

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

DOCUMENTING HUMAN TRAFFICKING IN BURMA

NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA

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This manual is a product of the Network for Human Rights Documentation – Burma (ND-Burma), a collaborative group of 12 member organizations documenting human rights violations committed in Burma. ND-Burma is developing a human rights database that will serve to centralize information collected by Burma human rights groups through interviews and other forms of fact-finding. ND-Burma embarked on this project in order to enhance the analysis of trends of human rights violations, to engage in advocacy to prevent the occurrence of human rights violations, and eventually to assist in the development of transitional justice measures in Burma. To these ends, this manual is part of a series of manuals designed to provide guidelines on how to document violations in Burma in accordance with international human rights law and based on the experience of ND-Burma members.

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This manual was authored through the collaborative efforts of Amy Alexander and Jeremy Mak. Members of ND-Burma provided extensive content supervision and editorial oversight to ensure the accuracy, completeness, and cohesion of this manual.

It is the sincere hope of ND-Burma that this manual will serve as an effective tool for human rights defenders of Burma, who are tirelessly working towards a day when the human rights of all the peoples of Burma are realized.

PREFACE

This manual is focused on human trafficking. It provides information on how to document violations, perform interviews, analyze whether there has been a breach of international law, and increase advocacy on these issues.

Chapter 1: Documentation: Chapter 1 sets out the relevant international law concerning human trafficking and provides guidelines on possible ways to document these violations. It then provides information about the historical and political context of human trafficking in Burma. Chapter 1 also provides a sample good and bad interview based on a hypothetical fact pattern involving human trafficking.

Chapter 2: Analysis: Chapter 2 discusses how to assess the evidence in order to establish a violation of international law. It discusses how to identify trends and patterns that will strengthen the evidence of violations. Chapter 2 also includes information on establishing serious crimes under international law such as genocide and crimes against humanity.

Chapter 3: Advocacy: Chapter 3 includes information on how to present evidence of human rights violations to international actors and bodies. This Chapter focuses on the role of the United Nations and provides an overview of the mechanisms that are available to deal with violations of human trafficking.

This manual covers only violations concerning human trafficking. It does not provide information about other abuses that may occur in conjunction with human trafficking, such as killings, arbitrary arrests, or torture. These violations are dealt with in the other manuals of this series.

About ND-Burma

ND-Burma formed in 2003 in order to provide a way for Burma human rights organizations to collaborate on the human rights documentation process. The 12 ND-Burma member organizations seek to collectively use the truth of what communities in Burma have endured to challenge the regime's power through present-day advocacy as well as prepare for justice and accountability measures in a potential transition. ND-Burma conducts fieldwork trainings; coordinates members' input into a common database using Martus, an open-source software developed by Benetech; and engages in joint-advocacy campaigns. When possible, ND-Burma also collaborates with other human rights organizations in all aspects of its work. Membership in ND-Burma, as of September 2008, includes the following organizations:

- All Arakan Student and Youth Congress (AASYC)
- Assistance Association for Political Prisoners (AAPP)
- Burma Issues
- EarthRights International (ERI)
- Human Rights Documentation Unit (HRDU)
- Human Rights Education Institute of Burma (HREIB)
- Human Rights Foundation of Monland (HURFOM)
- Kachin Women's Association of Thailand (KWAT)
- Lahu Women's Organization (LWO)
- Palaung Women's Organization (PWO)
- Palaung Youth Network Group (PYNG)
- Yoma-3

The range of human rights violations in Burma is extensive, and each ND-Burma member focuses on certain violations that are particularly relevant to their mission. One of the first tasks in developing a framework for collaboration among members was to develop a “controlled vocabulary,” listing the categories of human rights violations on which the network would focus. Based on that list, ND-Burma has developed this documentation manual series consisting of 13 violation-specific manuals and a general documentation manual. The series includes the following manuals:

1. Killings & Disappearance
2. Arbitrary Arrest & Detention
3. Recruitment & Use of Child Soldiers
4. Forced Relocation
5. Rape & Other Forms of Sexual Violence
6. Torture & Other Forms of Ill-Treatment
7. Forced Labor
8. Obstruction of Freedom of Movement
9. Violations of Property Rights
10. Forced Marriage
11. Forced Prostitution
12. Human Trafficking
13. Obstruction of Freedoms of Expression and Assembly
14. General Documentation

Additional manuals may be developed if ND-Burma expands the common vocabulary list.

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CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

I. Violations of Human Rights: Human Trafficking

For a human rights abuse to be a violation under international human rights law, it is necessary to satisfy the essential key elements of a violation. Elements are the specific criteria or set of circumstances that must be present in order for an action to be against the law. The elements of human rights violations are derived from international human rights legal instruments. Before beginning to document any human rights violation, it is helpful to have a clear understanding of the elements necessary in order to establish a violation. This chapter explains the elements that are required in order to demonstrate a violation of human trafficking.

II. Defining Human Trafficking

A. What are the elements of human trafficking under international law?

In order to document human trafficking as a human rights violation, evidence of *four elements* must be present:¹

1. Acquisition of person(s)^{*}
2. Coercion or lack of consent
3. An exploitative purpose
4. State action

B. What are examples of non-consensual or coercive circumstances?

Non-consensual or coercive circumstances are situations where a victim is deprived of their free choice,[†] including:²

- Intimidation
- Use of force
- Abduction
- Fraud or deception
- Threats of negative treatment, such as threats of being denied a necessary benefit or service or threats of harm to the oneself or others
- Physical or mental impairment, such as a disability, age limitation, or influence of drugs, alcohol, or medication

C. What are examples of “exploitative purposes”?

Human trafficking carried out for any purpose considered unfair, manipulative or abusive is likely to qualify as exploitative in order to demonstrate a violation under international law. For example, the following are some forms of exploitation common in human trafficking:³

^{*} Acquisition of a person or persons in relation to trafficking includes acts of recruitment, transportation, transfer, harboring, or receipt of persons.

[†] Consent and coercion should be determined from the perspective of the victim rather than the perpetrator. Actions that may not be considered coercive to the perpetrator may be highly coercive to the victim. Accordingly, it is important to focus on the experience of the victim to determine if the situation was non-consensual or coercive.

Vocabulary Alert: Trafficking Versus Smuggling



Human smuggling involves the illegal movement of people across national borders in exchange for financial or material benefit. Although trafficking and smuggling contain similar elements, they are distinct acts. Both involve the movement of human beings for profit. However, trafficking includes non-consensual or coercive means and an exploitative purpose. In some instances, the violation may begin as smuggling and turn into trafficking. For example, a person may initially consent to being transported internationally but that consent may later be rendered meaningless by coercive, deceptive, or abusive actions of the trafficker.

- Sexual exploitation
- Forced labor
- Slavery or similar practices
- Removal of organs

While human trafficking must be carried out for some exploitative purpose, this purpose does not need to be fulfilled in order to demonstrate a violation of international law. An intention to traffic a person for an exploitative purpose is sufficient.⁴

D. What is state action?

State action is necessary for human trafficking to be a violation under international human rights law. State refers to “the national entity based in the capital city that attempts to regulate and reorder populations and resources throughout an internationally-recognized territory.”⁵ State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a violation of human trafficking was perpetrated by a public official, the state action requirement would be satisfied.[‡] State action also includes instances when a violation takes place with official knowledge or consent, or when the state fails to prevent or adequately respond to the violation.[§] For example, a state may be in violation of international law when private perpetrators of human trafficking go unpunished.

Perpetrators: Non-State Actors



Non-state actors (NSA) are individuals or groups that are not part of the state but that operate with state-like authority. They may include organized civilians, resistance groups, private corporations, local militias, and others performing state-like functions. NSAs should be held accountable for their actions under domestic law. However, NSAs may be held accountable under international law if state action is not required to prove a violation or if they commit a violation that can be categorized as genocide or crimes against humanity. To create a complete human rights record, it is good practice to document all violations regardless of whether the perpetrator is a state or non-state actor.

