

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

**DOCUMENTING ARBITRARY ARREST AND
DETENTION IN BURMA**

NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA

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Network for Human Rights Documentation – Burma (ND-Burma)
c/o Human Rights Education Institute of Burma (HREIB)
P.O. Box 485
Chiang Mai, Thailand 50000
Tel/Fax: + 66-(0)53-279-472
Email: ND_Burma@yahoo.com

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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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The primary author of this manual is Amy Alexander. 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 a. 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 arbitrary arrest and detention and provides guidelines on possible ways to document these violations. It then provides information about the historical and political context of arbitrary arrest and detention in Burma. Chapter 1 also provides a sample good and bad interview based on a hypothetical fact pattern involving arbitrary arrest and detention.

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 arbitrary arrest and detention.

This manual covers only violations concerning arbitrary arrest and detention. It does not provide information about other abuses that may occur in conjunction with arbitrary arrest, such as killings, disappearances, 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: Arbitrary Arrest and Detention

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 an arbitrary arrest and detention.

II. Defining Arbitrary Arrest and Detention

A. What are the elements of arbitrary arrest and detention under international law?

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

1. An apprehension or taking into custody of a person
2. Arbitrariness
3. Deprivation of personal liberty
4. State action

Vocabulary Alert: Arrest and Detention



International instruments are not consistent in their use of the terms “arrest” and “detention” to describe a violation of personal liberty. Some instruments prefer the terms “apprehension,” “incarceration,” “imprisonment,” “reclusion,” etc. For consistency sake, this manual refers only to “arrest” and “detention.”

B. What is an “arbitrary” arrest and detention?

Arrests and detentions can be described as arbitrary if they contain some element of injustice, unreasonableness, disproportionality, or unpredictability.* For example, arrests and detentions are considered arbitrary when they are carried out:

- Because a person exercised a fundamental right guaranteed by international law;
- In contravention of basic procedural rights, such as a right to a fair trial;[†]
- Without any legal basis, such as when a person remains detained despite having completed the sentence or having received amnesty; or
- Without a reasonable, substantial, fair, or non-discriminatory cause.[‡]

* International human rights instruments have delineated minimum standards for the administration and enforcement of justice. Judicial systems, judicial officers, law enforcement officers, and penal facilities must abide by such minimum standards to prevent an arbitrary infringement on a person’s right to personal liberty.

[†] Procedural rights include a right to a fair trial, the right to be tried by an independent judicial authority, and the right to legal representation. In addition, a person has the right to be informed of the charges for an arrest and an arresting agent must obtain an arrest warrant before conducting an arrest. *See* endnote 3 and 4 for more explicit provisions of procedural guarantees in international law.

[‡] Even when arrests and detentions are conducted in accordance with domestic laws, the action may still be arbitrary if the domestic law justifying the arrest and detention is arbitrary.

C. When is an arrest and detention legal?

An arrest and detention is allowed only when it is not arbitrary and performed in accordance with established substantive and procedural legal standards.² For example, a person can be legitimately deprived of his/her liberty under the following circumstances:

- When the arrest/detention complies with international procedural justice standards, such as after being properly charged with or convicted of valid offenses³
- When a person poses a legitimate threat to the security of the community or themselves, such as a person likely to commit a violent crime
- During emergencies where the derogations of personal liberty are reasonable and necessary

International Law: Right to Personal Liberty



International law prohibits the arbitrary deprivation of personal liberty. Arbitrary arrests and detentions are a violation of international law as a deprivation of personal liberty.

Even when a person is legitimately deprived of his/her personal liberty, states may be violating their obligations under international law if the conditions of detention fail to meet certain minimal requirements.⁴

D. What is state action?

State action is necessary for an arbitrary arrest and detention 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 an arbitrary arrest and detention 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 an arbitrary arrest and detention 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

[§] 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.

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 arrest/detention*

- Who was arrested/detained?
- What happened?
- When did the incident occur?
- Where did the arrest occur? Where is the arrestee/detainee now?
- How do you know what happened?

2. *Establishing the arrest/detention was arbitrary*

- What led to the arrest/detention?
- What was the person accused of or charged with?
- Why was the person arrested/detained?
- What opportunity was the person given to defend him/herself?
- What were the conditions of the detention?
- How do you know this information?

3 *Establishing that there was a deprivation of liberty*

- What happened after the person was apprehended?
- Where was the person taken to after being apprehended?
- How was s/he detained?
- For how long was s/he detained?
- How do you know this information?

