

**HUMAN RIGHTS DOCUMENTATION  
MANUAL SERIES:**

**DOCUMENTING THE RECRUITMENT AND USE OF  
CHILD SOLDIERS IN BURMA**

**NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA**

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## ACKNOWLEDGEMENTS

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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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 child soldiers. 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 child soldiers and provides guidelines on possible ways to document these violations. It then provides information about the historical and political context of child soldiers in Burma. Chapter 1 also provides a sample good and bad interview based on a hypothetical fact pattern involving child soldiers.

**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 concerning child soldiers.

This manual covers only violations concerning child soldiers. It does not provide information about other abuses that may occur in conjunction with child soldiers, 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:

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: Child Soldiers

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 concerning child soldiers.

### II. Defining Child Soldiers

#### A. What are the elements of establishing a child soldier under international law?

In order to document child soldiers as a human rights violation, evidence of *three elements* must be present:<sup>1</sup>

1. The recruitment or participation;
2. Of an individual or individuals under the age of 18;<sup>2</sup>
3. Into the armed forces, an armed group, or hostilities.

#### International Law: Child Soldiers



The prevention and protection of child soldiers is addressed in international human rights law, humanitarian law, criminal law, and labor law. Although analyzed from different perspectives, the use of child soldiers is recognized by numerous legal instruments as a violation of international law.

#### B. What qualifies as “recruitment” and “participation”?

“Recruitment” refers to the process of physical initiation into an armed force or armed group. It includes formal as well as de facto forms of recruitment. For example, recruitment includes:

- Conscription (compulsory/obligatory military service)
- Voluntary enlistment\*
- Forced recruitment

“Participation” includes both the direct participation of children in combat and the use of children to perform tasks linked to combat, including the use of children in the support functions of the armed forces or an armed group. For example, participation in hostilities includes:

- Fighting on the frontlines
- Performing camp labor (e.g., cooking for troops, cleaning barracks, camp construction and maintenance)
- Patrolling and carrying out sentry duties
- Acting as spies, informants, and scouts
- Planting landmines
- Implementing orders for forced labor

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\* Self-described voluntary enlistment in the armed forces or an armed group by a child is rarely based solely on the free choice of the child but rather the “choice” is influenced by factors that are beyond his/her control. Typically, children are compelled to enlist in order to fulfill basic economic necessities, to avoid forcible recruitment, to acquire some degree of physical security, etc. Due to such pressures, children often have no other alternative than to join armed groups.

- Portering
- Acting as messengers

### C. What are “armed forces,” “armed groups,” and “hostilities”?

“Armed forces” generally refers to a state’s military forces. For example, a state’s official army, air force, navy, etc.

“Armed groups” includes any organization or group of people with weaponry operating with or without state authority.<sup>†</sup> For example, armed groups may include:<sup>‡</sup>

- Opposition groups’ armies
- Paramilitaries
- Law enforcement agencies
- Civil defense forces
- Death squads

The term “hostilities” refers to all acts that, by their nature or purpose, are undertaken because of conflict. It includes not only actual offensive actions and direct combat but also includes acts of preparing for combat and all post-combat operations.

#### 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 recruitment or participation*

- Who was the recruit or participant? Who recruited or initiated the victim?
- What happened?
- When did the recruitment or participation occur?
- Where did the recruitment or participation occur?
- How did the recruitment or participation occur?
- How do you know what happened?

### 2. *Establishing that the recruit or participant was under the age of 18*

- In what grade in school was the recruit or

#### 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.

<sup>†</sup> Note that state action is not required to establish a violation of the use of child soldiers under international law. The definition of armed groups includes non-state actors. Therefore, non-state actors as well as state actors can be held directly accountable for violating the prohibition against the use of child soldiers.

<sup>‡</sup> This list of examples is non-exhaustive.



- participant at the time of recruitment or participation?
- Where is the birth certificate of the recruit or participant?
- When was the recruit or participant born?
- How old was the recruit or participant at the time of recruitment or participation? How old is s/he now?
- How do you know this information?

### 3. *Establishing involvement in the armed forces, an armed group, or hostilities*

- Who led the group that the child was involved with?
- What organization or group was the child involved with?
- What did the child wear?
- Where did the group operate?
- How did the child participate in the group?
- How do you know this information?

#### 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 child soldier 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 child soldiers in Burma.