III. Asking the Critical Questions

Asking questions and interviewing is vital to gathering information about human rights violations. The usefulness of an interview will depend largely on the experience and ability of the fact-finder to ask meaningful and substantive questions. Knowing and understanding the essential elements of a violation should help a fact-finder develop critical questions in order to establish a violation of international law. The elements of a violation may provide a useful framework to ensure necessary information is collected.

1. *Establishing an acquisition of person(s)*

- Who was involved?
- What happened?
- Where did the incident take place?
- When did the incident take place?
- How did the acquisition occur?

[‡] Public officials may include members of any organization operating with state authority, such as members of law enforcement agencies, paramilitary groups, and death squads.

[§] Note that the element of state action is not required to prove genocide or crimes against humanity. For more information on proving genocide or crimes against humanity, see Chapter 2.

- How do you know this information?
- 2. Establishing lack of consent or coercive circumstances**
- Was there an agreement to enter into the arrangement? Why or why not?
 - What happened before/during/after the incident?
 - Where did the incident occur?
 - Why was the arrangement entered into?
 - How was the arrangement carried out?
 - How do you know this information?
- 3. Establishing an exploitative purpose**
- Who benefited from the arrangement?
 - What happened?
 - Where was the person(s) taken to?
 - Why did the transaction occur?
 - How do you know this information?
- 4. Establishing state action**
- Who carried out the arrangement? Who ordered it? Who knew about it? Who assisted in it?
 - Did you report the incident? Why or why not?
 - What did the state do to prevent or respond to the incident?
 - How do you know this information?

Interview Tips: Do's



- Be sure to address issues of security and confidentiality.
- Start with background and work up to the more sensitive topics.
- Be a good listener. Let the witness tell his/her account.
- Be sensitive to emotional reactions.
- Be alert for inconsistencies.
- Be patient.

Interview Tips: Don'ts



- Don't be judgmental or express opinions.
- Avoid leading questions.
- Don't refer to other witnesses.
- Don't make promises that you can't keep.
- Avoid aggressive or interrogation style questioning.
- Avoid influencing the story.

IV. Practicing Documentation

Finding the information necessary to establish a violation of international law takes time and practice. The essential elements of a violation are not always readily apparent. A fact-finder must be able to elicit information about human rights abuses and properly identify the essential elements of a violation from the information collected.

To practice identifying the elements of a violation, this section provides a fact pattern containing evidence of a typical violation of human trafficking in the Burma context. Based on this fact pattern, this section also offers examples of good and bad interviewing techniques. For more information on interviewing and tips on conducting effective fact-finding, please see the manual in this series entitled, "Documenting Human Rights Violations in Burma."

A. Understanding the Context

Before beginning any fact-finding mission or conducting an interview to uncover human rights information, it is important to understand the historical and political context in which violations are taking place. Understanding the context may help the fact-finder to develop meaningful questions and gain insight into the current situation. Even for experienced fact-finders, it can be helpful to review background information before starting a fact-finding

mission. Below is some background information on the historical and political context of human trafficking in Burma.



The Historical and Political Context of Human Trafficking in Burma

Since 1962, when General Ne Win led a military coup to gain control over Burma, successive military regimes have ruled the country through tactics of intimidation and unspeakable brutality. Widespread poverty, lack of jobs, and the inability to pay for an education push people, especially young people, to leave their homes in search of work opportunities in urban areas, on the border, and in other countries.⁶ Due to severe restrictions on movement, especially for women, and the prohibitive costs associated with obtaining a passport and valid travel documents in Burma, many women are forced to rely on traffickers and smugglers.⁷

Taking advantage of the situation, human traffickers in Burma often lure unsuspecting victims into captivity with promises of safe passage and oftentimes job opportunities. Trafficked persons are then often sold as laborers, prostitutes, and brides. Within Burma, trafficked persons are forced to work in factories, farming, and the fishing industry. Women and young girls are often targeted by traffickers and forced into sexual slavery, sold into the sex industry, or forced into marriages.⁸ For more information on violations on sexual violence, forced prostitution, and forced marriage, please see the respective manuals in this series entitled “Documenting Rape and Sexual Violence in Burma,” “Documenting Forced Prostitution in Burma,” and “Documenting Forced Marriage in Burma.”

Internationally, Burma serves as a major transit country and contributor of human trafficking for all of Asia.⁹ Men, women, and children are trafficked from Burma and taken to Thailand, China, Bangladesh, Malaysia, Pakistan, India, South Korea, and Macau. Many victims of human trafficking are unaware that they have crossed international borders because traffickers circumvent checkpoints, have ties to immigration officials, or provide false documents.¹⁰

In the 1990s, the SPDC began taking steps to curb international criticism by implementing superficial policies to stem human trafficking abuses in Burma. In reality, the policies do very little to prevent abuses and are rather aimed at restricting the movement of civilians.¹¹ The policies also provide punitive measures against the perpetrators and victims of trafficking alike. In September 2005, the SPDC made trafficking illegal and sentenced 33 alleged human traffickers to life in prison in 2007. Due to the lack of proper legal structures, however, it is unclear whether the convictions were justified.

B. Fact Pattern

Below is a fact pattern of a typical violation of human trafficking in the Burma context. This fact pattern may be useful to practice identifying the key elements of a violation. Remember, in order to establish a violation of human trafficking in accordance with international human rights standards, there must be:

1. Acquisition of person(s)^{**}
2. Coercion or lack of consent

^{**} Acquisition of a person or persons in relation to trafficking includes acts of recruitment, transportation, transfer, harboring, or receipt of persons.

3. An exploitative purpose
4. State action

Fact Pattern: Human Trafficking^{††}



A year ago, Mi Pakao Rot's father lost his business in Mon State after he could no longer afford the taxes demanded by the SPDC. Now, Mi Pakao Rot's father supports his family by working temporary jobs, which are often physically strenuous and low-paying. After her father lost his business, Mi Pakao Rot at age 15 dropped out of school in order to find work to support her parents and four younger siblings. Despite working long hours in a small restaurant, Mi Pakao Rot's earnings were nominal and the family continued to struggle for their survival.

Mi Pakao Rot's father returned from his work one day with encouraging news. He met a man who said he knew someone looking for young women to bring to Rangoon to work as housekeepers for wealthy businessmen. The positions paid more than 10 times the salary Mi Pakao Rot earned at the restaurant. Mi Pakao Rot saw this as a way to support her family and possibly even save money to complete her studies. She was eager to take advantage of the opportunity.

Through his co-worker, Mi Pakao Rot's father contacted the agent for more information. The agent said that the position involved cooking and cleaning for a small household. The employer would pay on a monthly basis and it included accommodations and meals. He agreed to reserve a position for Mi Pakao Rot and the family agreed to pay the agent's fee of 100,000 Kyat to bring Mi Pakao Rot to Rangoon. Although 100,000 Kyat is a considerable amount of money for Mi Pakao Rot's family, they borrowed the money to pay the agent.

After Mi Pakao Rot arrived to Rangoon, the agent brought her to an old house and locked her in a dirty room. Terrified, Mi Pakao Rot began to scream and pound on the door begging to be released. The agent opened the door and beat her severely. He hit and kicked her all over until she could barely move. He told her, "Keep your mouth shut and your legs open and I won't kill you." After that, Mi Pakao Rot was afraid to protest.

The agent and his associate, Kyaw Win, forced her to have sex with men. If she resisted, they beat her severely. She was forced to sleep with as many as three men per day. After the men were finished with her, they would knock on the door. Either Kyaw Win or the agent would unlock the door and the man would give them money. Twice a day, Kyaw Win or the agent would bring a plate of curry and rice. She was allowed out of her room only to bathe and use the toilet.

