individual B’s reference to a “local-style toilet” is likely referring to a squat toilet, while a “Western-style toilet” is a toilet bowl. The “slip” is a piece of paper that prisoners have to purchase from the prison warden in order to be able to use the “Western-style” toilet bowl.

WDLs from religious minorities appear to have been targeted with discriminatory treatment in detention facilities. For instance, the ICJ received information that a Rohingya Muslim WDL was singled out and “forced to sleep beside a toilet in her prison cell, despite her religious obligation to pray in a clean environment every morning”.⁵⁵ This type of abuse forms part of a wider pattern of religious minorities being discriminated against in detention settings, which includes impermissible prohibitions on practising their religion while in detention.⁵⁶

ii. Denial of Adequate Healthcare, Including Gender-Specific, Sexual and Reproductive Healthcare

Generally, a commonly reported issue is the denial of adequate healthcare to all persons deprived of liberty, including WDLs. The ICESCR recognizes the right of all persons to the highest attainable standard of physical and mental health,⁵⁷ and the Nelson Mandela Rules emphasize the responsibility to provide “the same standards of health care that are available in the community” (Rule 24), and “ensure prompt access to medical attention in urgent cases” (Rule 27).⁵⁸ Furthermore, sections 37, 38 and 39 of Myanmar’s Prisons Act detail the rights of prisoners to access timely and effective healthcare services, including the responsibility of prison officers to allow prisoners access to medical attention “without delay”.⁵⁹

On the contrary, prison and detention authorities usually only provide over-the-counter medications to all persons deprived of liberty, such as paracetamol, burmeton and betadine, even for serious health conditions and injuries.⁶⁰ Prison staff sometimes only provide traditional remedies, such as body oils for injuries.⁶¹ WDLs in Insein prison (Yangon Region) reportedly have to bribe prison officials for proper medical treatment,⁶² and noted how prison officials would not take inmates with emergency health conditions to the prison hospital on weekends, as the referral process typically took place only on Mondays, Wednesdays and Fridays.⁶³

One of the interviewees the ICJ spoke with recounted:⁶⁴

“I was in a state of extreme malnourishment and desperately sought a medical appointment at a public hospital instead of the prison, where only basic painkillers were available. However, the authorities denied my request continually, until my legs became completely immobile. Eventually, my family resorted to bribing a prison guard with a significant sum of money to secure medical attention after my health deteriorated significantly.”

The denial of healthcare and other basic needs, such as clean drinking water, has been reportedly used as a method of punishment and retaliation against persons deprived of liberty to cause pain and suffering, with political prisoners being deliberately targeted.⁶⁵ This may amount to a form of torture or other ill-treatment. For instance, in Daik-U prison (Bago Region), it has been alleged that doctors would intentionally take a longer time to arrive to tend to political prisoners.⁶⁶ In Obo prison (Mandalay Region), the prison authorities allegedly “refused to give medicines” to women prisoners after beating them up during altercations between

⁵⁵ ICJ interview with Individual J.

⁵⁶ ICJ, *Violations of the right to freedom of religion and belief since the coup d’état in Myanmar: A briefing paper*, June 2023, pp. 22 – 26, available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2023/06/Violations-of-the-right-to-freedom-of-religion-and-belief-since-the-coup-detat-in-Myanmar.pdf>. In another testimony collected by the ICJ, Hindu women were allegedly coerced into reciting Buddhist scripture.

⁵⁷ Article 12, ICESCR.

⁵⁸ Rules 24 – 35, Nelson Mandela Rules.

⁵⁹ Sections 37 – 39, The Prison Act 1894. In particular, section 37 states: “(1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the Officer in immediate charge of such prisoners to the Jailor. (2) The Jailor shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.”

⁶⁰ ICJ’s interview with Individuals A and F.

⁶¹ This was reported from some prisons in the Magway region; ICJ’s interview with Individual G.

⁶² ICJ’s interview with Individual F.

⁶³ ICJ’s interview with Individual B.

⁶⁴ ICJ Interview with Individual M.

⁶⁵ Rachel Moon, “Left to die: Myanmar political prisoners denied healthcare”, *Frontier Myanmar*, 26 April 2024, available at: <https://www.frontiermyanmar.net/en/left-to-die-myanmar-political-prisoners-denied-healthcare/>.

⁶⁶ Rachel Moon, “Left to die: Myanmar political prisoners denied healthcare”, *Frontier Myanmar*, 26 April 2024, available at: <https://www.frontiermyanmar.net/en/left-to-die-myanmar-political-prisoners-denied-healthcare/>.

prisoners and prison guards.⁶⁷ In Insein prison (Yangon Region), prison guards reportedly denied access to drinking water to punish women prisoners who had protested the poor living conditions, resulting in some prisoners contracting cholera and other diseases from drinking unclean water out of the toilet.⁶⁸

In particular, WDLs are denied access to adequate gender-specific healthcare, including menstrual products, and sexual and reproductive healthcare,⁶⁹ in contravention of Rule 5 of the Bangkok Rules, which establishes that the “accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge”.⁷⁰ For instance, one of the interviewees underscored:

“Women are given just one sanitary pack per month and **are unable to ask for additional supplies in situations where their menstrual cycle lasts longer.**”⁷¹