#### Historical and Political Context of Child Soldiers 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. Although Burma is a signatory to the Convention on the Rights of the Child, which

specifically prohibits the use of child soldiers, there is little respect for its provisions.<sup>8</sup> Despite the formation of the Committee for Prevention of the Recruitment of Minors in Armed Forces by the SPDC in January 2004, the Burma Army is still believed to have more child soldiers in its ranks than any other army or country in the world.<sup>3</sup> While there are no exact figures available, estimates indicate that some 70,000 of the total 350,000 soldiers in the Burma Army are under the age of 18, some as young as 9.<sup>4</sup> While many armed opposition and ceasefire groups also recruit and use child soldiers, the numbers are significantly lower than those of the Burma Army.<sup>5</sup> According to the UN Secretary-General's December 21, 2007 report to the Security Council on children and armed conflict, 10 groups in Burma use child soldiers.<sup>6</sup>

Children conscripted into the Burma Army are usually forced to join under threats of jail, physical assault, and other punishments. Civilian and military recruiters seize, abduct, and coerce children at bus and train stations and other public places.<sup>7</sup> Other children are compelled into joining in order to escape poverty or obtain a degree of physical security.<sup>8</sup> Some local authorities have also been given quotas for child recruits from villagers.<sup>9</sup> For recruiters, who reportedly receive substantial commissions for new recruits, children are seen as easy prey.<sup>10</sup>

For various reasons, children are considered preferable candidates for recruitment. For one, children are largely viewed as more obedient, more vulnerable to indoctrination, and easier to manipulate. Therefore they are easier to train. Due to their lack of the psychological maturity, children also tend to be more easily coaxed, intimidated, and forced into committing abuses. The increased proliferation of smaller, lighter, and easier to use weapons further heightens the likelihood of abuse by children because these types of weapons are more accessible for them. Children are also used for other tasks, such as spying or sabotage missions, because they are less noticeable and more innocent appearing.<sup>11</sup>

New recruits into the Burma Army are typically taken first to a recruitment center, which is usually just a fenced enclosure in an Army camp. While waiting to attend training, recruits are forced to perform strenuous tasks around the camp and are subject to severe mistreatment.<sup>12</sup> When there are a sufficient number of recruits, they are sent as a group for military training. Conditions in training camps are deplorable and abuse is frequent. The training typically lasts four to five months and trainees report beatings, starvation, and other hardships.<sup>13</sup> Following the training period, they are sent to operational battalions where the abuse continues.

As soldiers, children are particularly vulnerable to abuse. In the Burma Army, child soldiers are used as forced laborers, sentries, messengers, spies, and porters.<sup>14</sup> Children are not exempt from combat and are typically forced to commit violent abuses against civilians. Nor are child soldiers exempt from the physically demanding activities of military operations. Rather, they are more vulnerable to severe punishments by superior officers because of their inability to meet the physical demands. In addition, older soldiers have been known to steal the rations and salaries of children.<sup>15</sup> Children are also more vulnerable to sexual abuse and exploitation.<sup>16</sup> Meanwhile, those who attempt to escape are subject to brutal punishments and imprisonment in squalid, overcrowded detention facilities.<sup>17</sup>

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<sup>8</sup> Burma, however, is not a signatory to the Convention's two Optional Protocols.

Children are generally not psychologically or physically mature to cope with the demands of soldiering. Child soldiers in Burma not only witness the tragedies of violent conflict but also have committed severe abuses. Such traumatic experiences can result in serious emotional disorders. Child soldiers often suffer from higher levels of anxiety, developmental impediments, sleep disorders, withdrawal from society, and aggressive tendencies.<sup>18</sup> Child soldiers are also exposed to conditions, such as untreated injuries, illnesses, sexual violence, and malnourishment that can result in long-term physical disabilities.

In 2004, the SPDC established the Committee for Prevention of Military Recruitment of Underage Children.<sup>19</sup> The Committee's "Plan of Action" includes commitments to programs for the demobilization, rehabilitation, and reintegration of child soldiers. However, there is strong evidence that recruitment and use of child soldiers continues unabated. In its 2007 report on child soldiers in Burma, Human Rights Watch's assessment is that the committee "primarily serves a cosmetic function, making little progress in achieving its stated objectives, and failing to substantively address the army's institutionalized and pervasive forcible recruitment of children."<sup>20</sup>

## B. Fact Pattern

Below is a fact pattern of a typical recruitment and use of a child soldier 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 child soldiering in accordance with international human rights standards, there must be:

1. A recruitment or participation;
2. Of an individual or individuals under the age of 18;
3. Into the armed forces, an armed group, or hostilities.