After one late night visit from a man, Mi Pakao Rot realized that Kyaw Win had forgotten to relock her door. She saw her opportunity to escape. She waited until she was confident that Kyaw Win and the agent were asleep. Then she slipped quietly from her room and out of the house.

^{††} Please note that this hypothetical fact pattern was developed from a variety of people's experiences for the purpose of this manual and does not reflect the experience of any one person or of one particular event.

She ran directly to the police station to report her experience. The police, however, threatened to arrest her, telling her prostitution is illegal. Fearing arrest, she left the police station without filing a report. Afraid that she would bring shame to her family if she returned to her village in Mon State, she decided to flee to Thailand. Mi Pakao Rot now works at a small Burmese restaurant in Mae Sot, Thailand.

C. Sample Interviews

Interviewing is the principal method of fact-finding primarily because people hold the most amount of information about an event. Because interviewing is fundamental to the fact-finding process, developing excellent interviewing skills is a key to uncovering comprehensive details of human rights abuses. Below are two sample interviews, which are based on the above fact pattern. The first is an example of a bad interview and the second is an example of a good interview. Following each sample is an analysis of the interview.

1. Sample Interview: Bad

You were trafficked from Mon State to Rangoon, right?

Mi Pakao Rot: I guess. I came to Rangoon to work as a housekeeper but instead I was kept like a prisoner.

Did you pay a trafficker to bring you to Rangoon?

Mi Pakao Rot: My father paid a man who said he had a good job for young women in Rangoon. He brought me to Rangoon. I don't know if he was a trafficker.

Were you forced to go to Rangoon?

Mi Pakao Rot: At first I wanted to go to Rangoon because I wanted to earn some money for my family and my education. But after I got to Rangoon, I wished I had not left Mon State.

In Rangoon, you were forced to have sex with men? Is that right?

Mi Pakao Rot: Yes.

Did you receive any benefit for having sex with the men?

Mi Pakao Rot: No. Only my captors were paid.

And you didn't agree to this arrangement did you?

Mi Pakao Rot: No, of course not.

Did you try to report what happened or would it be pointless?

Mi Pakao Rot: I tried to report to the police but they threatened to arrest me so I fled Burma.

Thank you for your time.

Why is this interview **bad**?



This is a bad interview for several reasons. **First**, it is too short, and the questions do not accomplish the main goal of the interview, which is to document the elements

necessary to show a violation. There are not enough questions to get a detailed account of what happened. Follow-up questions are essential to develop a full picture of the events.

Second, most of these questions are “leading” questions. This means that they suggest to Mi Pakao Rot how she should answer. If she answers simply “yes” or “no,” she may be leaving out important details and the interviewer will miss important pieces of information. Also, Mi Pakao Rot may be less likely to speak freely and more likely to give answers that she believes the interviewer wants to hear.

Third, this interview focuses only on the violation the interviewer initially suspected, and does not ask questions that would provide evidence of other violations. Incidents of human trafficking, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such forced prostitution and other forms of sexual violence.

Finally, this interview does not provide any information to corroborate Mi Pakao Rot’s account. Asking Mi Pakao Rot if there were witnesses or other evidence available to check her story is an important part of good documentation.

2. *Sample Interview: Good*

Mi Pakao Rot, can you tell me what happened in Burma that made you decide to leave?

Mi Pakao Rot: I left because I was tricked and forced into prostitution. My family was barely surviving. My father heard about a work opportunity in Rangoon so he paid an agent to take me to Rangoon. When I arrived, however, I was held captive and forced to have sex with men.

How did this happen?

Mi Pakao Rot: My father contacted an agent who said he was recruiting women to work in Rangoon. The agent demanded 100,000 Kyat to take me to Rangoon. Because my family does not have much money, they borrowed money from friends and relatives to pay the agent. When I got to Rangoon, however, I became the agent’s prisoner.

What type of work were you promised in Rangoon?

Mi Pakao Rot: I thought I would be working as a housekeeper. The agent said that I would earn a salary that was more than 10 times the amount I earned at my restaurant job in Mon State. He also promised accommodation and daily meals.

What happened when you arrived in Rangoon?

Mi Pakao Rot: I was taken to a filthy room and locked in. The agent and his associate, Kyaw Win, beat me and held me captive. I wasn’t allowed to leave my room except to bathe and use the toilet.

Why did the agent bring you to Rangoon?

Mi Pakao Rot: He brought me to Rangoon in order to earn money off me. I was his prisoner and he sold me to men who wanted to have sex with me. The men paid money to Kyaw Win and the agent.

Chapter 1: Documentation- Establishing the Violation

How do you know that they were being paid?

Mi Pakao Rot: I saw them myself demanding money from the men who came to my room.

Did you agree to this arrangement?

Mi Pakao Rot: No! Of course not. I was a prisoner. I was forced to do these awful things.

How were you forced to have sex with the men?

Mi Pakao Rot: If I didn't, Kyaw Win or the agent would beat me. At first, I tried to protest, but they beat me so badly. After that, I didn't try to resist anymore.

Did you receive any compensation?

Mi Pakao Rot: No. Kyaw Win and the agent kept all the money for themselves. They didn't even provide proper meals. Usually, they gave me just a handful of rice and a taste of curry. I was always hungry.

Did you report what happened to the authorities?

Mi Pakao Rot: I tried to but they said I was a prostitute and I could be punished under the law. I was so afraid of going to jail so I just left without filing a complaint. I was too ashamed to return to my village so I just came here to Thailand. I didn't know what else to do.

Is there anyone else I can speak with who can corroborate your account?

Mi Pakao Rot: There is another woman from Shan State who was also held as a prisoner by the same men. She managed to escape some time after I did and I recently met her here in Thailand. Would it be useful to speak with her? I can arrange it.

Yes. That would be great! Is there anything else you would like to add or do you have any questions for me?

Mi Pakao Rot: Just that I am worried about my family back in Burma. They borrowed so much money to send me to Rangoon. Now, I don't know how they are surviving. I am trying to earn money here to send to them but it is also difficult to find work. I am always worried for them.

Thank you so much for sharing your experience with me. I know it must be very difficult to talk about. If you'd like, there are people I can refer you to who you can speak with and who might be able to help you deal with some of your thoughts.

Mi Pakao Rot: I would really like that.

And if I need to speak with you again, how can I contact you?

Mi Pakao Rot: You can ask for me here. I am usually working in the evenings.

Why is this interview good?



This interview is good because Mi Pakao Rot has told her story. The initial questions were open-ended and there were follow-up questions. Her answers help document

each element to establish a violation. For example, Mi Pakao Rot has provided the following information about the human trafficking:

First, Mi Pakao Rot provided information to establish an acquisition. Mi Pakao Rot indicated that an agent recruited her for a work position in Rangoon. She then indicated that he transported her to Rangoon for a considerable fee and held her captive. Information from her Shan co-worker will help to verify her account.

Second, Mi Pakao Rot provided details to establish the non-consensual and coercive nature of her experience. Although Mi Pakao Rot indicated that she initially agreed to be taken to Rangoon by the agent, the agent deceived Mi Pakao Rot about the details of the arrangements in Rangoon. Mi Pakao Rot agreed to go to Rangoon to work as a housekeeper. However, when she arrived she was locked in a room and forced to have sex with men. Mi Pakao Rot also indicated that the agent and his associate beat her and threatened to kill her if she did not comply with their demands. Based on her testimony, it appears that the act was carried out in a way that was non-consensual and under coercion.

Third, Mi Pakao Rot established an exploitative purpose. She indicated that the agent and Kyaw Win received payment from the men who had sex with her. This suggests that the agent and Kyaw Win brought Mi Pakao Rot to Rangoon and held her captive for an exploitative purpose.