Pregnant WDLs have suffered from pregnancy losses as a result of the harsh treatment in detention and denial of access to sexual and reproductive healthcare, in a manner that likely constitutes torture or other ill-treatment. This is in spite of the requirement under the Nelson Mandela Rules for “special accommodation for all necessary prenatal and postnatal care and treatment”.⁷² One of the women interviewed by the ICJ, who was pregnant while in the Yay Kyi Ai interrogation centre (Yangon Region), recounted:

“While at the interrogation centre, I faced sexual harassment due to my pregnancy. My interrogators warned me that I was fortunate to be alive because I was pregnant, because they would have killed me otherwise. **During the gruelling 16-day period of intense psychological and physical torment, I ultimately lost my pregnancy.**”⁷³

Her experience is not unique even within the pool of interviewees to whom the ICJ spoke while carrying out research for this briefing paper. Indeed, another interviewee alleged that the use of brutal interrogation methods resulted in miscarriages for pregnant WDLs in some instances;⁷⁴ and reports have emerged from Insein prison (Yangon Region) about a WDL having suffered a pregnancy loss as a result of being denied proper medical care.⁷⁵ A WDL, who was detained in Obo prison (Mandalay Region), also alleged seeing “three fellow political prisoners give birth in their cells after guards refused to allow their transfer to the hospital”.⁷⁶

There are numerous reports of WDLs being denied access to gender-specific medicine and timely medical interventions, including a WDL, who was prevented from undergoing a mastectomy for breast cancer after being arrested,⁷⁷ or another WDL, who was refused treatment to address the development of an ovarian cyst and kidney disease, which had been allegedly exacerbated by punishments in prison.⁷⁸

⁶⁷ As reported in Reuters, the authorities “refused to give medicines to the injured prisoners after beating them severely”, such that a lawyer “had to use under-the-table methods to be able to send medicine” to the affected prisoners; Reuters, “Smuggled note exposes violence against women in Myanmar jail – lawyers, activists”, 10 March 2023, available at: <https://www.reuters.com/world/asia-pacific/smuggled-note-exposes-violence-against-women-myanmar-jail-lawyers-activists-2023-03-10/>.

⁶⁸ RFA Burmese, “Guards deny female inmates drinking water after protest in Myanmar’s Insein Prison”, 10 June 2022, available at: <https://www.rfa.org/english/news/myanmar/insein-06102022190825.html>.

⁶⁹ As noted by the Special Rapporteur on Myanmar: “Women lack access to menstrual products, other hygiene necessities, and sexual and reproductive health care”; Special Rapporteur on Myanmar, October 2023 Report, para. 11.

⁷⁰ Rule 5, Bangkok Rules, supplementing Rules 15 – 16 of the Nelson Mandela Rules.

⁷¹ Emphasis added. ICJ’s interview with Individual B. Human Rights Watch’s documentation of the authorities not providing sufficient sanitary napkins to detainees during menstruation is consistent with this statement, see Human Rights Watch, “Rights of Women Violated in Myanmar Prisons”, 8 June 2021, available at: <https://www.hrw.org/news/2021/06/08/rights-women-violated-myanmar-prisons>.

⁷² Rule 28, Nelson Mandela Rules, as supplemented by Rules 48 – 52 of the Bangkok Rules.

⁷³ Emphasis added; ICJ interview with Individual A.

⁷⁴ ICJ interview with Individual G.

⁷⁵ The incident resulted in a protest in Insein prison, Nway Nway Eain, “Newborn dies as pregnant political prisoner is denied timely medical intervention in Insein”, *Myanmar Now*, 20 June 2022, available at: <https://myanmar-now.org/en/news/newborn-dies-as-pregnant-political-prisoner-is-denied-timely-medical-intervention-in-insein/>; RFA Burmese, “Guards deny female inmates drinking water after protest in Myanmar’s Insein Prison”, 10 June 2022, available at: <https://www.rfa.org/english/news/myanmar/insein-06102022190825.html>; The Irrawaddy, “Myanmar Political Prisoners Issue List of Torturers in Junta’s Insein Jail”, 17 October 2022, available at: <https://www.irrawaddy.com/news/burma/myanmar-political-prisoners-issue-list-of-torturers-in-juntas-insein-jail.html>.

⁷⁶ Rachel Moon, “Left to die: Myanmar political prisoners denied healthcare”, *Frontier Myanmar*, 26 April 2024, available at: <https://www.frontiermyanmar.net/en/left-to-die-myanmar-political-prisoners-denied-healthcare/>.

⁷⁷ Thompson Chau, “Myanmar military regime accused of murdering political prisoners”, *Al Jazeera*, 14 July 2023, available at: <https://www.aljazeera.com/news/2023/7/14/myanmar-military-regime-accused-of-murdering-political-prisoners>.

⁷⁸ Wathone Nyein Aye, “Women imprisoned by Myanmar junta denied treatment for chronic health issues”, *Myanmar Now*, 4 March 2022, available at: <https://myanmar-now.org/en/news/women-imprisoned-by-myanmar-junta-denied-treatment-for-chronic-health-issues/>.

While the ICJ was unable to ascertain the exact circumstances in which the authorities denied gender-specific, and sexual and reproductive healthcare to WDLs in the aforementioned cases, they constitute, in any event, grave violations of the right to health of WDLs. In addition, as noted by the UN Special Rapporteur on torture, the “absence of gender-specific health care in detention can amount to ill-treatment or, when imposed intentionally and for a prohibited purpose, to torture”,⁷⁹ which may be applicable to the WDLs in Myanmar in these cases.