4. *Establishing state action*

- Who carried out the arrest/detention? 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 arbitrary arrest and detention 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 arbitrary arrest and detention in Burma.



Historical and Political Context of Arrests and Detentions 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. Over the decades, arbitrary arrests and detentions have continued unabated throughout the country. Nonviolent political opponents, supporters of ethnic resistance groups, and other civilians are often the targets of such illegal arrests and detentions. As of September, 2008, over 2,000 political prisoners are detained in Burma, including prominent leaders, peaceful protestors, women, monks and religious leaders, as well as those with suspected political associations.⁶ Other arbitrary arrests occur without any apparent political reason, typically to extort money or other bribes from the detainee.

Arrests and detentions in Burma typically occur at night and without proper warrants. Without being informed of the charges or the reasons for the arrest and detention, victims are often taken directly to interrogation centers where they are questioned, threatened, and tortured. Torture is frequently used to extract false confessions or testimony to establish guilt. Torture during pre-trial detentions and interrogation sessions has resulted in the deaths of detainees, which typically go uninvestigated.⁷

While some detainees are released after a few days or weeks of interrogation, others are sent to labor camps or larger detention facilities. Some detainees simply disappear without official explanation or investigation. Detainees sent to labor camps are forced to work as porters or laborers for the military under harsh conditions. Some detainees are forced to accompany troops into conflict zones.⁸

Conditions in detention centers are deplorable and fall far short of international standards. Detainees endure unsanitary living conditions, torture and inhuman treatment, diet deficiencies, and limited access to inadequate medical care. Due to the squalid environment and constant mistreatment, prisoners suffer from an assortment of ailments ranging from severe psychological problems, hypertension, high blood pressure, heart disease, chronic liver cirrhosis, gastric ulcers, tuberculosis, diabetes, arthritis, depression, and nerve damage.⁹ Over the years, hundreds of detainees or former detainees have died due to the conditions of their imprisonment. Meanwhile, the International Committee of the Red Cross has not been

allowed to conduct independent and confidential visits to detention facilities since January 2006.¹⁰

Detainees are frequently held without trial or access to any judicial oversight. Even where cases are brought before the judiciary, defendants are denied proper procedural protections. Trials are typically conducted behind closed doors, without legal defense counsel, and in the absence of an independent judicial authority. Trial decisions are largely controlled by the political motives of the SPDC.¹¹

In addition, the SPDC frequently employs domestic Law No. 11/91, an amendment to Article 14 of the 1975 State Protection Act, to extend arbitrarily the terms of detention without trial or charge. Under this provision, prominent political leaders, including Daw Aung San Suu Kyi, have remained under house arrest or in SPDC custody despite the expiration of their original sentence.¹² For other detainees, where the regime is not impelled to extend the terms of detention, release frequently requires the payment of large bribes to the authorities.

B. Fact Pattern

Below is a fact pattern of a typical arbitrary arrest and detention 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 arbitrary arrest and detention in accordance with international human rights standards, there must be:

1. An apprehension or taking into custody of a person
2. Arbitrariness
3. Deprivation of personal liberty
4. State action

Fact Pattern: Arbitrary Arrest and Detention^{††}



Aung Kyaw Soe first got involved in politics in 2004 when he was a student at Rangoon University. He joined the National League for Democracy (NLD) and worked secretly as a youth leader. In January 2006, Aung Kyaw Soe drafted a pamphlet protesting certain activities of the military regime, including the arrest of several prominent democratic leaders, the repression of ethnic villagers, and the lack of educational freedom in the country. Aung Kyaw Soe made several copies of the pamphlet, and with the help of some friends, he distributed the pamphlet to teashop patrons, students, and shop owners.

Several weeks after distributing the pamphlets, Aung Kyaw Soe was asleep in his family's house when he was awakened by heavy knocks at the front door. He heard his father get up to answer the door but before he could open it, four men in military uniforms kicked open the door and demanded to see Aung Kyaw Soe. Before Aung Kyaw Soe could put proper clothes on, the soldiers found his room, grabbed him, and knocked him to the floor. One soldier tied Aung Kyaw Soe's hands behind his back while another put a cloth bag over his head. When Aung Kyaw Soe's father demanded to know what was going on, a soldier slapped him across his face and said, "I hope you're not complaining. Complaining is why your son is in trouble now."