Lastly, Mi Pakao Rot indicated that the violation involved state action. Mi Pakao Rot indicated that she informed the authorities. However, the authorities failed to take action. Instead, they threatened to arrest Mi Pakao Rot. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with human trafficking, such as forced prostitution. Mi Pakao Rot indicated that she was held captive in a room and forced to have sex with men for money. Interviewing her Shan co-worker who allegedly experienced similar abuses at the hands of the same agent and his associate would help to verify Mi Pakao Rot's account. Further questions may be necessary to establish other violations. The interview ends well because Mi Pakao Rot has agreed to answer further questions and the interviewer knows how to contact her.

V. Conclusion

After reading this Chapter, you should be able to:

- recognize the elements of human trafficking under international law,
- develop critical questions in order to collect information about human trafficking, and
- conduct an effective interview in order to determine if a violation has taken place.

The next Chapter of this manual discusses how to evaluate evidence of human trafficking in more detail.

CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE

I. Organizing the Evidence

Once a sufficient amount of evidence has been gathered, it is important to organize and evaluate it in a way that clearly and persuasively demonstrates a violation under international law. Remember that to establish a violation under international human rights law, every element of the violation must be satisfied. When beginning to analyze the information, it may be helpful to organize the evidence using the elements of the particular violation as a framework. For example, to establish human trafficking:

- What evidence exists to show an acquisition of person(s)?
- What evidence exists to show the lack of consent or coercive circumstances?
- What evidence exists to show an exploitative purpose?
- What evidence exists to show state action was involved?

After picking out the essential elements, additional evidence may be used to more fully describe the violation. In addition to the elements, it is also important that who, what, where, why, when, and how is completely answered. For example:

- *Who*: Identify the victim(s) and perpetrator(s) and witness(es).
- *What*: Identify any potential violation(s) and the events surrounding the violation(s).
- *Where*: Indicate the location of the event.
- *Why*: Determine the cause(s) or possible cause(s) of the event.
- *When*: Determine when the event took place.
- *How*: Explain how the events unfolded.

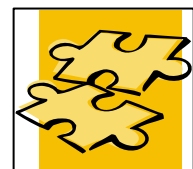
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

II. Strengthening the Evidence

Evidence of human rights violations can be strengthened when it is possible to show a trend or pattern of violations, rather than focusing on one, single incident. While all violations are significant and deserve international attention, responsive action may be more forthcoming if there are numerous, connected violations. For example, a report drawing conclusions from 50 cases of members from a particular ethnic group who experienced human trafficking by the authorities would likely have a greater impact than isolated incidents that do not indicate a pattern.

Accordingly, when evaluating the evidence, it is important to determine whether the violations were isolated incidents or whether they share similarities, for example:

- The same type of victim is targeted, such as members of the same political party or ethnic group.^{††}
- The same type of violation is committed, such as multiple instances of human trafficking in a particular area.
- The same type of perpetrator is responsible, such as the same military



^{††} When members of a group are targeted specifically for their membership in the group, the harm they suffer may constitute a more serious crime under international law because of the discriminatory nature of the violation(s). The issue of discrimination will be taken up in future editions of this manual and the others in this series.

unit consistently targeting a particular group of people.

- The state provides the same types of responses, such as repeated denials of knowledge of human trafficking.

These patterns can assist in deciding if the state took a leading role in the violations. They may also assist in recognizing other human rights violations to produce a stronger message for international action.

III. Serious Crimes under International Law: Genocide and Crimes against Humanity

Patterns of serious violations may result in the determination that a more serious human rights violation has occurred. For example, evidence of widespread or systematic human trafficking against political opponents or statements from a particular commander that “soon anyone suspected of supporting the Karen resistance movement will no longer exist” may indicate a discriminatory intent, or the intent to target a specific group, and the possible existence of acts of genocide or crimes against humanity and require further research.

A. Understanding the Magnitude of the Crimes

Genocide, crimes against humanity, and war crimes are among the most serious crimes in international law.¹² They represent severe violations of the most basic principles of human rights. As such, the prohibition against genocide, crimes against humanity, and war crimes is universally applicable. Therefore, in principle, states and individuals can be held accountable for acts of genocide, crimes against humanity, or war crimes without formally agreeing to abide by particular standards.¹³ This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions.

Due to the seriousness that genocide and crimes against humanity represent, very strong evidence is generally required before international action is taken. Sometimes, even with strong evidence, regional and international political issues inhibit the political will to take action to protect survivors and punish those responsible. At the same time, many groups may be suffering from abuse that rises to the level of such crimes but may not realize that it meets the requirements to establish such a serious violation. It is important for human rights organizations to understand the legal definition of genocide and crimes against humanity in order to understand the range of options available under international law and to improve their analysis of the situation. Knowledge of the elements of genocide and crimes against humanity will help in this task.

Analysis Tip: Seeking Advice



Experience shows that an organization's reputation and credibility could come into question if allegations of genocide or crimes against humanity are made without strong evidence. When dealing with a difficult case, a case that is a borderline violation or does not clearly rise to the level of extremity necessary to justify an allegation of an act of genocide or crime against humanity, it is always a good idea to ask for advice. A number of resources are available to assist in the analysis. Consultation and discussion can improve advocacy and prevent strategic blunders.

B. Defining Genocide

1. What are the elements of genocide?

Genocide involves grave human rights violations designed to destroy a particular group of people, in whole or in part. To establish genocide under international law from evidence of human rights violations, the following evidence is needed:¹⁴

1. The victims belong to a particular national, ethnical, racial, or religious group.^{§§}
2. Any of the following acts were committed:
 - Killing members of the group
 - Causing serious bodily or mental harm to members of the group
 - Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part
 - Imposing measures intended to prevent births within the group
 - Forcibly transferring children of the group to another group
3. The acts were committed with the intention to destroy that particular group, in whole or in part.

Vocabulary Alert: Genocide



Genocide is typically understood to refer to only large-scale killings. However, under international law, the definition of genocide refers to an intention to destroy a particular group (national, ethnic, racial, or religious) in whole or in part. According to the legal definition, certain human rights violations that do not automatically bring to mind a crime of genocide, such as rape and other forms of sexual violence, *may* meet the requirements of genocide.

2. Can human trafficking qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that human trafficking amounts to genocide. Genocide includes “causing serious bodily or mental harm to members of the group,” “deliberately inflicting on the group living conditions to bring about its physical destruction,” and “forcibly transferring children of the group to another group.” When any of these acts have been committed and when the other elements of genocide are met, human trafficking may amount to genocide.

3. Does there need to be evidence of deaths to prove genocide?

No. The common perception of genocide is that the term refers only to mass killings and, in the past, international tribunals have largely focused on cases involving the actual deaths of a significant number of people in findings of genocide.¹⁵ However, an act of genocide does not necessarily require evidence of actual death. The definition of genocide includes conditions that are imposed in order to cause a slow death of a group or even conditions which do not amount to death, such as acts of torture or of rape.¹⁶

4. What does it mean “to commit an act with intention?”

“With intention” means purposeful. A person acts purposefully towards a result when his or her conscious objective is to cause that result. To prove this element of genocide, one must show that the alleged perpetrator had a particular reason for acting, i.e. that he or she

Documentation Tip: Proving Intention



If a particular group feels they are being persecuted, ask if they know of any official documents or actions to demonstrate intention. Have they heard a particular government official or commander speaking publicly about destroying the group? Or are certain members of the group, especially leaders, constantly targeted?

^{§§} Some commentators argue that genocide should be defined more broadly as including groups and membership in such groups as defined by the perpetrator. This definition would include political and social groups. See Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analysis and Case Studies*. New Haven: Yale University Press, 1990.

intended to bring about the destruction, in whole or in part, of a national, racial, ethnic, or religious group. This element is particularly difficult to prove because it requires one to demonstrate what an alleged perpetrator was intending when he or she committed the crime.