### Fact Pattern: Child Soldiers\*\*



Maung Win is a 15 year old boy from Mandalay Division. As Maung Win was on his way to school, an officer from the Burma Army stopped him. The officer asked him for his ID card, and Maung Win told the officer he did not have it. The officer told him it was illegal not to have an ID card. The officer grabbed him by the arm and said he would have to arrest him. Maung Win was very afraid and began to cry. The officer told Maung Win that he could avoid jail if he agreed to join the Burma Army. Fearing the horrible conditions in detention, Maung Win agreed to join the Burma Army.

The officer took Maung Win to the recruitment center. At the center, Maung Win met many other recruits who were about his age. He remained at the recruitment center for about two weeks before he was sent for military training. At the training camp, Maung Win made friends with three other boys who were below the age of 18. During the training, the recruits were inspected by a General. The General approached Maung Win and asked him how old he was. Maung Win replied, "I am 15 years old." The General slapped him across his face and said, "You stupid boy. You must answer 18 when you are asked your age."

\*\*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.

During the military training, Maung Win was forced to complete long parade drills in full military dress for several hours every day under the hot sun while carrying heavy equipment. He was taught how to hold, fire, and clean automatic machine guns. He lived in the barracks along with the other recruits. Despite the physically demanding drills, each day the recruits were given only two small meals of rice and a small piece of meat. Maung Win was often hungry and physically exhausted.

During the training, five recruits from Maung Win's company tried to escape. Three succeeded but two were captured by the Burma Army. They were brought before the recruits and severely tortured by the military officers. The officers ordered the prisoners to lie face down. Their hands were tied behind their backs and their legs were locked in leg stocks. The officers forced the other recruits to beat them with sharp sticks. After about an hour of beating, the prisoners were locked in the detention block, where one of them died.

After one month of military training, Maung Win was assigned to Light Infantry Battalion #349. As a soldier, Maung Win was forced to carry heavy loads of military equipment over long distances. Maung Win was often beaten and harassed by the officers for falling behind the other troops. At one point, his battalion encountered several opposition fighters in the jungle. There was a brief exchange of artillery fire and one soldier from Maung Win's battalion was injured. During the commotion, Maung Win took this opportunity to flee. He hid in the jungle while his battalion was busy searching for the opposition fighters.

Once the battalion had moved on, Maung Win came out of hiding and ran to the nearest village. He continued from village to village until he reached the Thai border. He is now living in a safe house in 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***

So you were a child soldier in the Burma Army, right?

*Maung Win:* I joined the Burma Army because I was afraid of going to jail.

But you were forced to join, right?

*Maung Win:* I guess I could have chosen to go to jail instead. But I was afraid.

You were under the age of 18 when you joined?

*Maung Win:* Yes.

And you participated in hostilities when you were in the Burma Army?

*Maung Win:* Well, not really. I didn't shoot or kill anyone as a soldier.

**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 Maung Win 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, Maung Win 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 child soldiering, 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 while Maung Win was serving as a child soldier.

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

**2. Sample Interview: Good**

Maung Win, can you tell me why you left Burma?

*Maung Win:* I left Burma because I didn’t want to be part of the Burma Army. I never wanted to be a soldier but I was afraid of going to jail.

How were did you end up as a soldier in the Burma Army?

*Maung Win:* I was on my way home from school and a Burma Army officer stopped me and asked for my ID card. I told him I didn’t have it with me. He said he was going to arrest me because it is illegal not to have an ID card. I was afraid of going to jail because I’ve heard about how horrible conditions are in jail. The officer told me I wouldn’t have to go to jail if I joined the military. I didn’t have any other choice, so I joined.

How old were you when you joined the Burma Army?

*Maung Win:* I was 15.

What happened after you joined the Army?

*Maung Win:* The officer took me to a recruitment center for about two weeks. Then I was sent for military training. After training, I was assigned to LIB #349.

Did you have any problems at the recruitment center?

*Maung Win:* I got in trouble with a General who came to inspect us. He asked me what my age was and when I told him I was 15 he slapped me and told me I should have said I was 18.

*Chapter 1: Documentation- Establishing the Violation*

Were there any other recruits who were under 18?

*Maung Win:* Three of my friends were below 18 but I'm not sure if anyone else was under 18. After military training we were all assigned to the same battalion.

What did you do during military training?

*Maung Win:* We were taught how to use and take care of our guns. We also had to participate in marching drills for several hours everyday. It was very hot because we had to wear our military uniforms and carry all our gear. I was very tired every day.

Did you have any problems while you were in military training?