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

The soldiers dragged Aung Kyaw Soe out of the house and put him into a car. After about an hour drive, Aung Kyaw Soe was forced out of the car and led into a building. When they removed the bag from his head, he was in a small room. Three officers were in the room. One of them had a copy of the pamphlet Aung Kyaw Soe had written. The officers began to question him about the pamphlet and his activities with the NLD. When he refused to admit that he wrote the pamphlet, they began beating him. At one point, they tied his arms down and hit his hands repeatedly with their gun-butts saying, “Maybe this will stop you from writing slander.”

After about one hour of intense interrogation and beatings, the officers locked Aung Kyaw Soe in a small concrete cell. He remained locked in the cell for several months. Once a day, a guard gave him a small bowl of rice and a piece of spoiled meat. Once a week, he was provided with a bucket of dirty water, which was his only source of water for drinking and bathing. There were no toilet facilities in the cell so he was forced to urinate and defecate on the cell floor. He had nothing to sleep on. The cell was also infested with rodents and termites. After two months of living in such conditions, Aung Kyaw Soe fell very ill. He suffered from a high fever and severe stomach pain. He began vomiting and urinating blood. He pleaded with the guards to take him for medical treatment but they refused. He grew very weak.

After about five months, two soldiers came to Aung Kyaw Soe’s cell and dragged him to an interrogation room. The officer there had a prepared statement, which Aung Kyaw Soe signed. The statement said that he would never to speak out against the government again and he agreed to pay 200,000 kyat as a fine for having made false statements. The soldiers released Aung Kyaw Soe after his father brought the money.

Aung Kyaw Soe slowly regained his strength once he gained his release. The authorities continued to monitor him. Because most of his friends were involved in politics, Aung Kyaw Soe feared that the authorities would eventually associate him with their activities. Fearing that he would not survive another period of detention, he fled Burma and is now living in Thailand without documents.

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

So you were arrested by the military, right?

Aung Kyaw Soe: Yes. It was horrible. I didn’t think I’d survive being detained. And I still suffer pain in my hands from when I was beaten.

And you were arrested because of your involvement with the NLD?

Aung Kyaw Soe: Yes.

And you were not given a fair trial?

Aung Kyaw Soe: No. I wasn't given any trial. I didn't even see a judge or anything.

And you were put into a detention facility?

Aung Kyaw Soe: Yes.

Were you arrested by a government official?

Aung Kyaw Soe: I guess so. I was arrested by uniformed soldiers.

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 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 Aung Kyaw Soe how he should answer. If he answers simply “yes” or “no,” he may be leaving out important details and the interviewer will miss important pieces of information. Also, Aung Kyaw Soe may be less likely to speak freely and more likely to give answers that he believes the interviewer wants to hear.

Third, this interview focuses only on the violations the interviewer initially suspected, and does not ask questions that would provide evidence of other violations. Incidents of arbitrary arrests and detention, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as torture that occurred during Aung Kyaw Soe's term of imprisonment.

Finally, this interview does not provide any information to corroborate Aung Kyaw Soe's account. Asking Aung Kyaw Soe if there were witnesses or other evidence available, such as a doctor's examination report, to check his story is an important part of good documentation.

2. *Sample Interview: Good*

Aung Kyaw Soe, can you tell me why you decided to leave Burma?

Aung Kyaw Soe: I had to leave Burma. I was so scared that I would be arrested again by the military. I didn't think I would survive being detained again.

Why do you think you would be arrested by the military?

Aung Kyaw Soe: Well, I was arrested once before because of my involvement with the NLD. After I was released from detention, I was afraid the military would associate me with the activities of my friends, who are still actively involved with the NLD.

Can you tell me more about what happened when you were arrested?

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Aung Kyaw Soe: Sure. I was arrested back in January 2006. Four soldiers in uniforms came to my house, tied my hands behind my back, put a cloth bag over my head, and brought me to a detention facility outside of Rangoon. I spent five months in detention. I suffered a lot in detention.

Why were you arrested?

Aung Kyaw Soe: No one ever told me exactly why I was arrested but I think it was because of my involvement in the NLD. I was a youth leader in the NLD and a couple of weeks before I was arrested I had been distributing a pamphlet I wrote about opposing government activities. When I was being interrogated, they asked me a lot about my activities in the NLD and they had one of my pamphlets. Also, before they released me, they forced me to sign a statement agreeing not to participate in the NLD anymore.

Who arrested you?

