

**HUMAN RIGHTS DOCUMENTATION  
MANUAL SERIES:**

**DOCUMENTING FORCED PROSTITUTION IN BURMA**

**NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA**

**OCTOBER 2008**

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

## 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.

ND-Burma is grateful to the numerous people and institutions that provided critical support and input for the production of this project. ND-Burma is especially appreciative of the dedication and contributions of Patrick Pierce, who has been deeply involved in the design and management of this project. The involvement of Tyler Giannini and the International Human Rights Clinic at Harvard Law School in conducting initial research and developing a framework for the manuals is also greatly appreciated. The Human Rights Education Institute of Burma (HREIB), an ND-Burma member integral in the formation and facilitation of the network, provided essential administrative support to this project.

ND-Burma is thankful to Pablo Espiniella and the many academics, advocates, and activists who generously shared their time and expertise to review and comment on the content of this manual. ND-Burma also gratefully acknowledges the financial contributions of the Royal Netherlands Embassy in Bangkok and the Open Society Institute, which made the compilation and publication of this manual possible.

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

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

## PREFACE

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

**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 forced prostitution.

This manual covers only violations concerning forced prostitution. It does not provide information about other abuses that may occur in conjunction with forced prostitution, such as human trafficking and rape. 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: FORCED PROSTITUTION.....	- 1 -
II.   DEFINING FORCED PROSTITUTION.....	- 1 -
A. <i>What are the elements of forced prostitution under international law?</i> .....	- 1 -
B. <i>What are examples of non-consensual or coercive circumstances?</i> .....	- 1 -
C. <i>What type of payment is relevant for the purposes of establishing forced prostitution?</i> .....	- 2 -
D. <i>What is state action?</i> .....	- 2 -
III.  ASKING THE CRITICAL QUESTIONS.....	- 2 -
IV.  RELATING FORCED PROSTITUTION TO OTHER HUMAN RIGHTS VIOLATIONS .....	- 3 -
V.   PRACTICING DOCUMENTATION.....	- 3 -
A. <i>Understanding the Context</i> .....	- 4 -
B. <i>Fact Pattern</i> .....	- 5 -
C. <i>Sample Interviews</i> .....	- 6 -
VI.  CONCLUSION .....	- 9 -
<b>CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE.....</b>	<b>- 10 -</b>
I.    ORGANIZING THE EVIDENCE .....	- 10 -
II.   STRENGTHENING THE EVIDENCE .....	- 10 -
III.  SERIOUS CRIMES UNDER INTERNATIONAL LAW: GENOCIDE AND CRIMES AGAINST HUMANITY .....	- 11 -
A. <i>Understanding the Magnitude of the Crimes</i> .....	- 11 -
B. <i>Defining Genocide</i> .....	- 12 -
C. <i>Defining Crimes against Humanity</i> .....	- 14 -
IV.  CONCLUSION .....	- 15 -
<b>CHAPTER 3: ADVOCACY – USING THE EVIDENCE .....</b>	<b>- 16 -</b>
I.    PRESENTING THE EVIDENCE.....	- 16 -
II.   ROLE OF THE UNITED NATIONS .....	- 16 -
A. <i>UN Special Rapporteur on the Situation of Human Rights in Myanmar</i> .....	- 17 -
B. <i>UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography</i> .....	- 18 -
C. <i>UN Special Rapporteur on Violence against Women, its Causes, and Consequences</i> .....	- 19 -
D. <i>UN Committee on the Elimination of Discrimination against Women</i> .....	- 19 -
E. <i>Commission on the Status of Women (CSW)</i> .....	- 20 -
F. <i>Relevant Bodies at the United Nations</i> .....	- 20 -
III.  CONCLUSION .....	- 22 -
<b>APPENDIX 1: MODEL QUESTIONNAIRE ON CHILD PROSTITUTION.....</b>	<b>- 24 -</b>
<b>APPENDIX 2: MODEL QUESTIONNAIRE ON FORCED PROSTITUTION.....</b>	<b>- 27 -</b>
<b>ENDNOTES.....</b>	<b>- 30 -</b>

## CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

### I. Violations of Human Rights: Forced Prostitution

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 forced prostitution.

### II. Defining Forced Prostitution

#### A. What are the elements of forced prostitution under international law?

In order to document forced prostitution as a human rights violation, evidence of *four elements* must be present:<sup>1</sup>

1. Any sexual acts
2. Coercion or lack of consent
3. Payment of money or in kind
4. State action

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

Non-consensual or coercive circumstances are situations where a victim is deprived of their free choice.\* This includes situations of:

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

#### International Law: Forced Prostitution



Forced prostitution is prohibited as an act of sexual violence. Therefore, the legal instruments prohibiting sexual violence also prohibit forced prostitution. Some instruments, however, explicitly prohibit forced prostitution, including:

- *UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, Article 6
- *Geneva Convention*, Article 27
- *Additional Protocol I to the Geneva Conventions*, Articles 75(2)(b) and 76(1)
- *Additional Protocol II to the Geneva Conventions*, Article 4(2)(e)
- *Rome Statute of the International Criminal Court*, Article 7(1)(g)

Forced prostitution is also prohibited by customary international law.

