

**HUMAN RIGHTS DOCUMENTATION  
MANUAL SERIES:**

**DOCUMENTING OBSTRUCTION OF FREEDOM OF  
EXPRESSION AND ASSEMBLY 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 obstruction of freedom of expression and assembly. 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 obstruction of freedom of expression and assembly and provides guidelines on possible ways to document these violations. It then provides information about the historical and political context of obstruction of freedom of expression and assembly in Burma. Chapter 1 also provides a sample good and bad interview based on a hypothetical fact pattern involving obstruction of freedom of expression and assembly.

**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 freedom of expression and assembly.

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

### *About ND-Burma*

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

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

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

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

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

## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS .....</b>	<b>I</b>
<b>PREFACE.....</b>	<b>II</b>
<b>CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION.....</b>	<b>- 1 -</b>
I.    VIOLATIONS OF HUMAN RIGHTS: OBSTRUCTION OF FREEDOM OF EXPRESSION AND ASSEMBLY .....	- 1 -
II.   DEFINING OBSTRUCTION OF FREEDOM OF EXPRESSION AND ASSEMBLY .....	- 1 -
A. <i>What are the elements of obstruction of freedom of expression and assembly under international law?</i> .....	- 1 -
B. <i>What qualifies as “interference”?</i> .....	- 1 -
C. <i>What rights are included in the rights of freedom of expression?</i> .....	- 1 -
D. <i>What rights are included in the rights of freedom of assembly?</i> .....	- 2 -
E. <i>When is interference with the rights to freedom of expression and assembly legal?</i> .....	- 2 -
F. <i>What is state action?</i> .....	- 2 -
III.  ASKING THE CRITICAL QUESTIONS .....	- 3 -
IV.  PRACTICING DOCUMENTATION .....	- 4 -
A. <i>Understanding the Context</i> .....	- 4 -
B. <i>Fact Pattern</i> .....	- 6 -
C. <i>Sample Interviews</i> .....	- 7 -
V.   CONCLUSION.....	- 12 -
<b>CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE.....</b>	<b>- 13 -</b>
I.    ORGANIZING THE EVIDENCE .....	- 13 -
II.   STRENGTHENING THE EVIDENCE.....	- 13 -
III.  SERIOUS CRIMES UNDER INTERNATIONAL LAW: GENOCIDE AND CRIMES AGAINST HUMANITY .....	- 14 -
A. <i>Understanding the Magnitude of the Crimes</i> .....	- 14 -
B. <i>Defining Genocide</i> .....	- 14 -
C. <i>Defining Crimes against Humanity</i> .....	- 16 -
IV.  CONCLUSION.....	- 18 -
<b>CHAPTER 3: ADVOCACY – USING THE EVIDENCE .....</b>	<b>- 19 -</b>
I.    PRESENTING THE EVIDENCE.....	- 19 -
II.   ROLE OF THE UNITED NATIONS .....	- 19 -
A. <i>UN Special Rapporteur on the Situation of Human Rights in Myanmar</i> .....	- 20 -
B. <i>UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression</i> .....	- 21 -
C. <i>ILO Committee of Experts on the Application of Conventions and Recommendations</i> .....	- 22 -
D. <i>ILO Committee on Freedom of Association</i> .....	- 22 -
E. <i>UN Committee on Economic, Social, and Cultural Rights</i> .....	- 23 -
F. <i>Relevant Bodies at the United Nations</i> .....	- 23 -
III.  CONCLUSION.....	- 25 -
<b>APPENDIX 1: MODEL QUESTIONNAIRE FOR OBSTRUCTION OF FREEDOM OF OPINION AND EXPRESSION.....</b>	<b>- 26 -</b>
<b>ENDNOTES.....</b>	<b>- 29 -</b>

## CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

### I. Violations of Human Rights: Obstruction of Freedom of Expression and Assembly

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 freedom of expression and assembly.

### II. Defining Obstruction of Freedom of Expression and Assembly

#### A. What are the elements of obstruction of freedom of expression and assembly under international law?

In order to document obstruction of freedom of expression and assembly as a human rights violation, evidence of *three elements* must be present:<sup>1</sup>

1. Interference with freedom of expression or assembly
2. Illegality
3. State action

#### B. What qualifies as “interference”?

Any action by a public body that would suppress expression or assembly by fear of penalty qualifies as interference for the purpose of establishing a violation under international law. The degree of interference is irrelevant, whether it poses a slight nuisance or it is an absolute restriction on the exercise of the rights of expression/assembly. The form of interference is also irrelevant and includes restrictive laws, decrees, orders, court decisions, and physical acts.<sup>2</sup>

#### C. What rights are included in the rights of freedom of expression?

Freedom of expression is defined by international human rights law as:

- The right to seek, receive, or impart
- Information or ideas of any kind
- Regardless of frontiers
- Through any media

The right to free expression includes a variety of rights. Freedom of expression covers not only the right to contribute to communication but also to receive and have access to information and ideas. For example, states must provide access to and respond to requests for information and documents.<sup>3</sup> There are also broad protections pertaining to the content and mediums of expression.\* Expression also cannot be confined by international borders, meaning states must allow communication to and from other countries.<sup>4</sup>

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\* The rights of expression include subjective ideas and opinions; news and information; political, cultural, commercial, and artistic expression; as well as controversial, false, and shocking material. Expression is also not limited to any type of medium and includes all forms of written, audio, or visual expression.