Moreover, WDLs experience the stress, humiliation and trauma of being deprived of their liberty in specific ways that have a detrimental impact on their long-term mental health and well-being. All of the ICJ’s interviewees reported various degrees of psychological trauma from their experiences in interrogation and detention settings. As noted by the UN Special Rapporteur on violence against women, its causes and consequences, women “generally experience more psychological distress than men over their lifetimes”,⁸⁰ and the impact of being deprived of liberty is decidedly gendered in nature.

b. Sexual and Gender-Based Violence

Most persons deprived of liberty in Myanmar, especially political prisoners, have reported having been subjected to torture and other ill-treatment while being interrogated and also as a form of punishment. WDLs have been targeted with specific forms of sexual and gender-based violence, particularly during interrogation as a means of coercion and extracting confessions. Furthermore, there are violations of the right to privacy of several WDLs that appear to be aimed at humiliating and degrading them, including inadequate privacy while accessing toilet facilities,⁸¹ as well as reports of invasive and degrading strip and body searches and medical examinations. These are all manifestations of gender-based discrimination that have been perpetrated in a manner likely to constitute torture or other ill-treatment prohibited in all circumstances under international human rights law.⁸²

According to information received by the ICJ, access to justice for torture and other ill-treatment suffered by WDLs, including sexual and gender-based violence, is virtually non-existent. Although articles 330 and 331 of Myanmar’s Penal Code prohibit torture during interrogation,⁸³ the ICJ is not aware of any instance of such acts being investigated, prosecuted or sanctioned, in violation of the authorities’ obligations under international human rights law to do so.⁸⁴ This is despite attempts by lawyers to file cases complaining of instances of torture and other ill-treatment, with these cases being simply dismissed.⁸⁵

This is corroborated by the UN High Commissioner for Human Rights having noted that there are “reports of systemic use of torture against political detainees in police stations, military interrogation centres and prisons” in Myanmar.⁸⁶

⁷⁹ UN General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016.

⁸⁰ UN General Assembly, *Pathways to, conditions and consequences of incarceration for women*, UN Doc. A/68/340, 21 August 2013, para. 48.

⁸¹ See above Section III(a)(i).

⁸² Under international human rights law, gender-based violence may amount to torture or other cruel, inhuman or degrading treatment or punishment. The CEDAW Committee has affirmed that “a gender-sensitive approach is required to understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex”; CEDAW Committee, General recommendation No. 35, para. 17. Similarly, as affirmed by the UN Special Rapporteur on Torture, women “are at particular risk of torture and ill-treatment during pretrial detention because sexual abuse and violence may be used as a means of coercion and to extract confessions”; see, UN General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, para. 20.

⁸³ Article 330 and 331, Myanmar Penal Code 1861.

⁸⁴ Under article 2 of the CEDAW Convention, “States parties are responsible for preventing [gender-based violence] by their own organs and agents... and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities”; CEDAW Committee, General recommendation No. 35, para. 22.

⁸⁵ ICJ interviews with lawyers.

⁸⁶ UN Office of the High Commissioner for Human Rights, “Myanmar: human rights situation has ‘morphed into a never-ending nightmare,’ says Türk”, 1 March 2024, available at: <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

i. Physical Beatings and Threats Thereof, Sexual Violence and Other Forms of Ill-Treatment

Almost all the interviewees the ICJ spoke to provided harrowing accounts of WDLs being intentionally subjected to various forms of sexual and gender-based violence resulting in severe physical or mental pain and suffering. The ICJ's interviews indicated that many WDLs were subjected to physical beatings⁸⁷ aimed at intimidating them and extracting "confessions".⁸⁸ WDLs have been targeted with rape – both actual acts⁸⁹ and threats⁹⁰ – and other forms of sexual violence, such as sexual assault,⁹¹ during interrogations to obtain "confessions". Lesbian, bisexual and transgender (LBT) WDLs have reportedly been singled out for sexual violence and abuse, including rape, other forms of sexual assault and sexual harassment.⁹²

WDLs are sometimes made to witness the torture and other ill-treatment, as well as the aftermath of such cruelty, inflicted on other WDLs, presumably as a method of intimidation and to instill fear.⁹³ One interviewee to whom the ICJ spoke recounted seeing the burn scars of her cellmate, who was an elderly woman, in addition to numerous areas where her skin had become infected:

"The elderly woman had endured extensive physical and sexual abuse by military officials at an interrogation center. This included the **infliction of burns on her genital areas** in an effort to extract a confession and severe beatings that resulted in injuries impairing her eyesight."⁹⁴

One of the women to whom the ICJ spoke, who had been accused of attending a training by the Kachin Independence Army,⁹⁵ reported being traumatized by the rape threats her military interrogators made while slapping her face and kicking her abdomen:

"During my interrogation, the military personnel made sexualized comments and suggested sexual activities, including rape. **The comments included, "You are only 19 years old, and why would you go to the jungle full of men? If you like, I can give you the sexual pleasure you want now, and I would rape your ass as well."** This caused me significant trauma and distress, and I want to forget about what happened."⁹⁶

⁸⁷ Interrogators reportedly subject WDLs to beatings with an umbrella and pipes; repeated beatings to the body, including slapping of faces and kicking of abdomens; and stomping on fingers and toes with military boots: see, ICJ interview with Individuals D, F and G. Other torture tactics include covering the head of the WDL with a blanket to conceal their identities while mercilessly beating the detainee's head with a water-soaked wooden stick; see ICJ interview with Individual G. The ICJ has also previously documented how "detainees are being subjected to severe beatings with sticks, wire ropes and guns, electrocution, mock execution, and burying alive"; see, ICJ, "Myanmar: Abysmal human rights and rule of law situation deteriorates further three years after the coup", 1 February 2024, available at: <https://www.icj.org/myanmar-human-rights-and-rule-of-law-situation-increasingly-abysmal-three-years-after-the-coup/>.

