

**HUMAN RIGHTS DOCUMENTATION  
MANUAL SERIES:**

**DOCUMENTING KILLINGS AND DISAPPEARANCES  
IN BURMA**

**NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA**

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## ACKNOWLEDGEMENTS

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

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

## PREFACE

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

**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 killings and disappearances.

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

### *About ND-Burma*

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

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

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

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

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

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## CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

### I. Violations of Human Rights: Killings and Disappearances

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 killings and disappearances as violations.

### II. Defining Killings

#### A. What are the elements of a killing under international law?

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

1. A taking of human life
2. Illegality
3. State action

#### International Law: Right to Life



International law prohibits the arbitrary deprivation of life. A killing is a violation of international law as a deprivation of life.

#### B. What qualifies as an “illegal” killing?

An “illegal” killing includes unlawful killings or extrajudicial, summary, or arbitrary executions. In general, a killing is considered illegal if it contains some element of injustice, unreasonableness, disproportionality, or unpredictability. For example, illegal killings include the following:<sup>2</sup>

- Deaths from torture
- Executions without a fair trial
- Executions of prisoners of war\*
- Deaths resulting from excessive force, especially in peaceful demonstrations
- Deaths resulting from life-threatening conditions during detention, such as being denied food or medical supplies

Killings are considered “legal” in only a few circumstances, such as where the person is killed while engaging in active combat or under the death penalty after a fair trial.<sup>3</sup> Most other killings are illegal, including killings committed during national emergencies.

#### C. What is state action?

State action is necessary for a killing 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>4</sup> State action, therefore, means that this entity was in some way responsible for or involved in the

\* The International Laws of War do not permit killings of soldiers or members of armed opposition groups during combat, unless they occur within the context of active combat hostilities. This provision clearly does not extend to prisoners of war. Any person who has surrendered may not be executed under the International Laws of War, even if that person is or was a member of an opposing army or armed group. Further, deaths that result from torture are always unlawful.

violation. For example, if a killing 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 a killing 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: Killings

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 a killing*

- Who died?
- What happened?
- When did the person die?
- Where did the person die?
- How did the person die?
- How do you know what happened?

#### 2. *Establishing that the killing was illegal*

- What led to the killing?
- What was the reason given for the killing?
- What opportunity did the victim have to challenge the killing?
- How was the killing perpetrated?
- How do you know this information?

#### 3. *Establishing state action*

- Who carried out the killing? Who ordered it? Who knew about it? Who assisted in it?

#### Interview Tips: Do's



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

<sup>†</sup> 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.

- 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. Defining Disappearances

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

In order to document a disappearance as a human rights violation, evidence of *four elements* must be present:<sup>5</sup>

1. The abduction or carrying away of a person
2. Lack of willingness by the victim
3. State action
4. State denial of the disappearance

### B. What is required to show “state denial?”

“State denial” means the state failed to disclose or investigate the disappeared person’s whereabouts. In other words, the state failed to provide information or resources in order to locate the missing person. This element is important because it establishes that the disappeared person is outside legal protection.<sup>6</sup>

To prove “state denial,” the disappeared person’s family or other representative must show they made efforts to inquire about the missing person and that there was an inadequate response to these inquiries.

Where such inquiries may result in retaliatory action, the family or representative must show that fear of retaliation prevented them from inquiring about the missing person.<sup>7</sup>

#### International Law: Disappearances



Protection from disappearances stems from a collection of established rights, including the right to recognition as a person before the law; the right to liberty and security of the person; the right to be free from torture; and often the right to life. These rights are embodied in a number of international documents. The *Declaration on the Protection of All Persons from Forced Disappearances* deals specifically with Enforced Disappearances.

## V. Asking the Critical Questions: Disappearances

### 1. Establishing an abduction

- Who went missing?
- What happened?
- When did the person go missing?
- Where was the last known location of the person?
- How did the person go missing?
- How do you know what happened?