\* Consent and coercion should be determined from the perspective of the victim rather than the perpetrator. Actions that may not be considered coercive to the perpetrator may be highly coercive to the victim. Accordingly, it is important to focus on the experience of the victim to determine if the situation was non-consensual or coercive. Some commentators take an expansive view of what qualifies as coercive in terms of prostitution, including acute financial need. *Report of the Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, United Nations document E/1983/7, 1983, para. 23; Kathleen Barry, *The Prostitution of Sexuality*, 1995. Others, including sex workers' unions, caution against overstating financial need and advocate for a decriminalization of sex work as the best approach to counter coercion.

### C. What type of payment is relevant for the purposes of establishing forced prostitution?

To establish a violation of forced prostitution, a person must engage in sexual acts in exchange for some form of payment. The payment may be monetary or some other material benefit, such as food or clothing. Also, the recipient of the payment does not necessarily need to be the victim. Rather, payment may be received by someone facilitating the arrangement or passed on to others.<sup>2</sup>

### D. What is state action?

State action is necessary for forced prostitution 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>3</sup>

State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if forced prostitution was perpetrated by a public official, the state action requirement 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.<sup>‡</sup> For example, a state may be in violation of international law when private perpetrators of forced prostitution go unpunished.

#### Perpetrators: Non-State Actors



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

## III. Asking the Critical Questions

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

### 1. *Establishing sexual acts*

- Who was involved in the sexual acts?
- What happened?
- When did the incident occur?
- Where were you touched? On what body parts?
- How were you touched?
- How do you know what happened?

<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.

<sup>‡</sup> 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.



## 2. *Establishing lack of consent or coercive circumstances*

- Did you agree to engage in the sexual acts? Why or why not?
- What happened before/during/after the incident?
- Where did the incident occur?
- Why did you engage in this action?
- How did the incident occur?
- How do you know this information?

## 3. *Establishing payment*

- Who received payment? Who paid?
- What type of benefit was received?
- When was the payment received?
- What was the payment for?
- How much was received?
- How do you know this information?

## 4. *Establishing state action*

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

## IV. Relating Forced Prostitution to Other Human Rights Violations

Forced prostitution often occurs in conjunction with other human rights violations. To gain the most accurate account of the human rights situation, each violation should be documented as thoroughly as possible, with the goal of establishing the essential elements of each violation. Human rights violations often occurring with forced prostitution include:

- **Human trafficking:** Human trafficking involves the acquisition of persons by improper means for the purposes of exploitation. Forced prostitution is one common exploitative purpose for which people are trafficked.
- **Rape and other forms of sexual violence:** Forced prostitution is a form of sexual violence because it involves coercive or non-consensual sexual acts.

Please see the relevant manuals in this series on documenting these categories of human rights violations.

## V. 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.

### 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.

To practice identifying the elements of a violation, this section provides a fact pattern containing evidence of a typical forced prostitution violation 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 forced prostitution in Burma.



### **Historical and Political Context of Forced Prostitution in Burma**

Since 1962, when General Ne Win led a military coup to gain control over Burma, successive military regimes have ruled the country through tactics of intimidation and unspeakable brutality. Widespread poverty, lack of jobs, and the inability to pay for education push people, especially young people, to leave their homes in search of work opportunities in urban areas, on the border, and in other countries.<sup>4</sup> Traffickers often target young women and girls looking for work opportunities and sell them into the sex industry, where they are forced to work as prostitutes.<sup>5</sup> Due to severe restrictions on movement, especially for women, and the prohibitive costs associated with obtaining a passport and valid travel documents in Burma, many women are forced to rely on traffickers and smugglers.<sup>6</sup> For more on human trafficking please see the manual in this series entitled, “Documenting Human Trafficking in Burma.”

Women sold into prostitution are often held against their will and forced to perform sexual acts in exchange for money. Most if not all the money earned is taken by their captors. This practice effectively keeps victims impoverished, in debt bondage, and dependent on their captors.<sup>7</sup> In captivity, they are at extreme risk of physical abuse, rape, and sexual violence by both by their captors and clients.

In addition to physical violence, victims of forced prostitution are at high risk of contracting sexually transmitted infections, such as HIV/AIDS and hepatitis B as well as experiencing other physiological problems including fertility complications and cervical cancer.<sup>8</sup> Women held in forced prostitution typically receive little medical attention or access to condoms.<sup>9</sup> Victims also commonly experience post-traumatic stress and other psychological disorders.<sup>10</sup>

Women who have managed to escape from forced prostitution often experience difficulty reintegrating into society. In some cases, they are ostracized from their communities.