#### D. What rights are included in the rights of freedom of assembly?

Freedom of assembly is defined by international human rights law as the right to gather with others for a particular purpose.<sup>5</sup> The rights of free assembly include a variety of rights. For example, freedom of assembly protects the right not only to gather but also to form a group or association and accept or reject membership in a group or association. The right to free assembly also includes related rights, in particular rights associated with the trade unions and collective bargaining.<sup>6</sup>

#### E. When is interference with the rights to freedom of expression and assembly legal?

The rights of freedom of expression and assembly are not absolute. States may legally impose restrictions on expression and assembly. However, restrictions are justified only in limited circumstances. Under international law, a restriction on expression or assembly is valid only if:<sup>7</sup>

1. It is imposed by law.
2. It serves one of the following legitimate purposes:<sup>†</sup>
  - For national security or public safety
  - To prevent disorder or crime
  - For the protection of health or morals
  - For the protection of the rights and freedoms of others
3. It is necessary to serve the legitimate purpose.<sup>‡</sup>

Any restriction on the rights of expression or assembly must satisfy each part of the above three-part test to be valid. Restrictions on expression/assembly that fail any part of the test is not legal and likely a violation under international law.

States may also legally restrict the rights of expression if it amounts to war propaganda or hate speech.<sup>8</sup>

#### F. What is state action?

State action is necessary for obstruction of freedom of expression and assembly 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.”<sup>9</sup> State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a obstruction of freedom of expression and assembly was perpetrated by a public official, the state action requirement

##### 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.

<sup>†</sup> The list of legitimate purposes is exclusive, meaning that these are the only purposes that may justify a restriction on the rights of expression.

<sup>‡</sup> For a restriction to be “necessary,” it must be narrowly tailored to accomplish the legitimate purpose. In other words, if an alternative restriction could accomplish the same purpose in a less intrusive manner, the proposed restriction would not be considered “necessary.”

would be satisfied.<sup>§</sup> 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.\*\*

### 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 interference*

- Whose freedom was interfered with?
- What happened?
- When did the interference occur?
- Where did the interference occur?
- How was freedom interfered with?
- How do you know what happened?

#### 2. *Establishing expression*

- Who was the communicator? Who was the audience?
- What was the content of the communication?
- What was the medium of communication?
- When was the information communicated?
- Where did the act of expression take place?
- How do you know this information?

#### 3. *Establishing assembly*

- Who organized the gathering? Who participated?
- What was the purpose of the gathering?
- When did the gathering take place?
- Where was the gathering?
- How many participated in the gathering?
- How do you know this information?

#### 4. *Establishing that the interference was illegal*

- Under what authority was the interference enforced?
- Was the interference imposed by law? What law?
- What purpose did the restriction serve?
- Was the restriction necessary?

#### 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.

<sup>§</sup> 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.

- Could the goal of the restriction be achieved some other way? How?
- How do you know this information?

#### 5. *Establishing state action*

- Who carried out the interference? Who ordered it?  
Who knew about it? Who assisted in it?
- Was the incident reported? Why or why not?
- What did the state do to prevent or respond to the incident?
- How do you know this information?

## 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 obstruction of freedom of expression and assembly 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 obstruction of freedom of expression and assembly in Burma.



#### **Historical and Political Context of Obstruction of Freedom of Expression and Assembly 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. Along with other basic human rights, freedom of expression and assembly are highly circumscribed in Burma, particularly following the 1988 nationwide uprising.<sup>10</sup> The SPDC stifles all forms of expression, activities, and gatherings that could cause a potential threat to its continued rule.<sup>11</sup> Such restrictions on basic freedoms led Freedom House to call Burma one of the most repressed societies in the world.<sup>12</sup> In 2006, the Committee to Protect Journalists ranked Burma the world’s second most censored country.<sup>13</sup> Reporters Without Borders’ 2007 Worldwide Press Freedom Index ranked Burma 164 out of 169 countries.<sup>14</sup>

The SPDC systematically controls the press and media. Print and broadcast media is largely nationalized and used by the SPDC as propaganda mouthpieces. Independently authored publications are censored by the Press Scrutiny and Registration Division before being released to the public. Similar boards censor art, film, music, and performance art.<sup>15</sup> The SPDC filters, censors, and restricts information transmitted and accessed through internet and satellite service providers.<sup>16</sup> Information is further suppressed by limits on the number of cell phones allowed on the market.<sup>17</sup>

Freedom of assembly is also heavily restricted by the SPDC. Organizations and activities posing any potential threat to continued military rule are targeted, intimidated, and restricted by the regime. Political parties, student groups, trade unions, religious organizations, and ceasefire and ethnic opposition groups are particularly at risk. As a result of these restrictions few political parties are legally registered in Burma and even fewer operate independently.<sup>18</sup> Those who continue to operate are frequently harassed and intimidated by the SPDC, and anyone suspected of having affiliation or involvement with an unregistered group is subject to arrest and imprisonment.<sup>19</sup> Moreover, civil servants, students, and ethnic nationalities are forced to join the SPDC's puppet organization, the Union Solidarity and Development Association (USDA) and attend its functions and rallies under penalty of fines and potential arrest.<sup>20</sup> Likewise, the Swan Ah Shin, a state-supported militia group, forcibly recruits ex-criminals, the poor, and the unemployed to carry out violent attacks against political opposition groups.

Numerous, vaguely-worded domestic laws provide SPDC with unparalleled discretion to limit freedom of expression and assembly in Burma. Below is a brief survey of some of these laws.<sup>21</sup>

**Official Secrets Act (1923):** Prohibits possession or receipt of any document or information that threatens national security or foreign relations.

**Emergency Provisions Act (1950):** Prohibits any act deemed harmful to state security or a threat to the military.

**Unlawful Associations Act (1957):** Provides the head of state power to arbitrarily declare any type of organization illegal.<sup>22</sup>

**The Printers and Publishers Registration Law (1962):** Requires all publications to be censored for material deemed harmful to government ideology, national security, and public order before distribution.

**Motion Picture Law (1962) and Television and Video Law (1996):** Movie scripts and films must be censored. All television, video recorders, and satellite systems must be registered; all video tapes must be censored; and licenses are required for the copying and distribution of videos.

**State Protection Law (1975):** Allows the restriction of fundamental rights to protect national security and public order. Also allows the imprisonment of individuals up to five years without trial or appeal.