*Maung Win:* Military training was very difficult because the drills were very tiring. Also, they gave us very little to eat. I really wanted to run away but I saw what happens when you are caught trying to escape. While I was in military training, officers caught two recruits who tried to escape. They were beaten very badly. I was afraid this would happen to me.

After military training, what did you do?

*Maung Win:* I was assigned to LIB #349. Because I was smaller than the other soldiers, they made me carry the equipment because it was less likely I would be detected. The equipment was very heavy and I had to travel very long distances.

Did you have any problems in LIB #349?

*Maung Win:* The officers would often beat me and call me names because I had trouble keeping up with the troops.

How did you escape from the Burma Army?

*Maung Win:* One day while we were walking through the jungle, the battalion ran into some rebel fighters. There were some shots fired and one of the soldiers from my battalion was injured. Some of the troops ran after the fighters while others tried to help the injured soldier. While everyone was running around, I took a chance by hiding in the jungle. They didn't realize I was missing. When everyone was gone, I fled through the jungle and made my way to Thailand.

What happened to your friends who were also child soldiers in your battalion?

*Maung Win:* I don't know what happened to two of them. But after I was in Thailand for about three months, my friend Naing Myint showed up at the safe house. He told me he fled a couple weeks after I did. He now lives in the safe house with me.

Would it be possible for me to contact Naing Myint to ask him about his experience?

*Maung Win:* I'm sure he wouldn't mind. I can tell him to meet you here tomorrow.

Thank you. Is there anything else you would like to add or do you have any questions for me?

*Maung Win:* Just that I never wanted to be part of the Burma Army. I didn't have any choice. I was too scared of being arrested. It was terrible in the Burma Army. I couldn't continue my studies when I joined the Army. Now I have no opportunities to get an education. I hate the Burma Army.

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?

*Maung Win:* You can come back to the safe house and talk to me any time.

### **Why is this interview good?**



This interview is good because Maung Win 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, Maung Win has provided the following information about his time as a child soldier:

**First**, Maung Win provided information to establish recruitment or participation in the Burma Army. He said he joined the Army after he was threatened with arrest by an Army officer. He described being sent to the recruitment center, attending military training, and being assigned to LIB #349.

**Second**, Maung Win indicated that he was under the age of 18 when he joined the Army. He said that he was 15 when he was recruited by the officer and that he served in the Army before turning 18. He also described how he was slapped when he told a General he was 15 and told to say he was 18. Based on his testimony, it appears that Maung Win was still a child under the age of 18 when he served with the Burma Army.

**Lastly**, the interview established that Maung Win was involved in the armed forces. He spoke about how he was a soldier in the Burma Army and stationed with LIB#349. He indicated that he operated as a porter for the Burma Army and was sent into conflict zones.

The interview also provides evidence of other violations in connection with being a child soldier, such as torture. He indicated that he was frequently harassed and beaten. Interviewing his friend, Naing Myint, will help to verify Maung Win's account. Further questions may be necessary to establish other violations. The interview ends well because Maung Win 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 establishing the recruitment and use of child soldiers under international law,
- develop critical questions in order to collect information about a child soldier, 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 the recruitment and use of child soldiers 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 the use of child soldiers:

- What evidence exists to show recruitment or participation?
- What evidence exists to show that the victim was under the age of 18?
- What evidence exists to show that the child was a member of the armed forces, armed group, or involved in hostilities?

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.

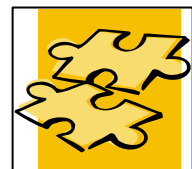
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

### 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 recruitment and use of child soldiers from a particular ethnic group 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.<sup>††</sup>
- The same type of violation is committed, such as multiple instances of recruitment and use of child soldiers in a particular area.



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<sup>††</sup> 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 the recruitment and use of child soldiers.

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 recruitment and use of child soldiers 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.

#### 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.



On March 17, 2006 the International Criminal Court made its first arrest. The ICC accused Thomas Lubanga of the Democratic Republic of Congo of recruiting and using child soldiers to participate in hostilities. The warrant listed three counts of war crimes related to child soldiers.<sup>21</sup> Notably in this case, the recruitment and use of child soldiers was considered a *war crime* because the violations allegedly occurred within the context of an armed conflict involving combatants (as distinct from a crime against humanity, which involve a civilian population). Based on that distinction, any judicial measures would likely consider cases involving the recruitment and use of child soldiers within the legal framework of “war crimes.”