⁸⁸ While this paper focuses on the experiences of WDLs in interrogation and detention facilities, physical violence is commonly reported by women being arrested, violence which is typically perpetrated by male police officers. For example, one interviewee recounted being arrested at a Hlegu military checkpoint (Yangon Region) by male police officers with no female police officers present, and enduring being beaten, including being slapped, which led to hearing loss and vision impairment; ICJ interview with Individual M.

⁸⁹ See, for instance, Mary Hnin and Maung Shwe Wah, "Junta forces raped three detainees in Mandalay interrogation centre, student activists say", 22 February 2022, available at: <https://myanmar-now.org/en/news/junta-forces-raped-three-detainees-in-mandalay-interrogation-centre-student-activists-say/>.

⁹⁰ A testimony presented by Individual F highlighted how a woman faced a sexualized interrogation, and she was "threatened with rape", and endured various forms of torture, including "water dripping on her head throughout the day, sleep deprivation, and beatings with a stick from an umbrella": ICJ interview with Individual F.

⁹¹ For instance, during her interrogation, military personnel touched and massaged Individual D's arms and shoulders (ICJ's interview with Individual D); an experience that was also reported by Individual F (ICJ's interview with Individual F).

⁹² Myanmar LGBTIQ Human Rights Watch, "Rainbow Amid the Storm: Exposing the Harsh Realities of LGBTQIAs in Post-Coup Myanmar", May 2023, available at: <https://progressivevoicemyanmar.org/2023/05/31/rainbow-amid-the-storm-exposing-the-harsh-realities-of-lgbtqias-in-post-coup-myanmar/>; The Irrawaddy, "Transgender Political Detainee Sexually Abused by Prison Officer in Upper Myanmar", 5 July 2022, available at: <https://www.irrawaddy.com/news/burma/transgender-political-detainee-sexually-abused-by-prison-officer-in-upper-myanmar.html>; Amnesty International, "Myanmar: 'Vile and brutal' tactics used by military to crush opposition – new report", 2 August 2022, available at: <https://www.amnesty.org.uk/press-releases/myanmar-vile-and-brutal-tactics-used-military-crush-opposition-new-report>.

⁹³ For instance, a WDL interviewed by the ICJ witnessed another WDL being physically tortured by having an iron rod filled with cement rolled over her skin repeatedly to the point that her skin fell off and bones started aching; ICJ interview with Individual A.

⁹⁴ Emphasis added. ICJ interview with Individual K.

⁹⁵ The Kachin Independence Army (KIA) is a prominent armed group that holds significant power the northern region of Myanmar's Kachin and Northern Shan State. Myanmar Peace Monitor, "Kachin Independence Organisation/ Kachin Independence Army (KIO/ KIA)," 6 June, 2023, available at: <https://mmpeacemonitor.org/my/1529/kia/>.

⁹⁶ Emphasis added. ICJ interview with Individual D.

One of the lawyers interviewed by the ICJ recounted representing a client who was involved in the CDM, who, during her interrogation:

“... was **forcibly stripped of all her clothes and left naked in front of the intoxicated military interrogators**. The trauma of being exposed in such a vulnerable state to drunken interrogators deeply affected her. **When she was released a year later, she tragically took her own life by jumping into a stream near her village.**”⁹⁷

The interrogators threaten the life and safety of family members, including children, of the women being interrogated in order to extract “confessions” to purported crimes.⁹⁸

Interrogators also make sexualized comments based on harmful gender stereotypes, compounding the psychological pain and suffering experienced by the WDLs. For instance, while being physically beaten, a WDL was reportedly accused of having an illicit relationship with the leader of a local defence task force.⁹⁹ Another WDL, who had separated from her husband due to marital problems, reported being sexually harassed for being pregnant while being interrogated.¹⁰⁰

ii. Intrusive Strip and Body Searches

WDLs have also been subjected to strip and body searches carried out in an unnecessarily and disproportionately humiliating and degrading manner.¹⁰¹ As a result, they may have amounted to ill-treatment or even torture.¹⁰² One of the WDLs interviewed by the ICJ recounted being subjected to a strip search that was unnecessarily intrusive and humiliating:

“I was ordered to remove my clothing, including my brassiere and underwear. **During the body search, the prison guard physically checked the area between my thighs and squeezed my breasts. The guard made sexually explicit comments about my private parts.** This experience was very distressing to me.”¹⁰³

Two other ICJ’s interviewees also noted how WDLs who were menstruating were still subjected to unnecessarily intrusive strip and body searches:

“These searches involved inspecting all body parts, including private areas, for prohibited items such as letters or drugs. **Even menstruating inmates are required to remove their pants, adding to their humiliation and discomfort.**”¹⁰⁴

⁹⁷ Emphasis added. ICJ interview with Individual G.

⁹⁸ ICJ interviews with Individuals A and I. Threats by the authorities of violence against family members of WDLs are a common tactic to instill fear and are used both inside and outside detention settings. For instance, even after she was released, N continued to receive threats in connection with her partner’s continued involvement in armed groups. She told the ICJ: “I had a terrifying experience when I received a chilling video call from military informants who threatened to kill me and my children by cutting our necks if I couldn’t reveal my husband’s hiding place. This threat caused such overwhelming fear and distress that I involuntarily wet myself. It was then that I knew I had to flee to protect myself and my loved ones from further harm.” See, ICJ interview with Individual N.