**Order 2/88:** Prohibits “gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime.”<sup>23</sup>

**Order 6/88:** Requires organizations to register and receive official permission to function. Members of organizations whose application is rejected are subject to arrest and imprisonment.<sup>24</sup>

**Computer Development Science Law (1996):** Requires licensure of all computer equipment, including fax machines and modems.

**Internet Law (2000):** Prohibits internet postings that may be detrimental to the interests, policies, or security affairs of the state.<sup>25</sup>

Violation of these laws can result in heavily fines, lengthy prison sentences, and even death. Misapplication and manipulation of these laws as well as the general lack of rule of law in Burma makes it virtually impossible to challenge charges brought against those accused under these laws.

## B. Fact Pattern

Below is a fact pattern of a typical obstruction of freedom of expression and assembly 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 freedom of expression and assembly in accordance with international human rights standards, there must be:

1. Interference with freedom of expression or assembly
2. Illegality
3. State action

### Fact Pattern: Freedom of Expression and Assembly<sup>††</sup>



Seven months ago, SPDC soldiers beat Aung Khaing’s brother severely while he was working as a forced laborer on a construction project for the military in western Arakan State. The beatings left him partially paralyzed and unable to work his family’s fields. Due to his brother’s disability, Aung Khaing was forced to drop out of school in order to replace his brother in the fields. Since working in the fields, Aung Khaing has been called more than ten times by the SPDC to work as a forced laborer.

Two months ago, while visiting with friends in a teashop, Aung Khaing began to discuss his family’s situation, becoming increasingly agitated about the abuses committed against his family by the military. At one point, he exclaimed in a raised voice, “This government is nothing but a bunch of corrupt, power-hungry dictators. We need to do something before they ruin us all.” His friends warned him to keep his voice down but he continued, saying, “We are not free. We are just their prisoners.”

<sup>††</sup> 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 particular event.

Just as he said this, two soldiers walked into the teashop. Hearing his remarks, they walked over to Aung Khaing's table. One of them slapped him across the face and said, "You foolish man. Your mouth is a tool of the enemy. If you cannot control your mouth, we can show you what it is really like to be a prisoner." The other soldier kicked Aung Khaing out of his chair and began to beat him, breaking his arm in the process.

After the incident in the teashop, Aung Khaing became even more disgruntled about the situation of his country, and wanted to do something about it. He asked eight of his friends to meet him at a noodle shop in town. All of his friends had similar stories of abuse and hardship. They decided to organize a protest against the military, demanding less forced labor and more freedoms.

While they were deep in discussion, two men in civilian clothes approached their table. They told the group that gatherings of more than five are not permitted by law and ordered them to disperse. Realizing the men were members of either the military intelligence (MI) or the Special Branch (SB), Aung Khaing and his friends quickly rose to leave. One of the agents put his hand on Aung Khaing's shoulder and told him to remain seated. Once his friends had left, the intelligence agent standing near Aung Khaing slapped him and said, "We warned you to change your ways and now we find you organizing illegal meetings. You will be punished for this."

Fearing arrest and possibly torture in detention, as the agent tried to bind his hands together, Aung Khaing managed to push him away. The man tripped over a chair and fell to the ground. The other agent rushed to the table and tried to grab Aung Khaing without success. Aung Khaing ran the entire way to his house. When he reached his house, he knew it would only be a matter of time before the military came after him. He quickly packed some belongings and fled to Rangoon and eventually to Thailand where he now works as a farm hand in western 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**

The SPDC violated your freedom of expression and assembly, right?

*Aung Khaing:* Yes. It's not possible to say anything or meet anywhere in Burma without getting into trouble.

Did they interfere with your ability to communicate with others?

*Aung Khaing:* Yes.

Is there a law that limits your freedom of expression?

*Aung Khaing:* I don't know. I just know that we are not allowed to speak freely in Burma.

And there is no legitimate justification to explain why the SPDC limits people’s expression in Burma?

*Aung Khaing:* Not that I know of. They just told me that my mouth was a tool of the enemy. I’m not sure what this means.

Was it someone from the government who interfered with your rights of expression?

*Aung Khaing:* Two soldiers of the Burma Army beat me and threatened me with arrest for speaking out against the government.

You also couldn’t meet in a group, right?

*Aung Khaing:* Right. They told me it was illegal.

Is there a law that limits your freedom of assembly?

*Aung Khaing:* Yes. We are not allowed to gather in groups of more than five persons. This law isn’t always enforced.

Does the law serve a legitimate purpose?

*Aung Khaing:* I don’t know.

Was it a government official who interfered with your rights of assembly?

*Aung Khaing:* They were two military intelligence agents. At least I think that is who they were. They were in civilian clothing.

Thank you for your time.

### Why is this interview **bad**?



This is a bad interview for several reasons. **First**, it is too short, and the questions do not accomplish the main goal of the interview, which is to document the elements necessary to show a violation. There are not enough questions to get a detailed account of what happened. Follow-up questions are essential to develop a full picture of the events.

**Second**, most of these questions are “leading” questions. This means that they suggest to Aung Khaing 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 Khaing 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 violation the interviewer initially suspected, and does not ask questions that would provide evidence of other violations. Violations of freedom of expression and assembly, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as forced labor.

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

## 2. *Sample Interview: Good*

Aung Khaing, can you tell me what happened in Burma that made you decide to leave?

*Aung Khaing:* I fell into trouble with the authorities after speaking my mind about the government. I was beaten badly and threatened with imprisonment if I said anything else. Then two MI agents overheard me planning a protest with several of my friends and they tried to arrest me but I managed to escape and I came here to Thailand.

What did you say the first time that got you in trouble with the authorities?