## B. Fact Pattern

Below is a fact pattern of typical forced prostitution 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 forced prostitution in accordance with international human rights standards, there must be:

1. Any sexual acts
2. Coercion or lack of consent
3. Payment of money or in kind
4. State action

### Fact Pattern: Forced Prostitution<sup>§</sup>



A year ago, Mi Pakao Rot's father lost his business in Mon State after he could no longer afford the taxes demanded by the SPDC. Her family had been struggling to make ends meet. Now, Mi Pakao Rot's father supports his family by working temporary jobs, which are often physically strenuous and low-paying. Hoping to help support her family, Mi Pakao Rot agreed to go with an agent to Rangoon to work as a housekeeper for a wealthy businessman. The agent promised a good salary, accommodation, and daily meals.

Soon after Mi Pakao Rot arrived in Rangoon, she suspected something was wrong. She was brought to a shabby house located in a poor neighborhood. The agent introduced Mi Pakao Rot to his associate, Kyaw Win, who led her into the house. Inside, there were several small, dirty rooms with only a bed. Some of the rooms were occupied and their doors were closed. Mi Pakao Rot was given a room and told, "This is where you will work and stay. I will bring your clients. Do whatever they tell you to do? If you do not, then you will be beaten and starved." Kyaw Win then locked Mi Pakao Rot in her room.

Terrified Mi Pakao Rot began to scream and pound on the door begging to be released. Kyaw Win opened the door and beat her severely. He hit and kicked her all over until she could barely move. He told her, "Keep your mouth shut and your legs open and I won't kill you." After that, Mi Pakao Rot was afraid to protest.

One week after her arrival to Rangoon, a knock came on her door. When the door opened, an older man was standing with Kyaw Win. Kyaw Win told Mi Pakao Rot to undress and show the man a good time. The man entered her room and Kyaw Win locked the door behind him. When the man tried to approach Mi Pakao Rot, she pushed him away, managing to scratch his cheek. The man became enraged and punched Mi Pakao Rot in the face. He then began banging on her door. When Kyaw Win unlocked the door, the man screamed, "Is this how all your whores treat paying customers? You had better tame them." He then stormed off. After the man left, Kyaw Win angrily grabbed Mi Pakao Rot and beat her, breaking one of her fingers and leaving her badly bruised and in pain.

Afraid of more beatings, Mi Pakao Rot stopped trying to resist the men who came to her door. She was forced to sleep with as many as three men per day. After the men were finished with her, they would knock on the door. Either Kyaw Win or the agent would unlock the door

<sup>§</sup> Please note that this hypothetical fact pattern was developed from a variety of people's experiences for the purpose of this manual and does not reflect the experience of any one person or of one particular event.

and the man would give them money. Twice a day, Kyaw Win or the agent would bring a plate of curry and rice. She was allowed out of her room only to bathe and use the toilet.

After one late night visit from a man, Mi Pakao Rot realized that Kyaw Win had forgotten to relock her door. She saw her opportunity to escape. She waited until she was confident that Kyaw Win and the agent were asleep. Then she slipped quietly from her room and out of the house. She ran to the police station to report her experience. The police, however, threatened to arrest her, telling her prostitution is illegal. Fearing arrest, she left the police station without filing a report. Afraid that she would bring shame to her family if she returned to Mon State, she decided to flee to Thailand. Mi Pakao Rot now works at a small Burmese restaurant in Mae Sot, Thailand.

### C. Sample Interviews

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

#### 1. Sample Interview: Bad

You were a victim of forced prostitution, right?

*Mi Pakao Rot:* Yes. I came to Rangoon to work as a housekeeper but instead I was kept like a prisoner and forced to have sex with men by my captors.

How many men did you have sex with?

*Mi Pakao Rot:* I can't say how many. Sometimes it was as many as three in one day.

Did you consent to having sex with these men?

*Mi Pakao Rot:* No! Absolutely not. I was afraid of being beaten or killed if I didn't have sex with them.

So you were forced to have sex with them?

*Mi Pakao Rot:* Yes.

And the men paid to have sex with you?

*Mi Pakao Rot:* They didn't pay me, but they paid my captors.

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

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

Thank you for your time.

**Why is this interview bad?**



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

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

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

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

**2. Sample Interview: Good**

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

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

What happened when you arrived in Rangoon?

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

What happened after that?

*Mi Pakao Rot:* They forced me to have sex with strangers. They would bring men to my room and forced me to undress. Then I had to have sex with them.

How many times were you forced to have sex with men?

*Mi Pakao Rot:* So many times. I don’t remember how many. Sometimes I had to accommodate three men in a day.

Could you refuse or resist the demands of the men?

*Mi Pakao Rot:* No. At first, I tried to protest, but they beat me so badly. One time, they broke one of my fingers. After that, I didn't try to resist anymore. I didn't have any choice. If I tried to resist, Kyaw Win or the agent would beat me. I was afraid they would kill me.

Did Kyaw Win or the agent receive anything from the men?

*Mi Pakao Rot:* I saw them demand money from the men. I don't know how much money but after the men were through with me, they paid Kyaw Win or the agent. I don't know if they got anything else.