⁹⁹ ICJ interview with Individual F.

¹⁰⁰ ICJ interview with Individual A.

¹⁰¹ These searches typically take place at various stages of detention, including upon arrival at the detention facility; after traveling back from court appearances; and during regular so-called security checks; ICJ interviews with Individuals B, C, D and F.

¹⁰² As affirmed by the Special Rapporteur on Torture: “Body searches, in particular strip and invasive body searches, are common practices and can constitute ill-treatment when conducted in a disproportionate, humiliating or discriminatory manner... When conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering, strip and invasive body searches amount to torture.” See, UN General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, para. 23.

¹⁰³ Emphasis added. ICJ interview with Individual B.

¹⁰⁴ Emphasis added. ICJ interview with Individual D and Individual K. Other reports confirm that WDLs in Maubin Township Prison in the Ayeyarwady region, who were menstruating, “begged not to be stripped search”, to no avail: The Irrawaddy, “Myanmar Guards Will be Held Accountable For Sexual Abuse of Women Political Prisoners”, 19 January 2024, available at: <https://www.irrawaddy.com/news/burma/myanmar-guards-will-be-held-accountable-for-sexual-abuse-of-women-political-prisoners.html>.

Similarly, it has been reported that during these searches in Maubin prison (Ayeyarwady Region), “breasts and buttocks are groped, and fingers are inserted into their vaginas and anuses”.¹⁰⁵

Intrusive searches have been undertaken in circumstances when they were not “absolutely necessary”. As such they would appear to contravene the Nelson Mandela Rules and the Bangkok Rules, both of which mandate that there are “appropriate alternatives to intrusive searches”.¹⁰⁶ For instance, it has been reported that there are body scanners and X-ray machines in Obo and Insein prisons (Mandalay and Yangon Regions, respectively). According to information received by the ICJ, some WDLs in these prisons opted for body and strip searches instead of going through an X-ray machine in order to minimize radiation exposure due to the lack of other viable alternatives.¹⁰⁷

The domestic legal basis for such searches is unclear, as the Burma Jail Manual does not explicitly mandate strip searches or cavity searches, but merely requires prisoners to be searched and have all weapons and prohibited articles confiscated.¹⁰⁸ While the Medical Officer in the prison has the power to order strip searches where the WDL “is reasonably suspected of having secreted forbidden articles on her person”,¹⁰⁹ such searches and examinations must still be “carried out with decorum”.¹¹⁰ However, these searches appear to be carried out indiscriminately regardless of the “reasonable suspicion” threshold and without “decorum”,¹¹¹ in a manner meant to intentionally inflict severe pain and suffering, as well as to degrade and humiliate.

Compounding the humiliation and distress experienced by WDLs, these searches are usually conducted without adequate privacy, in contravention of the privacy requirement under Rule 52 of the Nelson Mandela Rules and Rule 20 of the Bangkok Rules.¹¹² In Hinthada and Insein prisons (Ayeyarwady and Yangon Regions, respectively), body searches are reportedly conducted behind a cloth screen, which may occasionally expose the WDLs to nearby male staff members.¹¹³ Orders issued by prison staff to WDLs to remove their clothes and expose their private parts can be audible to those on the other side of these screens, which exacerbated the distress and humiliation experienced by the WDLs.¹¹⁴ One of the WDLs who was imprisoned in Insein prison recalled:

“The women staff of the prison searched my body invasively, using their fingers in my private parts. **They searched at the gate out in the open. There were men nearby while they were searching my body parts.** This made me feel angry and sad.”¹¹⁵

¹⁰⁵ The Irrawaddy, “Myanmar Guards Will be Held Accountable For Sexual Abuse of Women Political Prisoners”, 19 January 2024, available at: <https://www.irrawaddy.com/news/burma/myanmar-guards-will-be-held-accountable-for-sexual-abuse-of-women-political-prisoners.html>.

¹⁰⁶ Rule 52, Nelson Mandela Rules states: “Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.” Rule 19 of the Bangkok Rules further specifies that during personal searches, effective measures shall be taken to “ensure that women prisoners’ dignity and respect are protected”, and Rule 20 states: “Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches”.

¹⁰⁷ ICJ interview with Individual L. Obo prison and Insein prison reportedly have these machines, but the ICJ notes with concern that there are still reports of manual strip searches being carried out in Insein prison, indicating that prison officials choose not to use these less intrusive alternatives. See also, The Irrawaddy, “Myanmar Guards Will be Held Accountable For Sexual Abuse of Women Political Prisoners”, 19 January 2024, available at: <https://www.irrawaddy.com/news/burma/myanmar-guards-will-be-held-accountable-for-sexual-abuse-of-women-political-prisoners.html>.

¹⁰⁸ Section 24(1), Burma Jail Manual. Specifically in relation to WDLs, the manual stipulates: “In the case of female prisoners, the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer”. Based on the testimony collected by the ICJ, it does not appear that this procedure is being followed.

¹⁰⁹ Section 883, Burma Jail Manual, Chapter XIV, Section I – Medical Officer. According to information received from Individual K, these strip searches are also conducted purportedly for “prison security and to record any injuries during transfer from police custody or interrogation”; ICJ interview with Individual K.