## A. Understanding the Magnitude of the Crimes

Genocide, crimes against humanity, and war crimes are among the most serious crimes in international law.<sup>22</sup> 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.<sup>23</sup> This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions and will provide additional analysis of the recruitment and use of child soldiers within this category of severe international crime.

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:<sup>24</sup>

1. The victims belong to a particular national, ethnical, racial, or religious group.<sup>‡‡</sup>
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.

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<sup>‡‡</sup> 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.

## **2. Can the use of child soldiers qualify as an act of genocide?**

It is possible. There may be sufficient evidence to show that the use of child soldiers amount to genocide. Genocide includes “causing serious bodily or mental harm to members of a group,” “deliberately inflicting conditions of life calculated to bring about 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, the use of child soldiers 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.<sup>25</sup> 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.<sup>26</sup>

## **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 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.”<sup>27</sup> 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.<sup>28</sup>

## **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.<sup>29</sup> 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.<sup>30</sup> Direct evidence showing intention, such as a document stating that children of a certain religious group were recruited as child soldiers on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

### **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?

**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 they 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:<sup>31</sup>

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 the use of child soldiers qualify as a crime against humanity?

It is possible. The Rome Statute of the International Criminal Court defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person.” Child soldiering may be considered a form of enslavement. Child soldiering may also be considered an act of persecution, meaning the deprivation of fundamental rights.<sup>32</sup> Therefore, the use of child soldiers may qualify as a crime against humanity.

### 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.<sup>33</sup> 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.<sup>34</sup> 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 recruited or used child soldiers based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.<sup>35</sup>

“**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.<sup>36</sup> 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.<sup>37</sup>

***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.<sup>38</sup>

***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.<sup>39</sup> 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 child soldiers.

## 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 child soldiers, 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:<sup>§§</sup>

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.<sup>40</sup> 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 child soldiers in Burma.

## **A. UN Special Rapporteur on the Situation of Human Rights in Myanmar<sup>\*\*\*</sup>**

### ***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.<sup>41</sup> 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.<sup>42</sup>

### ***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.<sup>43</sup>

### ***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 child soldiers.

#### **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):

<sup>§§</sup> 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.

<sup>\*\*\*</sup> 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; and
- **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](mailto:SPDInfo@ohchr.org) or [urgent-action@ohchr.org](mailto: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 Representative on Children and Armed Conflict<sup>†††</sup>**

### ***1. What is the Special Representative's role?***

The Special Representative is responsible for lobbying the pertinent UN agencies, governments, and other influential bodies to increase protection of children in armed conflict. Based on this information, the Special Representative engages in awareness raising exercises to enhance the protection of children in conflict.<sup>44</sup>

### ***2. Who may give information to the Special Representative?***

The Special Rapporteur receives information on children and armed conflict from NGOs, governments, other UN agencies and monitoring bodies.<sup>45</sup>

### ***3. What types of violations will the Special Representative consider?***

The Special Representative will consider evidence of the following violations:<sup>46</sup>

- Killing or maiming of children
- Recruitment or use of children as soldiers
- Rape and other grave sexual abuse of children
- Abduction of children
- Attacks against schools or hospitals
- Denial of humanitarian access for children

## **C. UN Committee on the Rights of the Child**

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

The Committee on the Rights of the Child is composed of 18 independent experts on human rights issues.<sup>†††</sup> Each member serves a four year term. The Committee meets three times a year in Geneva with sessions lasting four weeks.<sup>47</sup>

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<sup>†††</sup> As of February 2006, Radhika Coomaraswamy is the UN Special Representative on Children and Armed Conflict.

<sup>†††</sup> Since March 2007, Yanghee Lee has acted as the Chairperson of the Committee.



**2. What is the Committee’s role?**

The Committee monitors the implementation of the Convention on the Rights of the Child (CRC) and the two Optional Protocols on involvement of children in armed conflict and on sale of children, child prostitution, and child pornography. The Committee receives and reviews states’ reports and provides recommendations. The Committee submits annual reports to states and the General Assembly.

**3. Who can submit reports to the Committee?**

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in CRC and the Optional Protocols. Only states that have signed onto CRC are obligated to submit reports to the Committee.<sup>48</sup> The Committee is also receptive to information from human rights organizations. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee’s meeting.<sup>49</sup> The Committee also accepts oral testimony from human rights organizations during pre-sessional meetings.<sup>50</sup>

**4. Is there an individual complaint process for the Committee?**

No. There is no process for the Committee to receive or consider individual complaints.