Aung Kyaw Soe: I'm not sure what branch of the military or anything, but they were government soldiers who came to my house and arrested me.

How do you know they were government soldiers?

Aung Kyaw Soe: I know because they were wearing the usual government uniforms.

What happened after you were arrested?

Aung Kyaw Soe: They interrogated me about my activities in the NLD. They told me they knew I had written the pamphlet and I was spreading dangerous ideas. I was beaten very badly. They crushed both my hands with their gun butts and said maybe that would prevent me from writing lies. Then they locked me up for about five months.

Did you appear before a court at any time?

Aung Kyaw Soe: No. They just locked me up.

Could you have disputed your detention?

Aung Kyaw Soe: I don't think so. If I could, I wouldn't know how. I was never given an opportunity to. I don't think it would matter much anyway since the entire system in Burma is corrupted by the military. There's nothing you can do if you are arrested.

What were conditions like in detention?

Aung Kyaw Soe: Conditions were really horrible. I was kept in a small cell by myself. I wasn't allowed any visitors. They gave me only one small portion of food every day but it was barely edible. I didn't have enough water to drink or wash with and I had no access to a toilet. I got really sick because of the conditions but they wouldn't let me see a doctor.

Who was in charge of the detention facility?

Aung Kyaw Soe: I think it was the same military unit that arrested me. All the guards and officers wore the same uniforms as those who arrested me.

How did you gain your release?

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Aung Kyaw Soe: One day some soldiers came and took me from my cell. I was told that I could leave if I signed a statement agreeing not to participate in politics. I also had to pay a fine of 200,000 kyat. I didn't want to die in prison so I signed the statement. The fine was a lot of money for my family but my father borrowed the amount from a neighbor. Then I was released. I don't know why they decided to release me.

What happened after you were released?

Aung Kyaw Soe: I went home with my father. My friends had heard about what had happened and came to visit me. I knew, however, that the authorities were monitoring my house and that they knew who came to visit me because sometimes soldiers would come and ask me about friends who had visited me and what we discussed. Like I said earlier, I was afraid the military would associate me with their activities so I left Burma.

Did you ever see a doctor after being released from detention?

Aung Kyaw Soe: Yes. After I was released I went to a doctor because I was still sick and very weak. Also I still had a lot of pain in my hands from when they beat me with their gun butts. The doctor gave me some medicine and told me to rest. When I came to Thailand, I again went to a doctor because I still had pain in my hands. He told me I need an operation however I cannot afford it so I have to take pain medication.

Do you have a copy of the medical reports?

Aung Kyaw Soe: I can get a copy from my doctor in Thailand. I don't have a copy of the report from the doctor I saw in Burma but I can ask my mother to send it to me if it would help.

That would be great, if it does not put your mother in danger. Also, is there anyone else I could talk to who knows what happened to you?

Aung Kyaw Soe: You could speak with my father. He came to Thailand shortly after I left and he lives with me. He was there when I was arrested and paid money for my release. I am sure he'd be willing to talk with you.

Okay. And is there anything else you would like to add or do you have any questions for me?

Aung Kyaw Soe: Just that it was terrible. There is no way to survive being detained in those conditions. I was treated like an animal. And all I did was tell the truth about the injustices happening in the country. I am not a criminal. I just want to be able to live freely and without fear.

Thank you so much for sharing your experience with me. I know it must be very difficult to talk about. If I need to speak with you again, how can I contact you?

Aung Kyaw Soe: You can come back here to this village and talk to me any time.

Why is this interview good?



This interview is good because Aung Kyaw Soe has told his story. The initial questions were open-ended and there were follow-up questions. His answers help document

each element to establish a violation. For example, Aung Kyaw Soe has provided the following information about the arrest and detention:

First, Aung Kyaw Soe provided information to establish an arrest. He said soldiers came to his house, tied his hands behind his back, and dragged him from his house. Because his father was present during the arrest, it would be helpful to interview the father to corroborate Aung Kyaw Soe's version of the events.

Second, Aung Kyaw Soe provided details to establish the arbitrary nature of the arrest and detention. He described how he was arrested, interrogated, and detained without being told of the charges against him. He said he was never given an opportunity to defend himself or appear before a court. Based on his testimony that he was arrested after writing up and distributing a political pamphlet, he was questioned about his political activities and involvement in creating the pamphlet, and he was forced to sign a statement agreeing not to participate in politics, it appears that he was arrested and detained for engaging in nonviolent political expression, a basic human right.