¹¹⁰ See also a similar standard articulated in the context of arrests, on searches being carried out “with strict regard to decency”: Section 52, Myanmar Code of Criminal Procedure, in the context of arrests, which states: “Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency”.

¹¹¹ Section 883, Burma Jail Manual, Chapter XIV, Section I – Medical Officer.

¹¹² Rule 52, Nelson Mandela Rules; Rule 20, Bangkok Rules.

¹¹³ ICJ interviews with Individuals C and D. In Loikaw prison, it has been reported that body searches may be conducted near the front main gate, which is utilized by both men and women prisoners, as well as men prison staff, and as such “lacks privacy”; ICJ interview with Individual F.

¹¹⁴ ICJ interview with Individual D.

¹¹⁵ ICJ interview with Individual E.

iii. Medical Examinations Violating Privacy and Dignity

Rule 11 of the Bangkok Rules makes clear that only medical staff should carry out medical examinations, and if non-medical prison staff are to be present, "such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality".¹¹⁶

However, one interviewee recounted how she was subjected to an unexpected medical examination that did not, in any way, safeguard her "privacy, dignity and confidentiality" as required under the Bangkok Rules.¹¹⁷ The examination was carried out while she was in solitary confinement. While this interviewee was only wearing her underwear,¹¹⁸ a woman medical doctor, accompanied by four non-medical prison staff, including a male prison guard, carried out an unscheduled check on her, taking her blood pressure, and examining her mental and overall health. Notably, during the examination:

"I was treated with utter disrespect and humiliation by the medical doctor, who referred to me as a psychopath and retard. **Initially, I was unaware that the male prison guard was secretly recording a video of me while I was in my underwear. I was preoccupied with trying to shield my body**, and it was only later that I realized what was happening. I immediately demanded to know why they were recording me without my consent and insisted that they delete the video."¹¹⁹

c. Overly Punitive Disciplinary Methods and Sanctions

Prison and detention authorities have subjected WDLs to harsh punishments and sanctions, including through the intentional denial of basic living needs, further compounding WDLs' already severe pain and suffering.¹²⁰ Prison authorities also used other humiliation tactics to instill fear. For instance, one of the WDLs interviewed by the ICJ recounted:

"In order to further intimidate political prisoners who resist the unjust treatment from prison staff, the prison guards forced us to wear the clothing typically worn by inmates who had died within the prison."¹²¹

These tactics, as well as the use of disproportionate physical violence and solitary confinement as described below, led many WDLs to report a "pervasive atmosphere of fear and intimidation" and the "silencing of dissenting opinions".¹²² WDLs reportedly "avoided speaking up or challenging unfair treatment due to the fear of retaliation from prison authorities".¹²³

The Nelson Mandela Rules emphasize that, "no prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification" (Rule 1). The Nelson Mandela Rules also specify that:

- Disciplinary offences and sanctions must be established by law or regulations (Rule 37); and
- Disciplinary measures must be proportionate (Rule 39).

¹¹⁶ Rule 11, Bangkok Rules.

¹¹⁷ ICJ interview with Individual L.

¹¹⁸ The WDL was detained in solitary confinement for 49 days after leading a protest inside the prison cell in support of the National Unity Government's (NUG) call for D-Day and going on a hunger strike. According to her, she was not allowed access to her clothing and only had one outfit for the first two weeks of her confinement. Due to a storm, her clothes became wet and she was forced to remove them to dry. ICJ interview with Individual L.

¹¹⁹ Emphasis added. ICJ interview with Individual L.

¹²⁰ See preceding analysis in Section III(a)(2) on the denial of healthcare and other basic needs, such as clean drinking water, as retaliation and punishment.

¹²¹ ICJ interview with Individual B.

¹²² ICJ interview with Individual C.

¹²³ ICJ interview with Individual D.

i. Excessive Use of Force, Including by Male Prison Guards

Several reports have emerged of prison officials, including male prison guards, using excessive and disproportionate physical force against WDLs. One of the WDLs interviewed by the ICJ recalled how she had participated in a hunger strike to protest against the mistreatment of prisoners, and as a result:

“Our entire prison wing, which held political prisoners, was subjected to a violent raid **by both male and female prison guards**. We were **severely beaten during the night**.”¹²⁴

Beatings of WDLs have also been reported in Mandalay’s Obo prison, where “an altercation between an inmate and a prison official [...] led to around 150 male prison guards arriving with slingshots, batons and bamboo sticks”, resulting in “more than 100 female political prisoners [...] seriously injured including a broken arm, eye injuries and facial bruises”.¹²⁵

These brutal crackdowns on dissent in detention facilities contravene the clear guidance in the Nelson Mandela Rules that the application of force is permissible only in self-defence or thwarting escape attempts, and should not exceed necessary limits.¹²⁶

The disproportionate use of force by male guards against WDLs has also been widely reported, in spite of the requirement that women prison facilities should primarily be supervised by women staff members.¹²⁷ Under domestic law, it is also unclear if these male prison guards entered the women detention facilities in accordance with the legal stipulation that “men officials or prison staff cannot enter without proper accompaniment or when not in the presence of a women convict officer”.¹²⁸

Widespread violence meted out against WDLs has also the effect of increasing the level of fear experienced when the authorities target them with death threats and other threats of violence, as the WDLs are fearful that the authorities would act on these threats:

“When women political prisoners went on strikes, such as by refusing to eat, prison officials responded with violent threats. The chief jailer would enter the cells with prison staff in tow, **brandishing a pistol, and give terrifying warnings: “As long as I am alive, don’t consider leaving these cells alive! As long as I am alive, if you want to leave these cells, you will leave as dead bodies!”**”¹²⁹

ii. Solitary Confinement

Prolonged solitary confinement in contravention of the 15-day limit under international human rights law and standards¹³⁰ has also been used as a means of punishment. As noted by the UN Special Rapporteur on violence against women, its causes and consequences, solitary confinement of women constitutes psychological violence, which is a form of abuse, “particularly when applied for an extended period of time or used as punishment”.¹³¹

Solitary confinement is frequently used against women human rights defenders in Bago region’s Tharawaddy prison.¹³² One of the WDLs interviewed by the ICJ recounted being subjected to prolonged solitary confinement:

¹²⁴ Emphasis added. ICJ interview with Individual A.