*Aung Khaing:* Only the truth. I said we were all prisoners in Burma and that we had to do something before we were all ruined. I was angry and tired of all the abuses. We are always being called for forced labor, where the soldiers beat us and treat us like dogs. My brother is now partially paralyzed because of these abuses. I couldn't hold my tongue.

Where did you say these things?

*Aung Khaing:* I was discussing these problems with some friends in a teashop. They tried to warn me to keep my voice low but I was so angry. I must have been speaking louder than I realized.

How did you get in trouble?

*Aung Khaing:* I didn't notice when two soldiers came into the teashop. They must have overheard me. They came to our table and slapped me. They told me that my mouth was a tool of the enemy and they threatened to imprison me.

What happened after that?

*Aung Khaing:* They beat me very badly. I had bruises all over my body and they broke my arm.

Did you go to the doctor?

*Aung Khaing:* Yes. I can get you the medical records showing my injuries, if you are interested.

Yes. That would be great. Do you know if there is a law prohibiting the type of expression you were engaged in?

*Aung Khaing:* I'm not sure if there is a law. I just know that we are not allowed to speak freely, especially speech against the government.

What reason did the soldier's provide for interrupting your discussion?

*Aung Khaing:* They didn't provide any reason. They just said my mouth was a tool of the enemy. I don't think they have a reason. They are just scared when anyone speaks the truth. They don't want to lose power.

Who were the soldiers?

*Aung Khaing:* I don't know their names. I think they were foot soldiers with the light infantry battalion #552.

You said you also had problems after meeting with friends to plan a protest. Could you tell me more about what happened?

*Aung Khaing:* Yes. After I was beaten by the soldiers, I was even more enraged by the state of our country. So I asked my friends to meet me at a noodle shop and we discussed the situation. Then we started to discuss about organizing a protest. That's when the intelligence agents came in.

How many of your friends were involved in the meeting?

*Aung Khaing:* There were nine of us altogether- me and my eight friends.

What happened when the intelligence agents arrived?

*Aung Khaing:* They told us that our meeting was illegal and told everyone to leave except for me. My friends left, and they told me that I had already been warned. They tried to arrest me but I managed to escape.

Do you know why they said that your meeting was illegal?

*Aung Khaing:* It is because there is a law prohibiting gatherings of more than five persons in Burma. However, it is not always enforced.

Do you know the purpose of that law?

*Aung Khaing:* I don't know, but I think it is because they are scared if we meet and talk with each other about the situation of the country, we will become organized and rise up against them. They just want to keep us repressed so they can continue to treat us like animals.

How do you know they were intelligence agents?

*Aung Khaing:* I'm not sure. They were wearing civilian clothes. However, they were very well dressed and well groomed. All the people doing intelligence work for the SPDC appear that way. They could have been with Military Intelligence or with the Special Branch. Also, they knew about my past problems.

Is there anyone else I can speak with you might no about your situation?

*Aung Khaing:* Yes. One of my friends who saw everything that happened is living on the outskirts of town now. He was afraid the intelligence agents would come after him too so he fled one week after I did. He was at both meetings in the teashop and the noodle shop. I can give you his contact information.

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

*Aung Khaing:* I just hope that one day I can return and live in peace in my country. It isn't that I hate my country. I love my country. But it is impossible to live there, right now. There are no freedoms. There is no peace for the people. We are living at the mercy of the military rulers. If we get democracy, I think things will improve. Then I will return.

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

*Aung Khaing:* I am alright for the moment. But thank you for the offer.

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

*Aung Khaing:* I work in the field every day. But in the evenings, you can find me here.

### Why is this interview good?



This interview is good because Aung Khaing 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 Khaing has provided the following information about the violations of the rights of expression and assembly:

**First,** Aung Khaing provided information to establish an interference with the rights of expression and assembly. He indicated that Burma Army soldiers warned him and beat him after they overheard him speaking out against the government. He also said that intelligence agents tried to arrest him after he was caught meeting with several friends at a noodle shop. His medical records showing his broken arm will help to verify his account.

**Second,** Aung Khaing provided details to establish that he was exercising his rights of expression and assembly. He indicated he had problems after he was overheard in a teashop discussion criticizing the government. He also said the intelligence agents interrupted a meeting with him and eight of his friends. The intelligence agents said the meeting was illegal and tried to arrest Aung Khaing. His testimony suggests that he was exercising his rights of expression and assembly. Interviewing Aung Khaing's friend would help to verify his account.

**Third,** Aung Khaing provided details to establish that the interference was illegal. While he was unsure whether a law existed prohibiting the type of speech he was engaged in at the tea shop, it is unlikely that such a prohibition would serve a legitimate purpose. Similarly, although Aung Khaing indicated that the law does prohibit gatherings of more than five persons, it is unlikely that this restriction of assembly would qualify as legitimate and necessary. Therefore, it appears that the interference was illegal.

**Lastly,** Aung Khaing indicated that the violation involved state actors. He indicated that two soldiers interfered with his right to free expression. He also indicated that two intelligence agents interfered with his right to free assembly. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the violation of obstruction of freedom of expression and assembly, such as forced labor. Aung Khaing indicated that both he and his brother were repeatedly called to perform work for the military. Interviewing Aung Khaing's friend would help to verify his account. Further questions may

be necessary to establish other violations. The interview ends well because Aung Khaing has agreed to answer further questions and the interviewer knows how to contact her.

## **V. Conclusion**

After reading this Chapter, you should be able to:

- recognize the elements of obstruction of freedom of expression and assembly under international law,
- develop critical questions in order to collect information about obstruction of freedom of expression and assembly, 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 obstruction of freedom of expression and assembly 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 obstruction of freedom of expression and assembly:

- What evidence exists to show interference with freedom of expression or assembly?
- What evidence exists to show that the interference was illegal?
- 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.

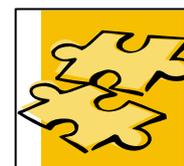
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

### 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 obstruction of freedom of expression or assembly 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 obstruction of freedom of expression or assembly 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 obstruction of freedom of expression or assembly.