Third, the interview established that Aung Kyaw Soe was deprived of his personal liberty. He spoke about how he was forcibly taken to the detention center and confined for several months in deplorable conditions. He also indicated that he was only released after he signed a statement and paid a fine.

Lastly, Aung Kyaw Soe indicated that the arrest and detention involved state actors. Although Aung Kyaw Soe could not clearly identify the specific military unit or outfit responsible for his arrest and detention were from, he indicated that they were wearing government uniforms. This may be sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the arbitrary arrest and detention, such as torture. He indicated that he was severely beaten and continues to suffer from his injuries. Records from his doctors of his injuries from these beatings will help to verify his account. Further questions may be necessary to establish other violations. The interview ends well because Aung Kyaw Soe has agreed to answer further questions and the interviewer knows how to contact him.

V. Conclusion

After reading this Chapter, you should be able to:

- recognize the elements of arbitrary arrest and detention under international law,
- develop critical questions in order to collect information about arbitrary arrest and detention, 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 arbitrary arrest and detention 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 arbitrary arrest and detention:

- What evidence exists to show an apprehension or taking into custody?
- What evidence exists to show that it was arbitrary?
- What evidence exists to show that it resulted in the deprivation of personal liberty?
- 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.

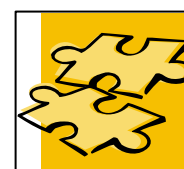
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

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 arbitrary arrest and detention 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 arbitrary arrests and detentions in a particular area.



^{‡‡} 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.

- The same type of perpetrator is responsible, such as the same military unit consistently targeting a particular group of people.
- The state provides the same types of responses, such as repeated denials of knowledge of arbitrary arrests and detentions.

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 arbitrary arrests and detentions of 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.¹³ 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.¹⁴ This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions.

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.

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.

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:¹⁵

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 arbitrary arrest and detention qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that arbitrary arrests and detentions amount to genocide. Genocide includes “deliberately inflicting living conditions calculated to bring about [a group’s] physical destruction in whole or in part.” Conditions that rise to this level have been interpreted to include:

- Reducing medical services to below a certain minimum
- Restricting access to suitable living accommodations
- Subjecting a group to less than a subsistence diet
- Reducing commodities to below a basic requirement¹⁶

When any of these acts have been committed and when the other elements of genocide are met, arbitrary arrests and detentions may amount to genocide. Based on this definition, international tribunals have held arbitrary arrests and detentions to qualify as a crime of genocide.¹⁷

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.¹⁸ 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.¹⁹

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

^{§§} 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.

“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 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.”²⁰ 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.²¹

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?

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.²² 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.²³ Direct evidence showing intention, such as a document stating that certain members of a religious group suffered arbitrary arrest and detention on a certain date in order to bring about their physical 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 may 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:²⁴

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 arbitrary arrest and detention qualify as a crime against humanity?*

It is possible. “Imprisonment or other severe deprivation of physical liberty” is explicitly defined as a crime against humanity in the Rome Statute of the International Criminal Court when the other elements are met.²⁵

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.²⁶ 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.²⁷ 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 arbitrarily arrest and detain civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.²⁸

“**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.²⁹ 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.³⁰

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.³¹

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.³² 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 arbitrary arrest and detention.

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 is 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 arbitrary arrest and detention, 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.³³ 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 arbitrary arrest and detention 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.³⁴ 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.³⁵

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.³⁶

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 arbitrary arrest and detention.

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 Working Group on Arbitrary Detention

1. Who are its members and when does it meet?

The Working Group is composed of five members of the UN Security Council.^{†††} Each member serves a three year term. The Group meets three times a year.³⁷

2. What is the Working Group's role?

The Working Group monitors conditions of detention and investigates cases of arbitrary detentions that are inconsistent with international standards. The Working Group receives individual complaints and issues opinions on situations of arbitrary detention. Based on such opinions, the Working Group provides recommendations to concerned states.^{§§§} To develop a full understanding of the situation in a particular country and to engage in direct dialogue with state actors and members of civil society, the Working Group conducts field visits.³⁸ The Working Group also submits annual reports to the Human Rights Council. The Working Group is also responsible for developing a consistent set of general standards to prevent arbitrary detentions, which are communicated through "deliberations" pertaining to specific topics such as house arrest, labor camps, etc.³⁹

3. Who may give information to the Working Group?

The Working Group receives information and will consider communications from victims of arbitrary detention, their family members, or representatives. Human rights organizations may send communications to the Working Group on behalf of victims or their family. However, they must be able to show that they have permission from the represented parties and that they will communicate the results of the case. States, human rights organizations, and other interested parties may also submit information to the Working Group.⁴⁰

^{†††} As of October 2008, Manuela Carmena Castrillo is serving as the chairperson of the UN Working Group on Arbitrary Detention.