Did you ever receive any compensation?

*Mi Pakao Rot:* No. The men never gave me anything and Kyaw Win and the agent kept all the money for themselves. They didn't even provide proper meals. Usually, they gave me just a handful of rice and a taste of curry. I was always hungry.

Did you report what happened to the authorities?

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

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

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

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

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

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

*Mi Pakao Rot:* I would really like that.

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

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

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



This interview is good because Mi Pakao Rot has told her story. The initial questions were open-ended and there were follow-up questions. Her answers help document each element to establish a violation. For example, Mi Pakao Rot has provided the following information about forced prostitution:

**First**, Mi Pakao Rot provided information to establish that she engaged in sexual acts. Mi Pakao Rot indicated that men came to her room, and she was forced to undress and have sex with them. Information from her Shan co-worker will help to verify her account.

**Second**, Mi Pakao Rot provided details to establish the non-consensual and coercive nature of her experience. Mi Pakao Rot indicated that the agent and his associate, Kyaw Win, held her captive and forced her to have sex with men. Mi Pakao Rot also indicated that the agent and his associate beat her and threatened to kill her if she did not comply with their demands. Based on her testimony, it appears that the act was carried out in a way that was non-consensual and under coercion.

**Third**, Mi Pakao Rot established that she was forced to have sex in exchange for money. She indicated that the agent and Kyaw Win received payment from the men who had sex with her. This information demonstrates that the agent and Kyaw Win benefited from the arrangement.

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

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

## VI. Conclusion

After reading this Chapter, you should be able to:

- recognize the elements of forced prostitution under international law,
- develop critical questions in order to collect information about forced prostitution, 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 forced prostitution 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 forced prostitution:

- What evidence exists to show sexual acts?
- What evidence exists to show such acts were engaged in without consent or under coercive circumstances?
- What evidence exists to show such acts were engaged in in exchange for money or payment in kind; and
- 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.

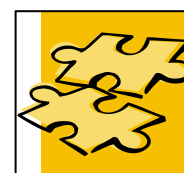
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

### 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 forced prostitution 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.\*\*



---

\*\* 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 violation is committed, such as multiple instances of forced prostitution in a particular area.
- 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 forced prostitution.

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 forced prostitution 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>11</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>12</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>13</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 forced prostitution qualify as an act of genocide?*

It is possible. There may be sufficient evidence to show that forced prostitution amounts to genocide. Genocide includes “causing serious bodily or mental harm to members of a group,” “deliberately inflicting conditions of life calculated to bring about physical destruction,” and “imposing measures intended to prevent births within the group.” When any of these acts have been committed and when the other elements of genocide are met, forced prostitution may amount to genocide.

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

No. The common perception of genocide is that the term refers only to mass killings and, in the past, international tribunals have largely focused on cases involving the actual deaths of a significant number of people in findings of genocide.<sup>14</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>15</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

---

<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.

group. This element is particularly difficult to prove because it requires one to demonstrate what an alleged perpetrator was intending when he or she committed the crime.

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

The perpetrator's intention is crucial to whether the crime can be defined as genocide. The question is whose intention is relevant. The general rule is that both the people who directly and publicly incite genocide; plan or order an act of genocide, such as high ranking government officials; and those who carry out the act, such as soldiers or even next door neighbors, can be prosecuted, even if the soldiers or other individuals were "just following orders."<sup>16</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>17</sup>

#### Documentation Tip: Proving Intention



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

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

Evidence is necessary to demonstrate the intentions of the perpetrator, and direct evidence such as government statements or army orders is extremely helpful for proving genocide. However, intent can also be inferred from the situation.<sup>18</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>19</sup> Direct evidence showing intention, such as a document stating that certain members of a religious group were forced into prostitution on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

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



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

## C. Defining Crimes against Humanity

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

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:<sup>20</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 forced prostitution qualify as a crime against humanity?*

It is possible. Forced prostitution is explicitly defined as a crime against humanity in the Rome Statute of the International Criminal Court when the other elements are met.<sup>21</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>22</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>23</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 force civilians into prostitution based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.<sup>24</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>25</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>26</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>27</sup>

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

To prove that the perpetrator “knew” about the attack, it is not necessary to prove that he or she knew about all of the details of the attack. Evidence that the perpetrator intended to assist or allow the attack to proceed is sufficient evidence of “knowledge” for crimes against humanity.<sup>28</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 forced prostitution.

## CHAPTER 3: ADVOCACY – USING THE EVIDENCE

### I. Presenting the Evidence

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

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

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

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

The United Nations (UN) is a particularly significant audience to address when dealing with human rights violations. By raising issues to the UN, human rights organizations are able to make violations more visible to the international community, which in turn helps to increase pressure on the targeted government. Because there are several UN bodies able to respond to violations of forced prostitution, 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>29</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 forced prostitution 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>30</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>31</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>32</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 forced prostitution.