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 obstruction of freedom of expression or assembly against political opponents or statements from a particular commander that “soon anyone suspected of supporting the Karen resistance movement will no longer exist” may indicate a discriminatory intent, or the intent to target a specific group, and the possible existence of acts of genocide or crimes against humanity and require further research.

#### A. Understanding the Magnitude of the Crimes

Genocide, crimes against humanity, and war crimes are among the most serious crimes in international law.<sup>26</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>27</sup> This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions.

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

#### Analysis Tip: Seeking Advice



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

#### B. Defining Genocide

##### 1. What are the elements of genocide?

Genocide involves grave human rights violations designed to destroy a particular group of people, in whole or in part. To establish genocide under international law from evidence of human rights violations, the following evidence is needed:<sup>28</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.

**2. Can obstruction of freedom of expression and assembly qualify as an act of genocide?**

It may be difficult to show that obstruction of freedom of expression and assembly amounts to genocide. However, in cases where genocide exists, violations of freedom of expression and assembly are also common.

**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>29</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>30</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.

**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?

<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.

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>31</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>32</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>33</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>34</sup> Direct evidence showing intention, such as a document stating that certain members of a religious group suffered a human rights violation on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

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



- **Mental Element:** To prove a crime against humanity you do not need to prove the perpetrator intended to bring about the destruction of a particular group. Instead, you need to show they "knew" that 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 can also include other groups, such as social or political groups.
- **Types of Violations:** Acts that constitute genocide and crimes against humanity overlap but also have some differences.

## **C. Defining Crimes against Humanity**

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

A crime against humanity had 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>35</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 obstruction of freedom of expression and assembly qualify as a crime against humanity?***

It may be difficult to show that obstruction of freedom of expression and assembly amounts to a crime against humanity. However, it may qualify as a crime against humanity if it amounts to “persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds” when the other elements are met.<sup>\*\*\*</sup>

## ***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>36</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>37</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 committed a violation against civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.<sup>38</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>39</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>40</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>41</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

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<sup>\*\*\*</sup> According to Article 7(2)(g) of the Rome Statute of the International Criminal Court, persecution includes the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identification of the group or collectivity.”

humanity.<sup>42</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 obstruction of freedom of expression and assembly.

## CHAPTER 3: ADVOCACY – USING THE EVIDENCE

### I. Presenting the Evidence

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

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

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

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

The United Nations (UN) is a particularly significant audience to address when dealing with human rights violations. By raising issues to the UN, human rights organizations are able to make violations more visible to the international community, which in turn helps to increase pressure on the targeted government. Because there are several UN bodies able to respond to violations of freedom of expression and assembly, 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>43</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 obstruction of freedom of expression and assembly 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>44</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>45</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>46</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 obstruction of freedom of expression and assembly.

#### **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
- **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 Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression<sup>§§§</sup>**

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

The Special Rapporteur is responsible for investigating and responding to reports of obstruction of freedom of expression. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.<sup>47</sup>

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

The Special Rapporteur receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to the relevant government with requests for further information.<sup>48</sup> The Office of the Special Rapporteur on the Right to Freedom of Expression provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www.unhchr.ch/html/menu2/7/b/expression/complaints.htm>.

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

The Special Rapporteur will consider evidence of the violations and problems related to:

- Detention of, discrimination against, or threats or use of violence and harassment directed at persons seeking to exercise or promote the right to freedom of expression
- Activities of political opposition parties and trade union activists
- Actions against the media or interference with their independent operation
- Actions against publishers and performers in other media
- Activities of human rights defenders
- Women's human rights issues related to obstruction of freedom of expression

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<sup>§§§</sup> As of August 2008, Frank William La Rue is the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

- Obstacles to access information at the local, regional, and national levels on projects and initiatives proposed by states to advance the right to development and other subjects and obstacles in the decision-making process

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

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.<sup>49</sup>

### **C. ILO Committee of Experts on the Application of Conventions and Recommendations**

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

The Committee of Experts is composed of 20 independent experts in the field of freedom of association issues. The Committee meets each year.

#### ***2. What is the Committee's role?***

The Committee monitors the implementation of the ILO's freedom of association Conventions No. 87 and No. 98 to ensure states are in compliance with international standards. The Committee receives and reviews comments from workers' and employers' organizations as well as states' reports.<sup>50</sup> The Committee submits annual reports to the ILO's Conference Committee on the Application of Standards, which is composed of government delegates and constituents from workers' organizations and employers' organizations.<sup>51</sup>

#### ***3. Who can submit information to the Committee?***

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in ILO Conventions No. 87 and 98. Only states that have signed onto the Conventions are obligated to submit reports to the Committee.<sup>52</sup> The Committee is also receptive to information from workers' and employers' organizations. To submit information to the Committee, organizations may send communications to the International Labour Standards and Human Rights Department of the ILO.<sup>53</sup>

### **D. ILO Committee on Freedom of Association**

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

The Committee on Freedom of Association is composed of ten members drawn from the ILO's Governing Body. The Committee meets three times each year in March, June, and November.