^{§§§} The Working Group can receive individual complaints about any country, even if the concerned country is not a party to relevant international conventions. However, the Group will not consider communications requesting an evaluation of "fairness" of a detention or evidence produced during a trial.

4. What if urgent action is necessary?

The Working Group may take urgent action in cases where an arbitrary detention either poses a serious threat to the person's life or circumstances warrant urgent action. Urgent cases are sent directly to the Foreign Affairs Minister of the concerned state rather than the state's Permanent Representative to the United Nations, which is the usual practice. The Working Group will ask that the state take appropriate measures to protect the rights of the person(s) at risk.⁴¹

Summary of the Working Group's Procedure⁴²



Upon receiving information on an arbitrary detention, the Working Group will take the following actions:

1. If the continued detention poses a threat to the life or health of the detainee or if detention involves other compelling circumstances, the Working Group will send an urgent appeal to the state's Foreign Minister.
2. Communications that are not of an urgent nature are forwarded onto the concerned state. All sources of the communication are kept confidential. The state then has 90 days to submit comments on the allegations, the facts, and the applicable laws, as well as the progress and results of any investigations on the matter. The state may request a 60 day extension to respond to the Working Group.
3. If the state replies, the Working Group will send the reply to the person or organization that submitted the communication and request final comments. If the state fails to reply, the Working Group may issue an opinion based on all available information.
4. If the Working Group finds that more information is necessary to render a decision as to whether the detention is arbitrary, the Group may put the case on hold until further information is received. If sufficient information is not obtainable, the Working Group may decide to file the case.
5. Upon receiving all the information, the Working Group will consider whether the detention is arbitrary and issue an opinion.
 - (a) If the detention is found not arbitrary, the case will be filed.
 - (b) If the detention is arbitrary, the Working Group will make recommendations to the state.
 - (c) If the person is released following a communication to the Working Group, the case is filed; however an opinion also be rendered.
 - (d) If the available information is inadequate, the Working Group may request additional information or file the case on that basis.
6. Opinions rendered by the Working Group along with recommendations are sent to the state and three weeks later to the communicant. The Working Group also transmits opinions to the Human Rights Council in their annual report.
7. States are responsible for informing the Working Group on any action taken on the recommendations as well as obstacles encountered in implementing the recommendations.

C. 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/miissions.htm
Human Rights Council****	To submit complaints to the Council under the 1503 Procedure: Treaties and Human Rights Council Branch OHCHR-UNOG 1211 Geneva 10, Switzerland Fax: (41 22) 917 90 11 E-mail: CP@ohchr.org To submit communications to the Council under the Special Procedures: 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 (0)22 917 90 06 E-mail: urgent-action@ohchr.org	To learn more about the Human Rights Council, visit: http://www.ohchr.org/english/bodies/hrcouncil/ 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
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	UN Office of the High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Tel: +41 22 917 9000	To learn more about the UN Office of the High Commissioner for Human Rights, visit: http://www.ohchr.org/EN/Pages/WelcomePage.aspx
UN Office of the High Commissioner for Human Rights, Southeast Asia Office, Regional Representative Homayoun Alizadeh	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 E-mail: alizadeh@un.org	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 .
UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomás Ojea Quintana	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 For urgent appeals, email: urgent-action@ohchr.org	For documents on the Special Rapporteur, visit: http://www.unhcr.ch/html/menue2/7/a/mmya.htm
UN Special Envoy of the Secretary-General for Myanmar	There is no specific process for sending information to the Special Envoy. Currently, the post of the Special Envoy is vacant.	To get updated information on the post of the Special Envoy, visit: http://www.un.org/News/ossgrsg/table.htm

**** 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 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.

Working Group on Arbitrary Detention, Manuela Carmena Castrillo, Chairperson	Working Group on Arbitrary Detention c/o Office of the UN High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06	To learn more about the Working Group on Detention, visit: http://www.ohchr.org/english/issues/detention/index.htm
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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 arbitrary arrest and detention, 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 FOR ARBITRARY ARREST AND DETENTION^{†††}

MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION^{†††}

I. IDENTITY

1. Family name:
2. First name:
3. Sex: (Male) (Female)
4. Birth date or age (at the time of detention):
5. Nationality/Nationalities:
6. (a) Identity document (if any):
(b) Issued by:
(c) On (date):
(d) No.:
7. Profession and/or activity (if believed to be relevant to the arrest/detention):
.....
.....
8. Address of usual residence:
.....
.....
.....
.....