5. *Whose intention is relevant in order to prove genocide?*

The perpetrator's intention is crucial to whether the crime can be defined as genocide. The question is whose intention is relevant. The general rule is that both the people who directly and publicly incite genocide; plan or order an act of genocide, such as high ranking government officials; and those who carry out the act, such as soldiers or even next door neighbors, can be prosecuted, even if the soldiers or other individuals were "just following orders."¹⁷ Alleged perpetrators have been found guilty of genocide-related crimes for "knowingly and substantially" aiding others who committed genocide, even if it was not proven that they themselves intended destruction of a group.¹⁸

6. *Is direct evidence required to prove the perpetrator's intention to commit genocide?*

Evidence is necessary to demonstrate the intentions of the perpetrator, and direct evidence such as government statements or army orders is extremely helpful for proving genocide. However, intent can also be inferred from the situation.¹⁹ For example, intent may be inferred from a systematic pattern of coordinated acts, such as the use of derogatory language against a group or by the physical targeting of a group or their property.²⁰ Direct evidence showing intention, such as a document stating that certain members of a religious group suffered a violation of human trafficking on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

Analysis Tip: Some of the differences between genocide and crimes against humanity



- **Mental Element:** To prove a crime against humanity you do not need to prove the perpetrator intended to bring about the destruction of a particular group. Instead, you need to show they "knew" that their crime they committed was part of a widespread or systematic attack against a civilian population.
- **Types of Victims:** Genocide requires that members of a religious, racial, ethnic or national group be targeted while crimes against humanity can also include other groups, such as social or political groups.
- **Types of Violations:** Acts that constitute genocide and crimes against humanity overlap but also have some differences.

C. Defining Crimes against Humanity

1. *What are the elements of crimes against humanity?*

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:²¹

1. Any of the following acts were committed:
 - Murder and extermination (including imposing living conditions that are likely to cause death)
 - Enforced disappearances
 - Enslavement (including trafficking)
 - Deportation or forcible transfer of population (both within and outside national borders)
 - Imprisonment or other severe deprivation of physical liberty in violation of international law

- Torture
 - Rape, sexual slavery, enforced pregnancy, and enforced sterilization
 - Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law
2. The act(s) were part of a widespread or systematic attack.
 3. The attack was against a civilian population.
 4. The perpetrator knew about the attack.

2. Can human trafficking qualify as a crime against humanity?

It is possible. Human trafficking is defined as a crime against humanity in the Rome Statute of the International Criminal Court when the other elements are met.²²

3. What qualifies as “a widespread or systematic attack” for purposes of proving a crime against humanity?

“**Widespread**” commonly means that a large number of people have been affected.²³ As with genocide, however, there is no specific number designated to deem an attack as widespread.

“**Systematic**” means that an attack is part of a common plan involving substantial private or public resources.²⁴ However, it is not necessary to prove that the plan was part of the state’s or the organization’s official policy. For example, if the state or other organization traffics civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.²⁵

“**Attack,**” for the purposes of establishing a crime against humanity, is not restricted to conduct during hostilities but extends to the treatment of those not involved in the conflict. However, there must be evidence that an attack was **either** widespread **or** systematic. There is no need for evidence that an attack was widespread *and* systematic.²⁶ Further, a widespread or systematic attack can be something other than a military attack, such as an administrative or legal measure, e.g. forced displacement.²⁷

4. How to decide if a civilian population has been targeted as part of a crime against humanity?

A population will still be considered “civilian” even if there are a few combatants among its population. Evidence must show that the population was “predominantly civilian” and that the civilians were the “primary object” of the abuse.²⁸

5. How to prove that the perpetrator “knew” about the attack in relation to a crime against humanity?

To prove that the perpetrator “knew” about the attack, it is not necessary to prove that he or she knew about all of the details of the attack. Evidence that the perpetrator intended to assist or allow the attack to proceed is sufficient evidence of “knowledge” for crimes against humanity.²⁹ Specific documentation setting out such knowledge or intention is helpful, but not essential.

IV. Conclusion

After reading this Chapter, you should be able to:

- organize the evidence to clearly and persuasively demonstrate a human rights violation,
- strengthen the evidence of violations by identifying patterns and trends, and
- recognize and identify the elements of more serious crimes under international law, such as genocide and crimes against humanity.

The next Chapter of this manual discusses advocacy strategies for dealing with human trafficking.

CHAPTER 3: ADVOCACY – USING THE EVIDENCE

I. Presenting the Evidence

Presenting human rights information persuasively in order to induce change or remedial action is often the ultimate goal for any human rights organization. Once evidence of a violation or violations has been collected, organized, and analyzed, the information is typically presented to an audience or audiences to accomplish a specific advocacy goal or objective.

There are a limitless number of potential audiences that may receive and act on human rights information. For example, some audiences commonly targeted by human rights groups include:

- Local communities (e.g., the Karen community, the refugee community)
- Regional or international NGOs (e.g., Asian Human Rights Commission, Amnesty International, Human Rights Watch)
- Government officials or agencies (e.g., the SPDC, the Government of Thailand, the President of the United States)
- Members of the international community (e.g., Europeans, Americans, Singaporeans)
- United Nations officials and bodies (e.g., Special Rapporteur on Torture, Working Groups, Human Rights Council)

Each audience is different in terms of how it will view information, be persuaded by information, and use the information. Therefore, the most effective presentation of information will largely depend on the audience. For that reason, it is a good idea to determine in advance the targeted audience before determining how to present the evidence.

The United Nations (UN) is a particularly significant audience to address when dealing with human rights violations. By raising issues to the UN, human rights organizations are able to make violations more visible to the international community, which in turn helps to increase pressure on the targeted government. Because there are several UN bodies able to respond to violations of human trafficking, this Chapter focuses on UN-based advocacy. For more information on addressing other audiences and detailed information on the enforcement mechanisms of the UN, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

II. Role of the United Nations

In Burma, UN action is highly circumscribed due to regime-imposed restrictions on access and movement throughout the country. The regime imposes strict visa regulations on international staff of NGOs as well as UN staff and also limits access within the country for those who have acquired visas. There are only a small number of UN agencies operating inside Burma and those operations are highly restricted. The UN, however, continues to monitor Burma and is generally receptive to information on human rights violations occurring there.

Advocacy Tip: Benefits of Contacting the United Nations



At times, states simply ignore recommendations of UN officials and agencies. However, the UN provides a strong mechanism to report violations to the international community. Repeated reports by the UN on human rights violations in a particular country may also pressure that state to take action to prevent violations.

There are two main ways that NGOs and human rights groups can submit information to the UN:^{***}

1. To the UN Human Rights Treaty-Based Monitoring Bodies
2. To the UN Human Rights Council's Special Procedures

Unlike the UN monitoring bodies, the UN Human Rights Council's Special Procedures process does not have ratification prerequisites for groups and individuals to submit individual complaints or communications. Claims of human rights violations can be addressed to the Special Rapporteur on the Situation of Human Rights in Myanmar in addition to the various thematic rapporteurs, special representatives, and working groups.³⁰ For more information on the UN human rights system, please see the manual in this series entitled, "Documenting Human Rights Violations in Burma."

Below are brief descriptions of some of the major UN-level agencies and individuals that are working on issues related to human trafficking in Burma.

A. UN Special Rapporteur on the Situation of Human Rights in Myanmar^{†††}

1. What is the Special Rapporteur's role?

The Special Rapporteur is responsible for monitoring and reporting on the human rights situation in Burma and following any progress made towards transfer of power to a civilian government, the drafting of a legitimate constitution, the end of restrictions on personal freedoms, and the restoration of human rights in Burma.³¹ Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council and General Assembly.³²

2. Who may give information to the Special Rapporteur?

The Special Rapporteur receives information on all aspects of human rights related to Burma from NGOs, governments, other UN agencies and monitoring bodies, and individuals. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to Burma's government with requests for further information.³³

3. What types of violations will the Special Rapporteur consider?

The Special Rapporteur will consider evidence of all human rights violations occurring in Burma, including human trafficking.