¹²⁵ Reuters, “Smuggled note exposes violence against women in Myanmar jail – lawyers, activists”, 10 March 2023, available at: <https://www.reuters.com/world/asia-pacific/smuggled-note-exposes-violence-against-women-myanmar-jail-lawyers-activists-2023-03-10/>.

¹²⁶ Rule 82, Nelson Mandela Rules.

¹²⁷ Rule 81, Nelson Mandela Rules; see also, the Special Rapporteur on Torture recommending that “female detainees are supervised and attended to only by female staff”; A/HRC/31/57, para. 70

¹²⁸ Sections 600 and 601, Prison Manual.

¹²⁹ Emphasis added. ICJ interview with Individual C.

¹³⁰ Rules 43 and 44, Nelson Mandela Rules.

¹³¹ UN General Assembly, *Pathways to, conditions and consequences of incarceration for women*, UN Doc. A/68/340, 21 August 2013, para. 40.

¹³² Women’s Peace Network, *Submission to the United Nations Special Rapporteur on the situation of human rights in Myanmar: The situation of women in Myanmar since the Burmese military’s attempt coup*, 22 December 2023, para. 13, available at: https://progressivevoicemyanmar.org/wp-content/uploads/2024/01/12_22_WPN_Submission_to_SR_Myanmar.pdf.

"After the prison guards violently raided our prison and severely beat us during the night after our hunger strike, I was sent to **solitary confinement for 18 days**, alongside 31 other inmates [who were also sent to solitary confinement]."¹³³

Another interviewee recounted her experience of being detained in solitary confinement for a staggering 49 days, during which she was subjected to a humiliating medical examination while she was just dressed in her underwear and filmed by a non-medical men prison guard without her consent.¹³⁴

The use of solitary confinement in both instances, lasting 18 days and 49 days, constituted prolonged solitary confinement as it exceeded 15 consecutive days,¹³⁵ which is prohibited under the Nelson Mandela Rules.¹³⁶ Solitary confinement should be used "only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority". None of these due process safeguards has been observed in the abovementioned cases of documented solitary confinement.

IV. Recommendations

The experiences of WDLs documented in this briefing represent just a small fraction of range of human rights violations experienced by WDL in Myanmar, including acts of torture and other ill-treatment perpetrated by the military junta against women and gender diverse persons, both within and outside detention facilities. These grave human rights violations take place against a backdrop of such violations being perpetrated, with impunity, across Myanmar, in a manner that is "widespread and systematic and likely constitute crimes against humanity".¹³⁷

In light of the above, the ICJ makes the following recommendations:

a. To the military junta:

- Immediately cease systematically violating human rights, including by ceasing the use of non-human rights compliant laws and by releasing all people arbitrarily arrested and detained;
- Immediately cease: the torture and other forms of ill-treatment of WDLs held in a range of detention facilities, including the denial of humane detention conditions; withholding of adequate healthcare (including gender-specific healthcare); perpetration of sexual and gender-based violence; and use of overly punitive disciplinary methods and sanctions;
- Order prompt, impartial, independent and effective investigations into all credible allegations of torture and other ill-treatment, including reports of sexual and gender-based violence, committed by detention authorities, and when the evidence so warrants, ensure that the alleged perpetrators be brought to justice in proceedings guaranteeing their right to a fair trial;
- Guarantee the right to an effective remedy for WDLs who are victims/survivors of human rights violations perpetrated by the military authorities, including by removing all *de jure* and *de facto* obstacles to WDLs' access to justice;
- Guarantee a WDL's right to address grievances without fear of retribution; and

¹³³ ICJ interview with Individual A.

¹³⁴ As previously discussed in Section III(b)(iii); ICJ interview with Individual L. She was confined for 49 days after leading a protest inside the prison cell in support of the National Unity Government's (NUG) call for D-Day and going on a hunger strike. Individual L's experiences of being subjected to a humiliating and invasive medical examination has been detailed above in Section 3(B)(iii).

¹³⁵ Rule 44, Nelson Mandela Rules.

¹³⁶ Rule 43, Nelson Mandela Rules.

¹³⁷ Human Rights Council, *Situation of human rights in Myanmar: Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN Doc. A/HRC/55/65, 14 March 2024, para. 72.