II. ARREST^{§§§§}

1. Date of arrest:.....
2. Place of arrest (as detailed as possible):
.....
.....
.....

^{†††} Please note that this document has been reproduced from www.unhchr.com. 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.

^{††††} A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not necessarily result in the inadmissibility of the communication.

^{§§§§} For the purpose of this questionnaire, “arrest” refers to the initial act of apprehending a person. “Detention” means and includes detention before, during and after trial. In some cases, only section II, or section III may be applicable. Nonetheless, whenever possible, both sections should be filled in.

.....
.....
3. Forces who carried out the arrest or are believed to have carried it out:

.....
.....
4. Did they show a warrant or other decision by a public authority?

(Yes) (No).....

5. Authority who issued the warrant or decision:

.....
.....
6. Relevant legislation applied (if known):

.....
.....
III. DETENTION

1. Date of detention:

2. Duration of detention (if not known, probable duration):

3. Forces holding the detainee under custody:

.....
.....
4. Places of detention (indicate any transfer and present place of detention):

.....
.....
5. Authorities that ordered the detention:

.....
.....
6. Reasons for the detention imputed by the authorities:

.....
.....
7. Relevant legislation applied (if known):

.....
.....
IV. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary^{*****}

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.....

V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken

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.....
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.....

VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible)^{†††††}

.....
.....
.....
.....
.....

Date: Signature:

This questionnaire should be addressed to:

*Working Group on Arbitrary Detention
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 avenue de la Paix
1211 Geneva 10,
Switzerland,
Fax No. (022) 917.90.06
E-mail: urgent-action@ohchr.org.*

^{*****} Copies of documents that prove the arbitrary nature of the arrest or detention, or help to better understand the specific circumstances of the case, as well as any other relevant information, may also be attached to this questionnaire.

^{†††††} If a case is submitted to the Working Group by anyone other than the victim or his family, such person or organization should indicate authorization by the victim or his family to act on their behalf. If, however, the authorization is not readily available, the Working Group reserves the right to proceed without the authorization. All details concerning the person(s) submitting the information to the Working Group, and any authorization provided by the victim or his family, will be kept confidential.

ENDNOTES

¹ The main international agreements explicitly prohibiting arbitrary arrests and detention include:

- *Universal Declaration of Human Rights (UDHR)*, Article 9; and
- *International Covenant on Civil and Political Rights (ICCPR)*, Article 9(1);

Regional agreements also expressly prohibit arbitrary arrest and detention, such as the *European Convention on Human Rights* (Article 5(1)), the *African Charter* (Article 6), and the *American Convention on Human Rights* (Article 7). Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments aimed at prohibiting arbitrary arrest and detention include: *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* (“*Principles on Detention*”); *Standard Minimum Rules for the Treatment of Prisoners* (“*Standard Minimum Rules*”), the *Basic Principles for the Treatment of Prisoners*, *UN Rules for the Protection of Juveniles Deprived of their Liberty*, *UN Standard Minimum Rules for the Administration of Juvenile Justice* (“*The Beijing Rules*”), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the *Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in the Basic Principles on the Independence of the Judiciary*, and *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

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

² *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 30 August 2006).

³ International instruments ensure that arrestees and detainees are protected by procedural safeguards to prevent arbitrary arrests and detentions. For example, under international law, arrestees and detainees have the right to:

- Be notified of the reason for the arrest at the moment of the arrest (*ICCPR*, Article 9(2); *Principles on Imprisonment*, Principle 10);
- Challenge the detention before a judicial authority (*UDHR*, Article 8; *ICCPR*, Article 9(4); *Principles on Detention*, Principle 32); and
- Access to legal counsel (*UDHR*, Article 11; *ICCPR*, Article 14(3); *Standard Minimum Rules*, Rule 93; *Principles on Detention*, Principles 17 and 18).