Sending Information to Special Rapporteurs



Submissions to Special Rapporteurs should be submitted in writing and provide **at least** the following information pertaining to the violation(s):

^{***} Of the nine core international human rights treaties, at the time of writing Burma has signed and ratified (with reservations) only two – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Therefore, the only treaty-based monitoring bodies currently accepting information from NGOs and human rights groups are the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

^{†††} As of May 2008, Thomás Ojea Quintana is the UN Special Rapporteur on the Situation of Human Rights in Myanmar.

- **Incident:** date and place of the incident; how the incident occurred; and a description of any law, practice or policy contributing the violation
- **Victims:** number of victims; victims' names, ages, sexes, professions; victims' residences or places of origin
- **Perpetrators:** any information regarding the alleged perpetrators, including why they are suspected; if they are not a government official, include information about how the government failed to act with due diligence to prevent, investigate, punish, or ensure compensation
- **Violation:** identify the rights that were violated, referring to specific provisions of international law if possible, and a detailed description of the violation
- **Source:** the reporting organization's full name and address

** For **urgent appeals**, provide the above information **and** the reasons why there is a fear of imminent violations.

Address Details

Individual communications can be emailed, mailed, or faxed to: Special Procedures Division, c/o Office of the High Commissioner for Human Rights, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland; **Fax:** + 41 22 917 9006; **Email:** SPDInfo@ohchr.org or urgent-action@ohchr.org. Remember to specify the relevant Special Rapporteur on the envelope or in the subject line of e-mail or fax communications.

B. UN Special Rapporteur on Trafficking in Persons, especially in Women and Children ⁺⁺⁺

1. What is the Special Rapporteur's role?

The Special Rapporteur is responsible for investigating and responding to reports of human trafficking. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.³⁴

2. Who may give information to the Special Rapporteur?

The Special Rapporteur receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to the relevant government with requests for further information.³⁵ The Office of the Special Rapporteur on Trafficking in Persons provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www2.ohchr.org/english/issues/trafficking/questionnaire.htm>.

3. What if there is an urgent need to speak with the Special Rapporteur?

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.³⁶

C. UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography ^{§§§}

1. What is the Special Rapporteur's role?

⁺⁺⁺ As of August 2008, Joy Ngozi Ezeilo is the UN Special Rapporteur on Trafficking in Persons.

^{§§§} As of May 2008, Najat M'jid Maalla is the UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography.

The Special Rapporteur is responsible for investigating and responding to reports of abuses against children, including violations of human trafficking involving children. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.³⁷

2. Who may give information to the Special Rapporteur?

The Special Rapporteur receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to the relevant government with requests for further information.³⁸ The Office of the Special Rapporteur on Violation provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www2.ohchr.org/english/issues/children/rapporteur/model.htm>.

3. What types of violations will the Special Rapporteur consider?

The Special Rapporteur will consider evidence of the following violations:

- The sale of children
- The use of children in prostitution
- The use of children in pornography
- Trafficking of children for the above mentioned purposes
- Sexual abuse of children in connection with trafficking offenses

The Special Rapporteur will also consider evidence demonstrating situations where a child is at risk of any of the above-listed abuses.³⁹

4. What if there is an urgent need to speak with the Special Rapporteur?

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.⁴⁰

D. Relevant Bodies at the United Nations

This section provides contact details for some of the main UN bodies responsible for monitoring Burma.

Contact Information		
Organization	Contact Details	Useful Websites
UN Secretary General, Ban Ki-Moon	Secretary General: Ban Ki-Moon Headquarters: 1st Ave. and 46th street New York, NY 10017 USA Tel: +1 212 963 1234 Fax: +1 212 963 4879	To learn more about the Secretary-General, visit: http://www.un.org/sg/biography.shtml For contact details of the permanent missions to the United Nations in New York see: http://www.un.org/Overview/mi ssions.htm

<p>Human Rights Council****</p>	<p>To submit complaints to the Council under the 1503 Procedure:</p> <p>Treaties and Human Rights Council Branch OHCHR-UNOG 1211 Geneva 10, Switzerland Fax: +41 22 917 90 11 E-mail: CP@ohchr.org</p> <p>To submit communications to the Council under the Special Procedures:</p> <p>Office of the United Nations High Commissioner for Human Rights Palais des Nations 8-14, avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 E-mail: urgent-action@ohchr.org</p>	<p>To learn more about the Human Rights Council, visit: http://www.ohchr.org/english/bodies/hrcouncil/</p> <p>To learn more about the complaint mechanism available under the Council's 1503 Procedure, visit: http://www2.ohchr.org/english/bodies/chr/complaints.htm To learn more the Special Procedures of the Council, visit: http://www2.ohchr.org/english/bodies/chr/special/index.htm</p>
<p>UN Office of the High Commissioner for Human Rights, Navanethem Pillay</p>	<p>UN Office of the High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Tel: +41 22 917 9000</p>	<p>To learn more about the UN Office of the High Commissioner for Human Rights, visit: http://www.ohchr.org/EN/Pages/WelcomePage.aspx</p>
<p>UN Office of the High Commissioner for Human Rights, Southeast Asia Office, Regional Representative Homayoun Alizadeh</p>	<p>OHCHR Southeast Asia Regional Office UNESCAP UN Secretariat Building, 6th Fl., Room A-601 Rajdamnern Nok Av. Bangkok 10200, Thailand Tel.: +66 2 288 1235 Fax: +66 2 288 3009 E-mail: ohchr.bangkok@un.org Homayoun Alizadeh: alizadeh@un.org</p>	<p>To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional Office, visit http://www.un.or.th/ohchr/index.html.</p>
<p>UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomás Ojea Quintana</p>	<p>UN Special Rapporteur on the situation of Human Rights in Myanmar OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06</p> <p>For urgent appeals, email: urgent-action@ohchr.org</p>	<p>For documents on the Special Rapporteur, visit: http://www.unhchr.ch/html/menu2/7/a/mmya.htm</p>
<p>UN Special Envoy of the Secretary-General for Myanmar</p>	<p>There is no specific process for sending information to the Special Envoy.</p> <p>Currently, the post of the Special Envoy is vacant.</p>	<p>To get updated information on the post of the Special Envoy, visit: http://www.un.org/News/oss/gsrsg/table.htm</p>
<p>UN Special Rapporteur on Trafficking in Persons, especially in Women and</p>	<p>UN Special Rapporteur on Trafficking in Persons, especially in Women and Children OHCHR-UNOG</p>	<p>To learn more about the Special Rapporteur, visit: http://www2.ohchr.org/english/i</p>

**** The Human Rights Council replaced the Commission on Human Rights on 27 March 2006 when the Commission was formally dissolved and the Council effectively took over all the functions and responsibilities of the Commission. Previously, the Commission was a subsidiary organ of ECOSOC. The Council is now reports directly to the General Assembly. The Commission membership was also reduced from 53 state members to the Council's 47. To better carry out its mandate, the Council also adopted the Universal Periodic Review (UPR) mechanism which enables the Council to review the human rights obligations of all countries.

Children, Joy Ngozi Ezeilo	8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 For urgent appeals, email: urgent-action@ohchr.org	ssues/trafficking/index.htm
UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, Najat M'jid Maalla	UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 For urgent appeals, email: urgent-action@ohchr.org	To learn more about the Special Rapporteur, visit: http://www2.ohchr.org/english/issues/children/rapporteur/index.htm

III. Conclusion

After reading this Chapter, you should be able to:

- present the evidence in a clear and precise manner,
- identify who to address at the UN regarding violations of human trafficking, and
- understand how to submit information to the UN.