- Comprehensively and expeditiously implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), and the United Nations Rules of the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) to address the gender-specific needs of WDLs, including by enacting or reforming policies on discipline and punishment, access to sexual and reproductive healthcare, strip and body searches and prolonged solitary confinement in line with these international standards.

b. To relevant UN agencies and independent experts:

- Continue efforts to investigate, document and highlight the human rights violations faced by WDLs in a gender-specific fashion, including in the work of the Independent Investigative Mechanism for Myanmar (IIMM), Special Rapporteur on the situation of human rights in Myanmar; Office of the United Nations High Commissioner for Human Rights (OHCHR) and the UN Secretary-General;
- Actively work and engage with civil society groups and individuals documenting human rights violations against WDLs to seek additional evidence or information based on existing gaps in data and evidence (e.g. underreporting in certain geographical areas, or of the intersectional discrimination faced by certain WDLs, such as ethnic or religious minorities, or persons of diverse sexual orientations, gender identities or expression);
- Put in place policies, strategies and implementation plans relating to gender and the investigation of sexual and gender-based violence, including in interrogation and detention settings, ensuring that such policies and strategies are designed in consultation with a range of relevant actors (including civil society and grassroots organizations, gender experts, and other accountability mechanisms) and make public and available in relevant Myanmar languages; and
- Conduct analysis on gender constructs in Myanmar, and their impact on the commission of crimes and harms experienced by survivors, including in interrogation and detention settings, taking into account the need to protect the rights of the victims and witnesses and possible suspects in future investigations and prosecutions and other accountability-oriented proceedings, for use by other actors engaged in accountability-related work, policy making or humanitarian intervention.

c. To UN Member States:

- Increase support for coordinated documentation and accountability efforts by ensuring that the Independent Investigative Mechanism for Myanmar (IIMM), Special Rapporteur on the situation of human rights in Myanmar and Office of the United Nations High Commissioner for Human Rights (OHCHR) be given adequate resources to continue their important functions as effectively as possible, including in relation to the human rights violations perpetrated against WDLs; and
- Hold perpetrators of serious crimes under international law accountable, including by effectively exercising universal jurisdiction over individuals reasonably suspected of grave human rights violations against WDLs that qualify as crimes under international law. Ensure that cases filed under the framework of universal jurisdiction integrate a gender analysis by including instances of gender-based crimes and human rights violations, including those perpetrated against WDLs.

Commission Members

July 2023

President

Professor Robert Goldman, United States

Vice-Presidents

Professor Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

Executive Committee

Sir Nicolas Bratza, United Kingdom

(Chair) Dame Silvia Cartwright, New Zealand

Mr. Shawan Jabarin, Palestine

Ms. Nahla Haidar El Addal, Lebanon

Ms. Mikiko Otani, Japan

Professor Marco Sassòli, Italy/Switzerland

Mr. Wilder Tayler, Uruguay

Justice Qinisile Mabuza, Eswatini

Executive Committee Alternates

Justice Martine Comte, France

Ms. Ambiga Sreenevasan, Malaysia

Other Commission Members

Justice Azhar Cachalia, South Africa

Justice Moses Hungwe Chinhengo, Zimbabwe

Professor Michelo Hansungule, Zambia

Ms. Jamesina Essie L. King, Sierra Leone

Justice Qinisile Mabuza, Swaziland

Justice Charles Mkandawire, Malawi

Justice Yvonne Mokgoro, South Africa

Justice Willy Mutunga, Kenya

Justice Aruna Devi Narain, Mauritius

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Carlos Ayala, Venezuela

Mr. Reed Brody, United States

Ms. Catalina Botero, Colombia

Professor José Luis Caballero Ochoa, Mexico

Professor Sarah Cleveland, United States

Mr. Belisario dos Santos junior, Brazil

Ms. Leilani Farha, Canada

Professor Robert Goldman, United States

Professor Juan Méndez, Argentina

Professor Mónica Pinto, Argentina

Professor Victor Rodriguez Rescia, Costa Rica

Mr. Alejandro Salinas Rivera, Chile

Mr. Wilder Tayler, Uruguay

Dr. Rodrigo Uprimny Yepes, Colombia

Professor Bernard Duhaime, Canada

Professor César Landa, Peru

Professor Kyong-Whan Ahn, Republic of Korea

Justice Adolfo Azcuna, The Philippines

Dr. Elizabeth Biok, Australia

Dame Silvia Cartwright, New Zealand

Ms. Hina Jilani, Pakistan

Justice John O'Meally

Ms. Mikiko Otani, Japan

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms. Ambiga Sreenevasan, Malaysia

Justice Chinara Aidarbekova, Kyrgyzstan

Sir Nicolas Bratza, United Kingdom

Justice Martine Comte, France

Justice Radmila Dragicevic-Dicic, Serbia

Ms. Gulnora Ishankhanova, Uzbekistan

Ms. Åsne Julsrud, Norway

Professor José Antonio Martín Pallín, Spain

Justice Tamara Morshchakova, Russia

Justice Egbert Myjer, Netherlands

Dr. Jarna Petman, Finland

Professor Marco Sassòli, Switzerland

Justice Philippe Texier, France

Justice Stefan Trechsel, Switzerland

Professor Fionnuala Ni Aolain, Ireland

Ms. Hadeel Abdel Aziz, Jordan

Mr. Mazen Darwish, Syria

Mr. Gamal Eid, Egypt

Ms. Nahla Haidar El Addal, Lebanon

Mr. Shawan Jabarin, Palestine

Justice Kalthoum Kennou, Tunisia

Dr. Fatsah Ougergouz, Algeria

Mr. Michael Sfard, Israel

Justice Marwan Tashani, Libya



International
Commission
of Jurists

P.O. Box 1740
Rue des Bains 3
CH 1211 Geneva 1
Switzerland

t +41 22 979 38 00
f +41 22 979 38 01
www.icj.org