#### ***2. What is the Committee's role?***

The Committee monitors the implementation of the ILO's freedom of association Conventions No. 87 and 98 to ensure states are in compliance with international standards. The Committee receives and makes recommendations on complaints regarding violations of freedom of association. The Committee submits its conclusions and recommendations to the concerned state and the ILO Governing Body.<sup>54</sup>

#### ***3. Who can submit information to the Committee?***

The Committee receives complaints regarding violations of freedom of association from states, employers' organizations, and workers' organizations.<sup>55</sup> The Committee accepts and considers complaints not only relating to states that have signed onto the ILO's freedom of association convention but also those which are not yet signatories.<sup>56</sup> To submit a complaint to the Committee, organizations must submit a written allegation to the Committee.<sup>57</sup>

#### **4. What if urgent action is necessary?**

The Committee may take urgent action in cases “involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, and cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.”<sup>58</sup> Urgent cases are prioritized and recommendations are sent immediately to the ILO Governing Body.<sup>59</sup>

### **E. UN Committee on Economic, Social, and Cultural Rights**

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

The Committee on Economic, Social, and Cultural Rights is composed of 18 independent experts in the field of human rights.<sup>\*\*\*\*</sup> Each member serves a four year term. The Committee meets twice a year in May and November/December with sessions lasting three weeks.<sup>60</sup>

#### **2. What is the Committee's role?**

The Committee monitors the implementation of the International Covenant on Economic, Social and Cultural Rights to ensure states are in compliance with international standards. The Committee receives and reviews states' reports and provides recommendations.<sup>61</sup>

#### **3. Who can submit information to the Committee?**

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in the Covenant on Economic, Social and Cultural Rights. Only states that have signed onto the Covenant are obligated to submit reports to the Committee.<sup>62</sup> The Committee also receives information and accepts oral testimony from human rights organizations during the first day of each session. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee's meeting.<sup>63</sup>

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

Presently, the Committee cannot receive individual complaints. However, a draft Optional Protocol is under consideration by the Committee, which may allow the Committee to receive individual complaints pertaining to violations under the Covenant at some later time.<sup>64</sup>

### **F. Relevant Bodies at the United Nations**

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

#### **Contact Information**



\*\*\*\* Since Date, Name has acted as the Chairman of the Committee.

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: <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 <sup>††††</sup>	To submit complaints to the Council under the 1503 Procedure:  Treaties and Human Rights Council Branch c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–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:  c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 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 Committee on Economic, Social, and Cultural Rights	UN Committee on Economic, Social and Cultural Rights c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 22	To learn more about the UN Committee on Economic, Social and Cultural Rights, visit: <a href="http://www.unhchr.ch/html/menu2/6/cescr.htm">http://www.unhchr.ch/html/menu2/6/cescr.htm</a>
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	UN Office of the High Commissioner for Human Rights Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Tel: +41 22 917 90 00	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	OHCHR Southeast Asia Regional Office UNESCAP UN Secretariat Building, 6th Fl., Room A-601 Rajdamnern Nok Av.	To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional

<sup>††††</sup> 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.

Representative Homayoun Alizadeh	Bangkok 10200, Thailand Tel.: +66 2 288 1235 Fax: +66 2 288 3009 E-mail: <a href="mailto:ohchr.bangkok@un.org">ohchr.bangkok@un.org</a> <a href="mailto:alizadeh@un.org">alizadeh@un.org</a>	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 c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06  For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	For documents on the Special Rapporteur, visit: <a href="http://www.unhchr.ch/html/men_u2/7/a/mmya.htm">http://www.unhchr.ch/html/men_u2/7/a/mmya.htm</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/oss/srsg/table.htm">http://www.un.org/News/oss/srsg/table.htm</a>
UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank William La Rue	UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06  For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	To learn more about the Special Rapporteur, visit: <a href="http://www.unhchr.ch/html/men_u2/7/b/expression/">http://www.unhchr.ch/html/men_u2/7/b/expression/</a>
ILO Committee on Freedom of Association	To submit a complaint to the Committee:  Committee on Freedom of Association The Director-General of the International Labour Organization CH-1211 Geneva 22 Switzerland	To learn more about the ILO Committee on Freedom of Association visit: <a href="http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CFa/lang--en/index.htm">http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CFa/lang--en/index.htm</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 of freedom of expression and assembly, 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 OBSTRUCTION OF FREEDOM OF OPINION AND EXPRESSION<sup>\*\*\*\*</sup>

### MODEL QUESTIONNAIRE FOR THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

#### 1. ALLEGATION REGARDING A PERSON OR PERSONS:

As detailed a description of the alleged violation as possible, including date, location, and circumstances of the event:

Name:

Age:

Gender:

Ethnic background (if relevant):

Profession:

Views, affiliations, past or present participation in political, social, ethnic, or labour group/activity:

Information on other specific activities relating to the alleged violation

#### 2. ALLEGATION REGARDING A MEDIUM OF COMMUNICATION

As detailed a description of the alleged infringement on the right as possible, including date, location, and circumstances of the event:

The nature of the medium affected (e.g. newspaper, independent radio), including circulation and frequency of publication or broadcasting, public performances, etc.:

Political orientation of the medium (if relevant):

#### 3. INFORMATION REGARDING THE ALLEGED PERPETRATORS

Name:

State affiliation (e.g., military, police):

Reasons why they are considered responsible:

For non-state actors, description of how they relate to the state (e.g., cooperation with or support by state security forces):

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

If applicable, state encouragement or tolerance of activities of non-state actors, whether groups or individuals, including threats or use of violence and harassment against individuals exercising their right to freedom of opinion and expression, including the right to seek, receive, and impart information:

#### **4. INFORMATION RELATED TO STATE ACTIONS**

If the incident involves restrictions on a medium (e.g., censorship, closure of a news organ, banning of a book, etc.):

- The identity of the authority involved (individual and/or ministry and/or department)
- The legal statute invoked
- Steps taken to seek domestic remedy

If the incident involves arrest of an individual or individuals:

- The identity of the authority involved (individual and/or ministry and/or department)
- The legal statute invoked
- Location of detention, if known
- Information on provision of access to legal counsel and family members
- Steps taken to seek domestic remedy or clarification of person's situation and status

If applicable, information on whether or not an investigation has taken place and, if so, by what ministry or department of the government and the status of the investigation at the time of submission of the allegation, including whether or not the investigation has resulted in indictments.