For more information on presenting evidence of human rights violations to the UN, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

APPENDIX 1: MODEL QUESTIONNAIRE ON HUMAN TRAFFICKING^{††††}

MODEL QUESTIONNAIRE FOR THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY IN WOMEN AND CHILDREN

Notes

- The objective of this questionnaire is to have access to precise information on alleged violations of the rights of the child. The Special Rapporteur may raise his concerns about the incidents reported and request Governments to make observations and comments on the matter.
- If any information contained in the questionnaire should be kept confidential please mark "CONFIDENTIAL" beside the relevant entry.
- The form should clearly indicate whether the victim or persons involved have agreed to their cases being submitted by the Special Rapporteur to the Government for the purpose outlined above.
- Do not hesitate to attach additional sheets, if the space provided is not sufficient.
- If you have any questions concerning the completion of this form, please do not hesitate to contact the Special Rapporteur.

GENERAL INFORMATION

1. Does the incident involve an individual or a group?
2. If it involves a group please state the number of people involved and the characteristics of the group:

Number of women:
Number of men:
Number of minors:
3. Country(ies) in which the incident took place:
4. Nationality(ies) of the victim(s):

IDENTITY OF THE PERSONS CONCERNED

Note: if more than one person is concerned, please attach relevant information on each person separately.

1. Family name:
2. First name:
3. Sex:
4. Birth date or age:
5. Nationality(ies):

^{††††} Please note that this document has been reproduced from <http://www.ohchr.org>. There is no affiliation between ND-Burma and the Office of the High Commissioner for Human Rights. The document is simply provided for training purposes.

INFORMATION REGARDING THE ALLEGED VIOLATION

1. Date:
2. Place (location - country/countries):
3. Time:
4. The nature of the incident (please describe the circumstances with reference to the categories listed under General Information):
5. Number of perpetrator(s):
6. Are the perpetrator (s) known to the victim?
7. Nationality of perpetrator (s)
8. Agents believed to be responsible for the alleged violation:
9. State agents (specify):
10. Non-state agents (specify):
11. If it is unclear whether they were state or non-state agents, please explain why.
12. If the perpetrators are believed to be state-agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.
14. If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANY ONE ELSE ON HIS/HER BEHALF

1. Indicate if complaints have been filed, when, by whom, and before which state authorities or competent bodies (i.e, police, prosecutor, court):
2. Other steps taken:
3. Steps taken by the authorities:
4. Indicate whether or not, to your knowledge, there have been investigations by the state authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken?
5. In case of complaints by the victim or its family, how have those authorities of other competent bodies dealt with them? What has been the outcome of those proceedings?

IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

1. Family name:

2. First name:

3. Status: individual, group, non-governmental organization, inter-governmental agency, Government.
Please specify:

Contact number or address (please indicate country and area code):

Fax:

Tel:

Email:

4. Please state whether you want your identity to be kept confidential:

Date you are submitting this form:

Signature of author

Please inform the Special Rapporteur of any further information which becomes available after you have submitted this form, including if your concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

**PLEASE RETURN TO:
THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD
PORNOGRAPHY
OHCHR-UNOG
1211 GENEVA 10
SWITZERLAND
Fax: +41 22 917 9006
E-mail: urgent-action@ohchr.org**

APPENDIX 2: MODEL QUESTIONNAIRE ON CHILD TRAFFICKING^{***}

MODEL QUESTIONNAIRE FOR THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Notes

- The objective of this questionnaire is to have access to precise information on alleged violations of the rights of the child. The Special Rapporteur may raise his concerns about the incidents reported and request Governments to make observations and comments on the matter.
- If any information contained in the questionnaire should be kept confidential please mark "CONFIDENTIAL" beside the relevant entry.
- Do not hesitate to attach additional sheets, if the space provided is not sufficient.
- If you have any questions concerning the completion of this form, please do not hesitate to contact the Special Rapporteur.

GENERAL INFORMATION

1. Does the incident involve an individual or a group?
2. If it involves a group please state the number of people involved and the characteristics of the group:
Number of boys/adolescents:
Number of girls/adolescents:
3. Country(ies) in which the incident took place:
4. Nationality(ies) of the victim(s):

IDENTITY OF THE PERSONS CONCERNED

Note: if more than one person is concerned, please attach relevant information on each person separately.

1. Family name:
2. First name:
3. Sex:
4. Birth date or age:
5. Nationality(ies):
6. Ethnic background (if relevant):

INFORMATION REGARDING THE ALLEGED VIOLATION

1. Date:

^{***} Please note that this document has been reproduced from <http://www.ohchr.org>. There is no affiliation between ND-Burma and the Office of the High Commissioner for Human Rights. The document is simply provided for training purposes.

2. Place (location - country/countries):

3. Time:

4. The nature of the incident (please describe the circumstances with reference to the categories listed under General Information):

5. Number of perpetrator(s):

6. Are the perpetrator (s) known to the victim?

7. Nationality of perpetrator (s)

8. Agents believed to be responsible for the alleged violation:

9. State agents (specify):

10. Non-state agents (specify):

11. If it is unclear whether they were state or non-state agents, please explain why.

12. If the perpetrators are believed to be state-agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.

13. If an identification as state agents is not possible, do you believe that Government authorities or persons linked to them, are responsible for the incident, why?

14. If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANY ONE ELSE ON HIS/HER BEHALF

1. Indicate if complaints have been filed, when, by whom, and before which state authorities or competent bodies (i.e, police, prosecutor, court):

2. Other steps taken:

3. Steps taken by the authorities:

4. Indicate whether or not, to your knowledge, there have been investigations by the state authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken?

5. In case of complaints by the victim or its family, how have those authorities of other competent bodies dealt with them? What has been the outcome of those proceedings?

IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

1. Family name:

2. First name:

3. Status: individual, group, non-governmental organization, inter-governmental agency, Government.
Please specify:

Contact number or address (please indicate country and area code):

Fax:

Tel:

Email:

4. Please state whether you want your identity to be kept confidential:

Date you are submitting this form:

Signature of author

Please inform the Special Rapporteur of any further information which becomes available after you have submitted this form, including if your concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

PLEASE RETURN TO:

**THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD
PORNOGRAPHY
OHCHR-UNOG
1211 GENEVA 10
SWITZERLAND**

Fax: +41 22 917 9006

E-mail: urgent-action@ohchr.org

ENDNOTES

¹ The main international agreements explicitly prohibiting human trafficking include:

- *UN Declaration of Human Rights*, Article 4
- *UN Convention on the Rights of the Child*, Article 35
- *UN Convention on Elimination of All Forms of Discrimination against Women*, Article 6
- *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Article 3
- *ILO Worst Forms of Child Labor Convention No. 182*, Article 3

Non-binding international instruments aimed at prohibiting human trafficking include *UN Declaration on the Elimination of Violence Against Women* (Art. 2), *UN Declaration on the Elimination of Discrimination Against Women* (Art. 8), and *Recommended Principles and Guidelines on Human Rights and Human Trafficking of the United Nations High Commissioner for Human Rights*

For copies of these documents, see <http://www2.ohchr.org/english/law/> (last visited 27 July 2008).

Burma is also subject to customary international law (CIL). CIL is a body of legal rules that comes from general state practice which over time has become accepted as binding law. However, a state may not be bound by a particular rule if that state has persistently objected to the rule.

In so much as human trafficking is considered a form of contemporary slavery, it is prohibited under CIL. Even if Burma has not signed some of the above treaties, it will still be subject to associated CIL norms (unless it can demonstrate a pattern of persistent objections to be bound by the law). Most people consider that the prohibition against human trafficking is not only part of general CIL but is a *jus cogens* norm, which means it is a fundamental norm of international law which states may never violate, even if they persistently object. In other words, states may not “contract out” of such norms.