International instruments that delineate more specific substantive and procedural standards and guidelines for the judiciary and administrative justice systems and actors in those systems include:

- *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in the Basic Principles on the Independence of the Judiciary*
- *The Guidelines on the Role of Prosecutors*
- *The Basic Principles on the Role of Lawyers*
- *The Code of Conduct for Law Enforcement Officials*

⁴ The *Standard Minimum Rules for the Treatment of Prisoners* is the main source of guidance on minimum requirements for detention conditions. It was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Under *Standard Minimum Rules*, detainees are guaranteed:

- Accommodations that meet a minimum standard of health (Rule 10 and 19)
- Personal cleanliness (Rule 15)
- Clean and adequate clothing (Rule 17 and 18)
- Daily exercise in the open air (Rule 21)
- Adequate, wholesome food and drinking water (Rule 20 and 21)
- Adequate medical, psychological, and dental care (Rules 22, 24, 25)
- The right to communicate with family and friends (Rule 92)
- Religious freedom (Rule 42)

- Reasonable access to educational, cultural, and informational material (Rules 39 and 40)
- Right to make a request or complaint regarding their treatment (Rule 36)

See http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

The *International Covenant on Civil and Political Rights*, the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, and the *Basic Principles for the Treatment of Prisoners* provide similar guarantees and protections.

There are also protections and guidelines for the treatment of particular categories of detainees, such as women (see, *Standard Minimum Rules*, Rule 53 and 23(1)) and children (see, *The Convention on the Rights of the Child*, the *Beijing Rules*, *UN Guidelines for the Prevention of Juvenile Delinquency*, and the *UN Rules for the Protection of Juveniles Deprived of their Liberty*).

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 Assistance Association for Political Prisoners, www.aappb.org (last visited September 25, 2008).

⁷ *Eight Seconds of Silence: The Death of Democracy Activists Behind Bars*, Assistance Association for Political Prisoners (Burma), May 2006.

⁸ *Enduring Hunger and Repression: Food Scarcity, Internal Displacement, and the Continued Use of Forced Labor in Toungoo District*, Karen Human Rights Group, September 2004.

⁹ *The Darkness We See: Torture in Burma's Interrogation Centers and Prisons*, Assistance Association of Political Prisoners of Burma, 2 December 2005.

¹⁰ *Eight Seconds of Silence: The Death of Democracy Activists Behind Bars*, Assistance Association for Political Prisoners (Burma), May 2006.

¹¹ *Myanmar: Justice on Trial*, Amnesty International, 30 July 2003; *Country Reports on Human Rights Practices-2004*, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, 28 February 2005.

¹² *Burma Briefing: Issues and Concerns, Vol. 3*, Alternative ASEAN Network of Burma, July 2006.

¹³ 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/icty/ (last visited 27 July 2008).

¹⁴ 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).

¹⁵ 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).

¹⁶ See, *Prosecutor v. Kayishema and Ruzindana*, ICTR Trial Judgment, 21 May 1999, para 115-18; *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998; Rome Statute, Footnote to Article 5(c).

¹⁷ *Ibid.*

¹⁸ See, *Prosecutor v. Jelacic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998.

¹⁹ 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).

²⁰ *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); Stiglmayer, 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).

²¹ Orentlicher, Diane F., “Genocide,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

²² See, *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

²³ *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).

²⁴ 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).

²⁵ *Rome Statute of the International Criminal Court*, Article 7(1)(e), 17 July 1998 (including “imprisonment or other severe deprivation of physical liberty...” as acts constituting a crime against humanity when the others elements of the crime are also met.).

²⁶ 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.

²⁷ *Ibid.*

²⁸ 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).

²⁹ *Ibid.*

³⁰ 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).

³¹ *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).

³² See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

³³ 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).

³⁴ 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.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

³⁵ 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).

³⁶ 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.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

³⁷ *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 30 August 2006).

³⁸ As of October 2008, Burma’s government has not invited the Working Group on Arbitrary Detention to conduct a field visit.

³⁹ *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 30 August 2006).

⁴⁰ *Ibid.*

⁴¹ In such communications to a state, the Working Group assures that the appeal is purely humanitarian in nature and no assessment has been made as to the arbitrariness of the detention. *Fact Sheet No. 26: The Working Group*

Endnotes

on Arbitrary Detention, Office of the High Commissioner for Human Rights,
<http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 30 August 2006).

⁴² The information in this table and the next table was compiled from Working Group's *Revised Methods of Work*.