#### **5. INFORMATION ON THE SOURCE OF THE COMMUNICATIONS**

Name:

Address:

Telephone:

Fax Number:

E-mail:

Name and contact information of person or organization submitting the allegation

**NOTE:** In addition to the information requested above, the Special Rapporteur welcomes any additional comments or background notes that are considered relevant to the case or incident.

#### **FOLLOW-UP**

The Special Rapporteur attaches great importance to being kept informed of the current status of cases and thus very much welcomes updates of previously reported cases and information. This includes both negative and positive developments, including the release of persons detained for exercising their rights to freedom of opinion and expression and to seek, receive and impart information, or the adoption of new laws or policies or changes to existing ones that have a positive impact on the realization of the rights to freedom of opinion and expression and information.

**ROOT CAUSES**

In order to carry out his work regarding the root causes of violations, which is of particular importance to the Special Rapporteur, he is very much interested in receiving information on and/or texts of draft laws relating to or affecting the rights to freedom of opinion and expression and to seek, receive and impart information. The Special Rapporteur is also interested in laws or government policies relating to electronic media, including the Internet, as well as the impact of the availability of new information technologies on the right to freedom of opinion and expression.

**COMMUNICATIONS**

Where requested or considered necessary by the Special Rapporteur, information on the source of the allegations will be treated as confidential.

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

**PLEASE RETURN TO:  
THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN  
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
c/o OHCHR-UNOG  
1211 GENEVA 10  
SWITZERLAND  
Fax: +41 22 917 9003  
E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)**

## ENDNOTES

<sup>1</sup> The main international agreements protecting the rights to freedom of expression include:

- *Universal Declaration of Human Rights*, Article 19
- *UN International Covenant on Civil and Political Rights (ICCPR)*, Article 19
- *UN Convention on the Rights of the Child (CRC)*, Article 13
- *UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, Article 5(d)(viii)

Regional agreements also prohibit violations of the rights to freedom of expression, such as in the Americas, *American Convention on Human Rights “Pact of San Jose, Costa Rica,”* (Art. 13); in Europe, *European Convention on Human Rights* (Art. 10), *Declaration on Principles of Freedom of Expression, Amsterdam Recommendations* and *Bishkek Declaration*; in Africa, *African Charter on Human and Peoples’ Rights* (Art. 9), *Declaration of Principles on Freedom of Expression in Africa*. Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments aimed at prohibiting violations of the rights to freedom of expression include: *Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War* and *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.

The main international agreements protecting the rights to freedom of assembly include:

- *Universal Declaration of Human Rights*, Article 20 and 23
- *UN International Covenant on Civil and Political Rights*, Article 21 and 22
- *UN International Covenant on Economic, Social and Cultural Rights*, Article 8
- *UN International Convention on the Rights of the Child*, Article 15
- *UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, Article 5(ix)

The International Labor Organization (ILO) has also passed several conventions relating to protections of assembly, including:

- *ILO Convention No. 11 concerning the Right of Association*
- *ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize*
- *ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively*
- *ILO Convention No. 151 concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service*
- *ILO Declaration on Fundamental Principles and Rights at Work*

Regional agreements also prohibit violations of the rights to freedom of assembly, such as in the Americas, *American Convention on Human Rights “Pact of San Jose, Costa Rica,”* (Art. 15 and 16(1)); in Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms* (Art. 11(1) and (2)), *European Social Charter* (Art. 5 and 6), *Charter of Fundamental Rights of the European Union* (Art. 12); in Africa, *African Charter on Human and Peoples’ Rights* (Art. 10 and 11), *African Charter on the Rights and Welfare of the Child* (Art. 8). Similar agreements have not yet been signed by ASEAN nations.

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

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

The rights to freedom of expression and assembly are considered protected under CIL. So, even if Burma has not signed some of the above treaties, it will still be subject to associated CIL norms (unless it can demonstrate a pattern of persistent objections to be bound by the law).

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<sup>2</sup> Leon E. Irish and Karla W. Simon, *Freedom of Association: Recent Developments Regarding the “Neglected Right,”* American Society of International Law Human Rights Interest Group Newsletter, Vol. 9. No. 1 and 2, p.37.

<sup>3</sup> *Central Asian Pocketbook on Freedom of Expression*, Article 19, October 2006.

<sup>4</sup> *Ibid.*

<sup>5</sup> *UN International Covenant of Civil and Political Rights*, Article 21 and 22.

<sup>6</sup> See, *Universal Declaration of Human Rights* (Art. 23(4)), *UN International Covenant on Civil and Political Rights* (Art. 22(1)), *UN International Covenant on Economic, Social and Cultural Rights* (Art. 8(1)), *Preamble of the Constitution of the International Labor Organization (ILO)*, *ILO Declaration on Fundamental Principles and Rights at Work* (para. 2(a)), *ILO Conventions No. 87 and 98*.

<sup>7</sup> *UN International Covenant of Civil and Political Rights*, Article 19, 1966

<sup>8</sup> *Ibid.* According to the Human Rights Committee, states are not just *allowed* to restrict war propaganda and hate speech but states are *required* to restrict such forms of expression. Human Rights Committee, *General Comment 11*, Article 20, 19<sup>th</sup> Session, 1983.

<sup>9</sup> Mary Callahan, *Political Authority in Burma’s Ethnic Minority States: Devolution, Occupation, and Coexistence*. Washington, DC: East-West Center Washington, 2007, p. vii, 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.

<sup>10</sup> The Fund for Peace, “Country Alert: Burma,” 28 September 2007, [http://www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=258&Itemid=404](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=258&Itemid=404) (last visited 2 September 2008).

<sup>11</sup> Committee to Protect Journalists, “Attacks on the Press in 2005: Burma,” 2005, [http://www.cpj.org/attacks05/asia05/burma\\_05.html](http://www.cpj.org/attacks05/asia05/burma_05.html), (last visited 2 September 2008).