#### **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 Sale of Children, Child Prostitution, and Child Pornography** \*\*\*

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

The Special Rapporteur is responsible for investigating and responding to reports of abuses against children, including violations of forced prostitution involving children. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.<sup>33</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>34</sup> The Office of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www2.ohchr.org/english/issues/children/rapporteur/model.htm>.

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

The Special Rapporteur will consider evidence of the following violations:

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

The Special Rapporteur will also consider evidence demonstrating situations where a child is at risk of any of the above-listed abuses.<sup>35</sup>

---

\*\*\* As of May 2008, Najat M'jid Maalla is the UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography.



#### ***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>36</sup>

### **C. UN Special Rapporteur on Violence against Women, its Causes, and Consequences<sup>†††</sup>**

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

The Special Rapporteur is responsible for investigating and responding to reports of violence against women, including rape and other forms of sexual violence. 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>37</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>38</sup> The Office of the Special Rapporteur on Violation provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www.ohchr.org/english/issues/women/rapporteur/complaints.htm>.

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

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.<sup>39</sup>

### **D. UN Committee on the Elimination of Discrimination against Women**

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

The Committee on the Elimination of Discrimination against Women is composed of 23 independent experts in the field of women's issues.<sup>†††</sup> Each member serves a four year term. The Committee meets for two weeks each year.<sup>40</sup>

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

The Committee monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to ensure states are in compliance with international standards. The Committee receives and reviews states' reports and provides recommendations. The Committee submits annual reports to the Economic and Social Council through the Commission on the Status of Women.<sup>41</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 CEDAW. Only states that have signed onto CEDAW are obligated to

---

<sup>†††</sup> As of August 2003, Dr. Yakin Erturk is the UN Special Rapporteur on Violence Against Women, its Causes, and its Consequences.

<sup>††††</sup> As of March 2008, Dubravka Šimonović is the Chairperson of the Committee.

submit reports to the Committee.<sup>42</sup> The Committee is also receptive to information from human rights organizations. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee's meeting. The Committee also accepts oral testimony from human rights organizations usually on the first day of the pre-sessional working group meeting as well as on the second day of its regular session. It may also be possible to schedule informal meetings with Committee members by contacting the Secretariat.<sup>43</sup>

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

Yes. Under Article 2 of the Optional Protocol of CEDAW, the Committee may receive communications by individuals or groups.<sup>44</sup> However the complaint must concern a state that has ratified the Optional Protocol of CEDAW.<sup>45</sup> Burma has not ratified the Optional Protocol, therefore the complaint mechanism is not available to individuals from Burma under CEDAW.

**E. Commission on the Status of Women (CSW)**

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

The Commission is composed of 45 members elected by the Economic and Social Council.<sup>§§§</sup> Each member serves a four year term. The Commission meets once a year in February-March.<sup>46</sup>

**2. *What is the Commission's role?***

The Commission monitors the implementation of measures to promote the advancement of women. The Commission is responsible for developing recommendations and initiatives to respond to concerns in the field of women's issues. The Commission reports to the Economic and Social Council.<sup>47</sup>

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

The Commission receives and reviews reports from the Committee on Elimination of Discrimination against Women. The Commission also receives information and accepts oral testimony from human rights organizations. Human rights organizations may also participate in Commission round-tables and special events. To submit information and participate in Commission events, organizations must be accredited with the Economic and Social Council.<sup>48</sup> The Commission also provides comprehensive guidelines for organizations interested in submitting information or participating in Commission sponsored activities.<sup>49</sup>

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


Yes. The Commission does receive communications and complaints from individuals and groups. The Commission, however, does not take direct action against violators. Rather, they rely on communications and complaints to analyze trends and patterns of discrimination in order to develop policy recommendations.<sup>50</sup>

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

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

---

<sup>§§§</sup> In 2008, Olivier Belle is the Chairperson of the Commission.

<b>Contact Information</b> 		
<b>Organization</b>	<b>Contact Details</b>	<b>Useful Websites</b>
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****	To submit complaints to the Council under the 1503 Procedure:  Treaties and Human Rights Council Branch OHCHR-UNOG 1211 Geneva 10, Switzerland Fax: +41 22 917 90 11 E-mail: <a href="mailto:CP@ohchr.org">CP@ohchr.org</a>  To submit communications to the Council under the Special Procedures:  Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 E-mail: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	To learn more about the Human Rights Council, visit: <a href="http://www.ohchr.org/english/bodies/hrcouncil/">http://www.ohchr.org/english/bodies/hrcouncil/</a>  To learn more about the complaint mechanism available under the Council's 1503 Procedure, visit: <a href="http://www2.ohchr.org/english/bodies/chr/complaints.htm">http://www2.ohchr.org/english/bodies/chr/complaints.htm</a> To learn more the Special Procedures of the Council, visit: <a href="http://www2.ohchr.org/english/bodies/chr/special/index.htm">http://www2.ohchr.org/english/bodies/chr/special/index.htm</a>
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	UN Office of the High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Tel: +41 22 917 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 Representative Homayoun Alizadeh	OHCHR Southeast Asia Regional Office UNESCAP UN Secretariat Building, 6th Fl., Room A-601 Rajdamnern Nok Av. Bangkok 10200, Thailand Tel.: +66 2 288 1235 Fax: +66 2 288 3009 E-mail: <a href="mailto:ohchr.bangkok@un.org">ohchr.bangkok@un.org</a> Homayoun Alizadeh: <a href="mailto:alizadeh@un.org">alizadeh@un.org</a>	To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional Office, visit <a href="http://www.un.or.th/ohchr/index.html">http://www.un.or.th/ohchr/index.html</a> .
UN Special Rapporteur on the Situation of Human	UN Special Rapporteur on the situation of Human Rights in Myanmar	For documents on the Special Rapporteur, visit:

\*\*\*\* 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.

### Chapter 3: Advocacy – Using the Evidence

Rights in Myanmar, Thomás Ojea Quintana	OHCHR-UNOG 8-14 Avenue de la Paix 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>	<a href="http://www.unhcr.ch/html/men_u2/7/a/mmya.htm">http://www.unhcr.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/g/srsg/table.htm">http://www.un.org/News/oss/g/srsg/table.htm</a>
UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, Najat M'jid Maalla	UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06  For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	To learn more about the Special Rapporteur, visit: <a href="http://www2.ohchr.org/english/issues/children/rapporteur/index.htm">http://www2.ohchr.org/english/issues/children/rapporteur/index.htm</a>
UN Special Rapporteur on Violence against Women, its Causes, and Consequence, Dr. Yakin Ertürk	Special Rapporteur on Violence against Women OHCHR-UNOG 8-14 Avenue de la Paix 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.ohchr.org/english/issues/women/rapporteur/">http://www.ohchr.org/english/issues/women/rapporteur/</a>
Committee on Elimination of Discrimination against Women	The Committee on the Elimination of Discrimination Against Women c/o Division for the Advancement of Women Room DC2-1220 P.O. Box 20 United Nations New York, NY 10017 USA Fax: +1 212 963 3463	To learn more about the Committee, visit: <a href="http://www.un.org/womenwatch/daw/cedaw/committee.htm">http://www.un.org/womenwatch/daw/cedaw/committee.htm</a>
Commission on the Status of Women	Commission on the Status of Women c/o Division for the Advancement of Women Room DC2-1220 P.O. Box 20 United Nations New York, NY 10017 USA Fax: +1 212 963 3463 Email: <a href="mailto:daw@un.org">daw@un.org</a>	To learn more about the Commission, visit: <a href="http://www.un.org/womenwatch/daw/csw/index.html">http://www.un.org/womenwatch/daw/csw/index.html</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 forced prostitution, and
- understand how to submit information to the UN.

*Chapter 3 Advocacy – Using the Evidence*

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

## APPENDIX 1: MODEL QUESTIONNAIRE ON CHILD PROSTITUTION<sup>†††</sup>

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

#### Notes

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

#### GENERAL INFORMATION

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

#### IDENTITY OF THE PERSONS CONCERNED

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

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

#### INFORMATION REGARDING THE ALLEGED VIOLATION

1. Date:
2. Place (location - country/countries):

<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.

3. Time:

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

5. Number of perpetrator(s):

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

7. Nationality of perpetrator (s)

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

9. State agents (specify):

10. Non-state agents (specify):

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

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

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

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

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

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

2. Other steps taken:

3. Steps taken by the authorities:

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

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

**IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM**

1. Family name:

2. First name:

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

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

Fax:

Tel:

Email:

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

Date you are submitting this form:

Signature of author

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

**PLEASE RETURN TO:**

**THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD  
PORNOGRAPHY**

**OHCHR-UNOG**

**1211 GENEVA 10**

**SWITZERLAND**

**Fax: +41 22 917 9006**

**E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)**



**APPENDIX 2: MODEL QUESTIONNAIRE ON FORCED PROSTITUTION<sup>\*\*\*</sup>**

**Confidential Violence against Women Information Form**

**1. PETITIONER :** *(This information, if taken up by the Special Rapporteur, will remain confidential)*

- (a) Name of person/organization:  
.....  
.....  
.....
- (b) Relationship to victim(s).....
- (c) Address:  
.....  
.....  
.....  
.....  
.....
- (d) Fax/tel/e-mail, web-site:.....
- (e) Date petition sent:.....
- (f) Other:  
.....  
.....  
.....

**2. ALLEGED INCIDENT**

**(i) Information about the victim(s):**

- (a) Name: .....
- (b) Sex: .....
- (c) Date of Birth or Age: .....
- (d) Nationality:.....
- (e) Occupation:.....
- (f) Ethnic / religious / social background, if relevant:.....
- (g) Address:  
.....  
.....  
.....  
.....  
.....
- (h) Other relevant information: *(such as passport, identity card number)*:  
.....  
.....
- (i) Has the victim(s) given you her consent to send this communication on her behalf? .....