**D. UN Working Group of the Security Council on Children and Armed Conflict**

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

The Working Group is composed of 15 members of the UN Security Council.<sup>§§§</sup> The Group does not meet on a fixed schedule.<sup>51</sup>

**2. What is the Working Group’s role?**


The Working Group reviews the progress of action plans pertaining to the situation of children in areas of armed conflict. The Working Group considers monitoring country-specific reports on child in armed conflict as well as general and emerging issues of concern for children. Based on this information, the Working Group makes recommendations to the Security Council on measures to promote the protection of children.<sup>52</sup>

**3. Who may give information to the Working Group?**

The Working Group considers specific country reports and receives generalized information from the Secretary General.

**E. 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:	To learn more about the Secretary-General, visit:

<sup>§§§</sup> Jean-Marc de la Sabliere is currently serving as the chairperson of the UN Working Group of the Security Council on Children and Armed Conflict.

	1st Ave. and 46th street New York, NY 10017 USA Tel: +1 (212) 963 1234 Fax: +1 (212) 963 4879	<a href="http://www.un.org/sg/biography.shtml">http://www.un.org/sg/biography.shtml</a>  For contact details of the permanent missions to the United Nations in New York see: <a href="http://www.un.org/Overview/missions.htm">http://www.un.org/Overview/missions.htm</a>
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: <a href="mailto:CP@ohchr.org">CP@ohchr.org</a>  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: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	To learn more about the Human Rights Council, visit: <a href="http://www.ohchr.org/english/bodies/hrcouncil/">http://www.ohchr.org/english/bodies/hrcouncil/</a>  To learn more about the complaint mechanism available under the Council's 1503 Procedure, visit: <a href="http://www2.ohchr.org/english/bodies/chr/complaints.htm">http://www2.ohchr.org/english/bodies/chr/complaints.htm</a> To learn more the Special Procedures of the Council, visit: <a href="http://www2.ohchr.org/english/bodies/chr/special/index.htm">http://www2.ohchr.org/english/bodies/chr/special/index.htm</a>
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: <a href="http://www.ohchr.org/EN/Pages/WelcomePage.aspx">http://www.ohchr.org/EN/Pages/WelcomePage.aspx</a>
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 <a href="mailto:ohchr.bangkok@un.org">ohchr.bangkok@un.org</a> Homayoun Alizadeh: <a href="mailto:alizadeh@un.org">alizadeh@un.org</a>	To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional Office, visit <a href="http://www.un.or.th/ohchr/index.html">http://www.un.or.th/ohchr/index.html</a> .
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:	For documents on the Special Rapporteur, visit: <a href="http://www.unhcr.ch/html/menue2/7/a/mmya.htm">http://www.unhcr.ch/html/menue2/7/a/mmya.htm</a>

\*\*\*\* 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.

	<a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	
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: <a href="http://www.un.org/News/ossg/srsg/table.htm">http://www.un.org/News/ossg/srsg/table.htm</a>
UN Special Representative for Children and Armed Conflict, Radhika Coomaraswamy	Office of the Special Representative of the Secretary-General for Children and Armed Conflict United Nations S-3161 New York, NY 10017 Tel: +1 212 963 3718 Fax: +1 212 963 0879	For more information on the Special Representative, visit: <a href="http://www.un.org/children/conflict/english/home6.html">http://www.un.org/children/conflict/english/home6.html</a>
UN Committee on the Rights of the Child	Committee on the Rights of the Child c/o 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 22	For more information on the Committee, visit: <a href="http://www.ohchr.org/english/bodies/crc/">http://www.ohchr.org/english/bodies/crc/</a>

### 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 concerning child soldiers, 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.”

## ENDNOTES

<sup>1</sup> The main international agreements prohibiting the use of child soldiers includes:

- *The Convention on the Rights of the Child* (Article 38). Burma is a party to this treaty with reservations.
- *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (Articles 1-4)
- *Geneva Conventions, Additional Protocol I* (Article 77(2)) and *Additional Protocol II* (Article 4(c))
- *International Labor Organization Worst Forms of Child Labor Convention 182* (Article 3(a))

Regional agreements like *The African Charter on the Rights and Welfare of the Child* also include provisions to protect child soldiers. The Organization of American States, the European Union, the Council of Europe and the Economic Community of West African States have signed resolutions on children and armed conflict expressing concern about the recruitment and treatment of child soldiers. The Nordic Foreign Ministers of Denmark, Finland, Iceland, Norway, and Sweden also prohibited the use of child soldiers through a declaration. Similar agreements have not yet been signed by ASEAN nations.