<sup>12</sup> Piano, Aili and Arch Puddington, eds, “The Worst of the Worst: The World’s Most Repressive Societies 2007,” Freedom House, 2007, [http://www.freedomhouse.org/uploads/special\\_report/58.pdf](http://www.freedomhouse.org/uploads/special_report/58.pdf) (last visited 8 April 2008), p. 5.

<sup>13</sup> Committee to Protect Journalists, “10 Most Censored Countries,” 2 May 2006, <http://www.cpj.org/censored/index.html> (last visited 8 April 2008).

<sup>14</sup> Reporters Without Borders, *Annual Worldwide Press Freedom Index 2007*, 2007, [http://www.rsf.org/article.php?id\\_article=24025](http://www.rsf.org/article.php?id_article=24025) (last visited 8 April 2008).

<sup>15</sup> Human Rights Documentation Unit, *Burma Human Rights Yearbook 2006*, National Coalition Government of the Union of Burma, 2007, <http://www.ncgub.net/BHRY/2006/expression.html#communications> (last visited 9 April 2008).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> In 2006, only 10 political parties were legally registered in Burma and only three acted independently.

<sup>19</sup> Human Rights Watch, “Burma: Civil Rights and Freedoms,” 1997, [http://www.hrw.org/reports/1997/burma2/Burma-05.htm#P251\\_64497](http://www.hrw.org/reports/1997/burma2/Burma-05.htm#P251_64497), (last visited 2 September 2008).

<sup>20</sup> The Network for Democracy and Development, “The White Shirts: How the USDA will become the Next Face of Burma’s Dictatorship,” 30 May 2006, <http://www.burmacampaign.org.uk/pm/reports.php> (last visited 2 September 2008).

<sup>21</sup> Venkat, Dr. Iyer, "Acts of Oppression: Censorship and the Law in Burma," Article 19, March 1999, <http://www.article19.org/pdfs/publications/burma-acts-of-oppression.pdf> (last visited 3 April 2008).

<sup>22</sup> Human Rights Watch, "Burma: Civil Rights and Freedoms," 1997, [http://www.hrw.org/reports/1997/burma2/Burma-05.htm#P251\\_64497](http://www.hrw.org/reports/1997/burma2/Burma-05.htm#P251_64497), (last visited 2 September 2008). Bureau of Democracy, Human Rights, and Labor, "Burma: Country Reports on Human Rights Practices 2007," US Department of State, 11 March 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100515.htm> (last visited 2 September 2008).

<sup>23</sup> Human Rights Documentation Unit, *Burma Human Rights Yearbook 2006*, National Coalition Government of the Union of Burma, 2007, <http://www.ncgub.net/BHRY/2006/expression.html#communications> (last visited 9 April 2008).

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</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 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/ict/](http://www.un.org/ict/) (last visited 27 July 2008).

<sup>27</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*, 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>28</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>29</sup> *See*, *Prosecutor v Jelusic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

<sup>30</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*,

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[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>31</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); Stiglmeier, Alexandra, "Sexual Violence: Systematic Rape," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/sexual-systematic-rape.html> (last visited 27 July 2008).

<sup>32</sup> Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

<sup>33</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>34</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>35</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 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>36</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>37</sup> *Ibid.*

<sup>38</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>39</sup> *Ibid.*

<sup>40</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>41</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>42</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>43</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>44</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>45</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>46</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>47</sup> *Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression - Introduction*, Office of the High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu2/7/b/expression/index.html> (last visited 22 October 2008).

<sup>48</sup> *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.

<sup>49</sup> *Ibid.* The Special Rapporteur will aim to prevent the loss of life and therefore will usually make the appeal even if there are still domestic remedies available.

<sup>50</sup> In addition to reviewing reports from states that have ratified ILO Conventions No. 87 and No. 98, which are relevant to freedom of association, the Committee of Experts also reviews report from states that have not ratified such conventions to evaluate their current laws and practices and assess the obstacles to eventual ratification of the conventions. See, *Freedom of Association and the Right to Collective Bargaining*, Clean Clothes Campaign, September 2005.

<sup>51</sup> *Freedom of Association and the Right to Collective Bargaining*, Clean Clothes Campaign, September 2005.

<sup>52</sup> Burma is a party to ILO Convention No. 87.

<sup>53</sup> Tajgman, David and Karen Curtis, *Freedom of Association: A User's Guide*, ILO, 2000.

<sup>54</sup> If a state is a signatory to the relevant convention, the Committee may also submit its conclusions and recommendations to the ILO Committee of Experts on the Application of Conventions and Recommendations.

<sup>55</sup> An organization includes: (1) a national organization directly interested in the matter; (2) an international organization of employers or workers which has consultative status with the ILO; or (3) any other international organization of employers or workers, where the allegations relate to matters directly affecting affiliated organizations. Solidarity Center, *Justice for All: A Guide to Workers Rights in the Global Economy*, AFL-CIO, [http://www.solidaritycenter.org/files/JFA\\_Appendices.pdf](http://www.solidaritycenter.org/files/JFA_Appendices.pdf) (last visited 19 October 2008).

<sup>56</sup> Burma is a party to ILO Convention No. 87.

<sup>57</sup> Tajgman, David and Karen Curtis, *Freedom of Association: A User's Guide*, ILO, 2000.

<sup>58</sup> *Committee on Freedom of Association Procedures*, ILO, para. 55.

<sup>59</sup> Tajgman, David and Karen Curtis, *Freedom of Association: A User's Guide*, ILO, 2000.

<sup>60</sup> *Committee on Economic, Social, and Cultural Rights*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cescr/> (last visited 28 July 2008).

<sup>61</sup> *Ibid.*

<sup>62</sup> Burma is not a party to the International Covenant on Economic, Social, and Cultural Rights.

*Endnotes*

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<sup>63</sup> *Committee on Economic, Social, and Cultural Rights*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cescr/> (last visited 28 July 2008).

<sup>64</sup> *Ibid.*