---

<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.

Appendix 2: Model Questionnaire on Forced Prostitution

(j) Has the victim(s) been informed that, if the Special Rapporteur decides to take action on her behalf, a letter concerning what happened to her will be sent to the authorities?  
.....

(k) Is the victim(s) aware that, if this communication is taken up, a summary of what happened to her will appear in a public report of the Special Rapporteur?  
.....

(l) Would the victim(s) prefer that her full name or merely her initials appear in the public report of the Special Rapporteur?  
.....

*(Please note that the full names of victims appear in communications with governments unless it is indicated that exposing the victims' names to the government would place the victims at risk of further harm. In the public report, the names of victims under the age of 18 and victims of sexual violence will not be disclosed, but initials will be used)*

**(ii) Information regarding the incident:**

(a) Detailed description of human rights violation:  
.....  
.....  
.....  
.....  
.....

(b) Date: ..... (c) Time: .....

(d) Location/country: .....

(e) Number of assailants: .....

(f) Are the assailant(s) known or related to the victim? If so, how?  
.....  
.....  
.....

(g) Name or nickname of assailant(s) (if unknown, description, scars or body marks such as tattoos, clothes/uniform worn, title/status, vehicle used):  
.....  
.....  
.....

(h) Does the victim believe she was specifically targeted because of her sex? If yes, why?  
.....  
.....  
.....

(i) Has the incident been reported to the relevant state authorities?.....

If so, which authorities?  
.....  
.....  
.....

When? .....

(j) Have the authorities taken any action after the incident? .....

If so, which authorities?.....

What action?  
.....  
.....  
.....

When?.....

(l) If the violation was committed by private individuals or groups (rather than government officials), include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.

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

(m) Has the victim seen a doctor after the incident took place? Are there any medical certificates/notes relating to the incident concerned?

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

**(iii) Laws or policies which are or are likely to cause or contribute to violence against women**

(a) If your submission concerns a law or policy, please summarize it and the effects of its implementation on women's human rights. Provide concrete examples, when available.

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

*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  
OHCHR-UNOG  
1211 GENEVA 10  
SWITZERLAND  
Fax: +41 22 917 9006  
E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)**

## ENDNOTES

<sup>1</sup> The main international agreements explicitly prohibiting forced prostitution includes:

- UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 6
- UN Convention on the Rights of the Child, Article 34
- UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Article 1, 2
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Article 27
- Additional Protocol I to the Geneva Conventions, Article 75(2)(b), 76(1)
- Additional Protocol II to the Geneva Conventions, Article 4(2)(e)
- Rome Statute, Article 7(1)(g)
- International Labor Organization Worst Forms of Child Labor Convention (No. 182), Article 1

Non-binding international instruments aimed at prohibiting forced prostitution include the *UN Declaration on the Elimination of Violence Against Women* (Art. 2(b)) and the *UN Declaration on the Elimination of Discrimination Against Women* (Art. 8).

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.

Forced prostitution is considered a violation of customary international law. 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). Most people consider that the prohibition against forced prostitution is not only part of general CIL but is a *jus cogens* norm, which means it is a fundamental norm of international law which states may never violate, even if they persistently object. In other words, states may not “contract out” of such norms. See, *Prosecutor v Anto Furundzija*, ICTY Trial Judgment, 10 December 1998.

<sup>2</sup> Michèle Hirsch, *Plan of Action against Traffic in Women and Forced Prostitution*, Council of Europe, 1996; Lin Lean Lim, ed., *The Sex Sector: The Economic and Social Basis of Prostitution in South East Asia*, (ed.), International Labor Organization, 1998.

<sup>3</sup> Mary Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence*. Washington, DC: East-West Center Washington, 2007, p. vix, explaining that in Burmese, there is no equivalent for this meaning of state. Instead one might use *asoya* (government) or *naing-ngan* (country), depending on the context.

<sup>4</sup> Kachin Women's Association of Thailand, “Driven Away,” 2005, [http://www.womenofburma.org/Report/Driven\\_Away.pdf](http://www.womenofburma.org/Report/Driven_Away.pdf), (last visited 16 June 2008), pp. 22 – 23.

<sup>5</sup> Human Rights Watch, “A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand,” August 1993, [http://www.hrw.org/reports/1993/thailand/#\\_1\\_17](http://www.hrw.org/reports/1993/thailand/#_1_17), (last visited 3 September 2008).

<sup>6</sup> Belak, Brenda, “Migration and Trafficking,” in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, <http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf>, (last accessed 3 September 2008), p. 199.

<sup>7</sup> Human Rights Watch, “A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand,” August 1993, [http://www.hrw.org/reports/1993/thailand/#\\_1\\_17](http://www.hrw.org/reports/1993/thailand/#_1_17), (last visited 3 September 2008).