For copies of these documents, see <http://www.ohchr.org/english/law/> (last visited 28 October 2006).

The UN Security Council has also passed a series of resolutions to prevent the perpetuation of child soldiering and use of children in hostilities. See Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005). Although these resolutions are not legally binding, they provide a framework to promote protection of children in armed conflict. The Secretary General has also highlighted and repeatedly criticized the continued use of child soldiers in several reports. For copies of these documents, visit: <http://www.securitycouncilreport.org/> (last visited 28 October 2006)

Non-binding international instruments aimed at protecting children in situations of armed conflict include the *UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, the *Cape Town Principle and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa*, and the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. To obtain a copy of the *Declaration*, visit: <http://www.ohchr.org/english/law/> (last visited 28 October 2006). For a copy of the *Cape Town Principles*, visit: [http://www.unicef.org/emerg/index\\_childsoldiers.html](http://www.unicef.org/emerg/index_childsoldiers.html) (last visited 28 October 2006). For the *Paris Principles*, please visit <http://www.unicef.org/protection/files/ParisPrinciples310107English.pdf> (last visited 17 September 2008).

<sup>2</sup> The age determinant in the definition of a “child” differs between international legal instruments. Although the age set by the *Additional Protocols to the Geneva Convention*, the *Rome Statute of the International Criminal Court*, and *Article 28 of the Convention on the Rights of the Child* is 15, this manual applies a maximum age of 18 as the distinguishing line between child and adult. The higher age limit of 18 is justified on a variety of levels. To begin with, the definition of a child as any individual under the age of 18 is supported by the following instruments: *the International Labor Organization Worst Forms of Child Labor Convention 182*, *the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, and *the African Charter on the Rights and Welfare of the Child*. Furthermore, although the specific provision pertaining to the prohibition of child soldiers in the *Convention on the Rights of the Child* uses the age of 15, the article defining child for the overall purposes of the Convention defines a child as “any individual over the age of eighteen.” See Article 1 of the *Convention on the Rights of the Child*. Furthermore, the Cape Town Principles, which established guidelines for dealing with the issue of child soldiers based on the culmination of work by UNICEF and major international non-governmental organizations, set the age of a child soldier at 18. In addition, most states have set 18 as the minimum age for compulsory service in the armed forces, indicating a widespread acceptance of 18 as the age of majority. For more information, see Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers*, Swedish Save the Children, 1996, p. 196-7.

<sup>3</sup> *Interview with an SPDC Child Soldier*, Karen Human Rights Group, 26 April 2006.

<sup>4</sup> *My Gun was as Tall as Me: Child Soldiers in Burma*, Human Rights Watch, October 2002; *Abuse Under Orders: The SPDC and DKBA Armies Through the Eyes of Their Soldiers*, Karen Human Rights Group, 27 March 2001.

<sup>5</sup> *My Gun was as Tall as me: Child Soldiers in Burma*, Human Rights Watch, October 2002.

<sup>6</sup> The groups listed are: SPDC, KNU-KNLA Peace Council (a breakaway group from the KNU/KNLA), Kachin Independence Army, United Wa State Army, Shan State Army – South, Myanmar National Democratic Alliance Army (Kokang), Karenni National People's Liberation Front, and the Democratic Karen Buddhist Army. The report also refers to the use of child soldiers by the Karen National Liberation Army (KNLA) and Karenni Army (KA) and says that the UN had not received reports of recent recruitments by these two armies. In 2007, both the KNLA and the KA signed deeds of commitment to halt and prevent the recruitment and use of child soldiers. See *Report of the Secretary-General on Children and Armed conflict to the UN Security Council, 21 December 2007*, UN Doc. A/62/609-S/2007/757.

<sup>7</sup> The Coalition to Stop the Use of Child Soldiers. *Child Soldiers Global Report 2008: Myanmar*. [Page 2](http://www.child-soldiers.org/document/get?id=1416). <<http://www.child-soldiers.org/document/get?id=1416>>. Last accessed July 21, 2008.

<sup>8</sup> Stefania Capodaglio, *Stop Using Child Soldiers*, Nuclear Age Peace Foundation, December 1999; *Factsheet: Child Soldiers on the Frontline*, AlertNet, 31 October 2005.

<sup>9</sup> *Child Soldiers Global Report 2008: Myanmar*, The Coalition to Stop the Use of Child Soldiers, <http://www.child-soldiers.org/document/get?id=1416> (last visited 21 July 2008).