² *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Article 3(a).

³ This list is non-exhaustive. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Article 3(a).

⁴ *Annotated Guide to the Complete UN Trafficking Protocol*, Global Rights, http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723 (last visited 19 Aug. 2008)

⁵ Mary Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence*. Washington, DC: East-West Center Washington, 2007, p. vix, explaining that in Burmese, there is no equivalent for this meaning of state. Instead one might use *asoya* (government) or *naing-ngan* (country), depending on the context.

⁶ Kachin Women's Association of Thailand, “Driven Away,” 2005, http://www.womenofburma.org/Report/Driven_Away.pdf, (last visited 16 June 2008), pp. 22 – 23.

⁷ Belak, Brenda, “Migration and Trafficking,” in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, <http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf>, (last accessed 3 September 2008), p. 199.

⁸ Human Rights Watch, “A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand,” August 1993, http://www.hrw.org/reports/1993/thailand/#_1_17, (last visited 3 September 2008).

⁹ United Nations Office on Drugs and Crime, “Trafficking in Persons: Global Patterns,” April 2006, p. 60, 89, http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf, (last visited 17 June 2008).

¹⁰ Belak, Brenda, “Migration and Trafficking,” in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, <http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf>, (last accessed 3 September 2008), p. 195.

¹¹ *Ibid.*

¹² Recently, the international community has reiterated the importance of preventing genocide. For example, as well as the International Criminal Court's focus on the crime, the Secretary General of the United Nations recently established the position of Special Adviser on the Prevention of Genocide, currently held by Francis Deng. *See* Office of the Special Adviser on the Prevention of Genocide, http://www.un.org/Depts/dpa/prev_genocide/index.htm (under construction when last visited 27 July 2008). Further, the Secretary General's High-level Panel on Threats, Challenges and Change has suggested that the Security Council should authorize military intervention where a country is unwilling or powerless to prevent genocide. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have both prosecuted genocide and crimes against humanity as part of their jurisdiction. *See* generally for the ICTY, www.un.org/icty/ (last visited 27 July 2008) and for the ICTR, www.un.org/icttr/ (last visited 27 July 2008).

¹³ As the most serious of offenses in international law, it is generally accepted that the violation of genocide is universally applicable, meaning that it applies to states and individuals even if they have not signed onto a treaty or agreement to prevent genocide. This idea has been referenced by the International Court of Justice, the 1971 Barcelona Traction and in several statements by the U.N. Secretary General. Regardless, Burma is a party to the Convention on the Prevention and Punishment of the Crime of Genocide (with reservations).

Crimes against humanity have also been deemed to be part of customary international law and are therefore universally applicable. *See*, Bassiouni, C. and Hampson, F. et al., "Crimes against Humanity and Universal Jurisdiction," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 27 July 2008).

¹⁴ Genocide is prohibited under several treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the Rome Statute for the International Criminal Court (ICC), as well as customary international law. It is prohibited during times of war and peace. Both state and non-state actors, such as armed opposition groups, may be guilty of genocide.

Since 1956, Burma has been a party to the Genocide Convention and is also subject to customary international law.

The International Criminal Court provides a useful summary of the elements of genocide. *See, Elements of Crimes*, Article 6, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

¹⁵ *See, Prosecutor v Jelisic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

¹⁶ Regarding the number of people who need to be harmed for genocide to apply, the International Criminal Court suggests that the number simply needs to be one or more, highlighting that there does not need to be evidence of the extermination of the whole or even most of the population. *See, Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

¹⁷ *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Judgment, 2 September 1998; *Kosovo Backgrounder: Sexual Violence as International Crime*, Human Rights Watch, 10 May 1999, <http://www.hrw.org/backgrounder/eca/kos0510.htm> (last visited 27 July 2008); Stiglmeier, Alexandra, "Sexual Violence: Systematic Rape," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/sexual-systematic-rape.html> (last visited 27 July 2008).

¹⁸ Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

¹⁹ *See, Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

²⁰ *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998, para 523; *Prosecutor v Kayishema and Ruzindana*, ICTR Trial Judgment, 21 May 1999; *Krstic Judgment*, ICTY Trial Judgment, August 2001, para 580 (considering evidence of the destruction of mosques and houses belonging to members of the group to prove the necessary intent).

²¹ The definition is taken from the *Rome Statute of the International Criminal Court*, Article 7. Crimes against humanity were identified formally as breaching international law in the Charter of the Nuremberg Tribunal in 1945. In 1946, the United Nations' General Assembly recognized that international law prohibits crimes against humanity. The ICC also prosecutes crimes against humanity. Burma is not directly subject to the ICC's jurisdiction but is subject to the prohibition against crimes against humanity under customary international law. See, *Rome Statute of the International Criminal Court* (1998), Article 7, [http://untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf) (last visited 2 August 2008); Amnesty International, *The International Criminal Court: Fact Sheet 4 – Prosecuting Crimes Against Humanity*, <http://web.amnesty.org/library/index/engior400052000> (last visited 27 July 2008); see also, Bassiouni, C. and Hampson, F. et al., "Crimes against Humanity and Universal Jurisdiction," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 27 July 2008).

²² *Rome Statute of the International Criminal Court*, Article 7(1)(c), 17 July 1998 (including "enslavement" as acts constituting a crime against humanity when the others elements of the crime are also met. According to Article 7(2)(c) "enslavement includes trafficking in persons).

²³ See, Diego Garcia, *A Crime Against Humanity? Public Debate at the House of Commons*, 16 November 2004, citing *Prosecutor v. Tadic*, Trial Judgment, paras 644-648; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998, para 580.

²⁴ *Ibid.*

²⁵ See, Human Rights Watch, *Targeting the Anuak: Human Rights Violations and Crimes against Humanity in Ethiopia's Gambella Regio*, section on Crimes Against Humanity in International Law, citing *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998, para 580, http://hrw.org/reports/2005/ethiopia0305/10.htm#_ftn201 (last visited 28 July 2008).

²⁶ *Ibid.*

²⁷ See, Amnesty International, *The International Criminal Court: Fact Sheet 4 – Prosecuting Crimes Against Humanity*, <http://web.amnesty.org/library/index/engior400052000> (last visited 28 July 2008); Bassiouni, C. and Hampson, F. et al., "Crimes against Humanity and Universal Jurisdiction," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 28 July 2008).

²⁸ *Prosecutor v. Naletilic and Martinovic*, ICTY Trial Judgment, 31 March 2003, para 235, <http://www.un.org/icty/cases-e/index-e.htm> (last visited 28 July 2008).

²⁹ See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

³⁰ A full list of human rights concerns of UN thematic rapporteurs, representatives of the UN Secretary-General, and working groups can be accessed online at: <http://www2.ohchr.org/english/bodies/chr/special/themes.htm> (last visited 5 October 2008).

³¹ Office of the High Commissioner for Human Rights. "Situation of human rights in Myanmar," Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

³² Office of the High Commissioner for Human Rights. "Special Procedures of the Human Rights Council," <http://www2.ohchr.org/english/bodies/chr/special/> (last visited 1 August 2008).

³³ Office of the High Commissioner for Human Rights. "Situation of human rights in Myanmar," Commission on Human Rights Resolution 1992/58, 3 March 1992,

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

³⁴ *Special Rapporteur on Trafficking in Persons - Introduction*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/trafficking/index.htm> (last visited 1 August 2008).

³⁵ *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.

³⁶ *Ibid.* The Special Rapporteur will aim to prevent the loss of life and therefore will usually make the appeal even if there are still domestic remedies available.

³⁷ *Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography- Background and Mandate*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/children/rapporteur/index.htm> (last visited 1 August 2008).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.* The Special Rapporteur will aim to prevent the loss of life and therefore will usually make the appeal even if there are still domestic remedies available.