<sup>8</sup> Farley, Melissa, and Vanessa Kelly, “Prostitution: A Critical Review of the Medical and Social Sciences Literature,” *Women and Criminal Justice*, Vol. 11, No. 4, [http://www.prostitutionresearch.com/pdfs/Farley\\_Kelly.pdf](http://www.prostitutionresearch.com/pdfs/Farley_Kelly.pdf), (last visited 3 September 2008), p. 29.

---

<sup>9</sup> Belak, Brenda, "Migration and Trafficking," in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, <http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf>, (last visited 3 September 2008), p. 211.

<sup>10</sup> Office to Monitor and Combat Trafficking in Persons, "Health Consequences of Trafficking in Persons," U.S. State Department, 8 August 2007, <http://www.state.gov/g/tip/rls/fs/07/91418.htm>, (last visited 3 September 2008).

<sup>11</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/icttr/](http://www.un.org/icttr/) (last visited 27 July 2008).

<sup>12</sup> As the most serious of offenses in international law, it is generally accepted that the violation of genocide is universally applicable, meaning that it applies to states and individuals even if they have not signed onto a treaty or agreement to prevent genocide. This idea has been referenced by the International Court of Justice, the 1971 Barcelona Traction and in several statements by the U.N. Secretary General. Regardless, Burma is a party to the Convention on the Prevention and Punishment of the Crime of Genocide (with reservations).

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

<sup>13</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>14</sup> See, *Prosecutor v Jelisic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

<sup>15</sup> Regarding the number of people who need to be harmed for genocide to apply, the International Criminal Court suggests that the number simply needs to be one or more, highlighting that there does not need to be evidence of the extermination of the whole or even most of the population. See, *Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>16</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Judgment, 2 September 1998; *Kosovo Backgrounder: Sexual Violence as International Crime*, Human Rights Watch, 10 May 1999, <http://www.hrw.org/backgrounder/eca/kos0510.htm> (last visited 27 July 2008); Stiglmayer, Alexandra, "Sexual Violence: Systematic Rape," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/sexual-systematic-rape.html> (last visited 27 July 2008).

---

<sup>17</sup> Orentlicher, Diane F., “Genocide,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

<sup>18</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>19</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>20</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>21</sup> *Rome Statute of the International Criminal Court*, Article 7(1)(g), 17 July 1998.

<sup>22</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>23</sup> *Ibid.*

<sup>24</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>25</sup> *Ibid.*

<sup>26</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>27</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>28</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>29</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>30</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.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

## Endnotes

- 
- <sup>31</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>32</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.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).
- <sup>33</sup> *Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography- Background and Mandate*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/children/rapporteur/index.htm> (last visited 1 August 2008).
- <sup>34</sup> *Ibid.*
- <sup>35</sup> *Ibid.*
- <sup>36</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>37</sup> *Special Rapporteur on Violence Against Women, its Causes, and Consequences- Introduction*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/women/rapporteur> (last visited 3 August 2006).
- <sup>38</sup> *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.
- <sup>39</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>40</sup> Proposals have been submitted and are currently under consideration by the General Assembly to extend the meeting time for the Committee. These proposals have not yet taken effect. *See, Meeting of States parties to the Convention on the Elimination of All Forms of Discrimination against Women*, 14<sup>th</sup> Meeting, 23 June 2006, <http://www.un.org/womenwatch/daw/cedaw/statesmeeting/fourteenth.htm> (last visited 14 August 2006).
- <sup>41</sup> *See, CEDAW, Article 21, 18 December 1979; Fact Sheet No. 22- Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).
- <sup>42</sup> Burma is a signatory to CEDAW and, therefore, is responsible for submitting periodic reports. As of November 2007, Burma has submitted an initial report and a combined second and third report. To view these reports, visit, *Country Reports*, Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/reports.htm#m> (last visited 20 November 2007).
- <sup>43</sup> *Fact Sheet No. 22- Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).
- <sup>44</sup> *Optional Protocol to CEDAW, Article 2, 22 December 2000.*
- <sup>45</sup> *Ibid.*
- <sup>46</sup> *See, CEDAW, Article 21, 18 December 1979; Fact Sheet No. 22 - Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).
- <sup>47</sup> *Ibid.*
- <sup>48</sup> For information on becoming accredited with the Economic and Social Council, visit *How to Obtain Consultative Status with ECOSOC*, Economic and Social Council, NGO Section, <http://www.un.org/esa/coordination/ngo/> (last visited 20 November 2007)

<sup>49</sup> For more information on how to submit information or participate in Commission sponsored activities, visit, *NGO Participation in CSW Sessions*, Commission on the Status of Women, Division for the Advancement of Women, [http://www.un.org/womenwatch/daw/csw/csw51/NGO.html#not\\_received](http://www.un.org/womenwatch/daw/csw/csw51/NGO.html#not_received) (last visited 20 November 2007)

<sup>50</sup> *Fact Sheet No. 22- Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006). See also, *Women's Rights the Responsibility of All: Basic Information Kit No. 2*, Commission on the Status of Women, 10 November 1997.