<sup>10</sup> *My Gun was as Tall as me: Child Soldiers in Burma*, Human Rights Watch, October 2002

<sup>11</sup> *Position of the International Committee of the Red Cross Geneva*, International Committee of the Red Cross, 27 October 1997; *No Childhood at All*, Images Asia, 1997; Mark Lorey, *Child Soldiers: Care and Protection of Children in Emergencies- A Field Guide*, Save the Children, 2001.

<sup>12</sup> *My Gun was as Tall as me: Child Soldiers in Burma*, Human Rights Watch, October 2002.

<sup>13</sup> *Despite Promises: Child Soldiers in Burma's SPDC Armed Forces*, Human Rights Education Institute of Burma, September 2006.

<sup>14</sup> *No Childhood at All*, Images Asia, 1997.

<sup>15</sup> *Interview with an SPDC Child Soldier*, Karen Human Rights Group, 26 April 2006.

<sup>16</sup> Mark Lorey, *Child Soldiers: Care and Protection of Children in Emergencies- A Field Guide*, Save the Children, 2001.

<sup>17</sup> *My Gun was as Tall as me: Child Soldiers in Burma*, Human Rights Watch, October 2002.

<sup>18</sup> *Position of the International Committee of the Red Cross Geneva*, International Committee of the Red Cross, 27 October 1997; Stefania Capodaglio, *Stop Using Child Soldiers*, Nuclear Age Peace Foundation, December 1999.

<sup>19</sup> *Report of the Secretary-General on Children and Armed conflict to the UN Security Council, 21 December 2007*, UN Doc. A/62/609-S/2007/757.

<sup>20</sup> *Sold to be Soldiers*, Human Rights Watch, October 2007.

<sup>21</sup> *Warrant of Arrest*, Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubango Dyilo, International Criminal court, 10 February 2006.

<sup>22</sup> 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](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

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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/](http://www.un.org/icty/) (last visited 27 July 2008) and for the ICTR, [www.un.org/icttr/](http://www.un.org/icttr/) (last visited 27 July 2008).

<sup>23</sup> 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).

<sup>24</sup> 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](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>25</sup> See, *Prosecutor v Jelisic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

<sup>26</sup> 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](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>27</sup> *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).

<sup>28</sup> Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

<sup>29</sup> See, *Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>30</sup> *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).

<sup>31</sup> 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

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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).

<sup>32</sup> *Rome Statute of the International Criminal Court*, Article 7(1)(e), 17 July 1998.

<sup>33</sup> 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.

<sup>34</sup> *Ibid.*

<sup>35</sup> 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](http://hrw.org/reports/2005/ethiopia0305/10.htm#_ftn201) (last visited 28 July 2008).

<sup>36</sup> *Ibid.*

<sup>37</sup> 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).

<sup>38</sup> *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).

<sup>39</sup> See *Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

<sup>43</sup> 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).

<sup>44</sup> Office of the Special Representative for Children and Armed Conflict, <http://www.un.org/children/conflict/english/home6.html> (last visited 28 October 2006).

<sup>45</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict. “Working with Partners,” <http://www.un.org/children/conflict/english/workingwithpartners.html> (last visited 16 November 2008).

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<sup>46</sup> See, *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/torture/rapporteur/> (last visited 12 March 2007).

<sup>47</sup> *Fact Sheet No. 10: The Rights of the Child*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 28 October 2006); Office of the High Commissioner for Human Rights, Committee on the Rights of the Child, <http://www.ohchr.org/english/bodies/crc/index.htm> (last visited 28 October 2006).

<sup>48</sup> Burma is a signatory to CRC and, therefore, is responsible for submitting periodic reports. Burma, however, is not a signatory to either of the two Optional Protocols. As of November 2007, Burma has submitted an initial report and the second report. To view these reports, visit, *Report Status by Country*, UN Treaty Database, <http://www.unhcr.ch/TBS/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=117&Count=15&Expand=119.2#119.2> (last visited 24 November 2007).

<sup>49</sup> Human rights organizations may also send information to the NGO Group for the Convention on the Rights of the Child, which helps transmit information to and from the Committee. For more information, visit the NGO Group for the Convention on the Rights of the Child at: <http://www.crin.org/NGOGroupforCRC>.

<sup>50</sup> *Fact Sheet No. 10: The Rights of the Child*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/sheets.htm> (last visited 28 October 2006).

<sup>51</sup> See, *Working Group on Children and Armed Conflict*, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, <http://www.un.org/children/conflict/english/workinggrouponca103.html> (last visited 24 November 2007).

<sup>52</sup> *Ibid.*