### 2. Establishing that the disappearance was involuntary

- Who ordered the disappearance?
- What would have happened if the victim refused to leave?
- Why do you think the disappearance occurred?
- How did the incident occur?
- Was the victim threatened? How? By whom?
- How do you know this information?

### 3. *Establishing state action*

- Who carried out the disappearance? 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?

### 4. *Establishing state denial*

- Was the disappearance reported? Why or why not?
- Who was the incident reported to?
- What did the state do to prevent or respond to the incident?
- When was the incident reported?
- How do you know this information?

#### Interview Tips: Don'ts



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

## VI. Practicing Documentation

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

To practice identifying the elements of a violation, this section provides a fact pattern containing evidence of a typical killing and disappearance 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 killings and disappearances in Burma.



#### Historical and Political Context of Killings and Disappearances 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. In recent years, illegal killings have continued at the hands of the military regime.<sup>8</sup> Groups accused of these practices include the Burma Army, the police, the former Military Intelligence, the *pyithusit* (people's militia), and ceasefire groups working alongside the

SPDC forces.<sup>9</sup> There is also evidence of civilian killings by armed opposition groups, although on a smaller scale than state-sanctioned killings.<sup>10</sup>

Nonviolent political opponents are often the targets of attacks. At least 93 political prisoners have died in prison since 1988.<sup>11</sup> On May 30, 2003, Daw Aung San Suu Kyi and her traveling party were attacked on the road near Depayin, in northern Burma.<sup>12</sup> Eyewitnesses estimate that as many as seventy civilians died. The UN Special Rapporteur for the situation of human rights in Myanmar has determined that the attack “could not have happened without the connivance of State agents.” The military rulers, meanwhile, refuse to investigate the incident.<sup>13</sup>

Reports indicate that most killings and disappearances in Burma are committed by military soldiers against ethnic nationalities as part of the regime’s war against armed ethnic opposition groups. Many civilians have been killed or kidnapped for allegedly supporting the armed opposition. Reports indicate that others have died from forced labor, particularly while working as porters or clearing landmines.<sup>14</sup> Widespread rape by soldiers has resulted in the abuse and death of many women.<sup>15</sup> Soldiers often kill villagers for refusing to relocate their homes or for going to forbidden areas.

## B. Fact Pattern

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

1. A taking of human life
2. Illegality
3. State action

To establish a disappearance in accordance with international human rights standards, there must be:

1. The abduction or carrying away of a person
2. Lack of willingness by the victim
3. State action
4. State denial of the disappearance

### Fact Pattern: Killings and Disappearances<sup>§</sup>



Nang Seng Sai awoke suddenly in the middle of the night to the sound of gunshots ringing through her village. She then noticed that her husband, Sai Aye, was nowhere to be found. The two had fallen asleep only a few hours earlier. She jumped from her bed to check on her 15-year-old son, Sai Ye Thip, and two daughters, Nang Mywe Horn, age 8, and Nang Kham Seng, age 4. As she ran to them, she could hear other villagers screaming. With her terrified children, she looked out in front of her house. She saw a group of men in military uniforms storming the village and yelling for all men to come with them. The house next to hers was on fire, and she could see other villagers’ belongings scattered nearby.

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

“Quick,” she called to her children, “we must leave here and hide. Follow me to the fields behind the house, and be quiet.”

They left hurriedly through the dark but some of the soldiers spotted Sai Ye Thip. “You!” they called, “Stop! You’re coming with us. We won’t tolerate this village supporting Shan rebels!”

The men grabbed Sai Ye Thip, but he pulled back. One man hit him with his gun, and Sai Ye Thip fell to the ground. Nang Seng Sai could see him still moving and shouted for him to run. However, as she was running away, she saw one of the men drag him along with them. She picked up Nang Kham Seng, took Nang Mywe Horn by the hand, and ran for the fields. Nang Seng Sai was terrified and her daughters were crying. “Shhh,” she said to them. “Your brother will come. We just have to wait here until they’re gone.”

They ran deeper and deeper into the fields until they could not see through the thickness of the crops. They collapsed into quiet sobs, and waited there until daylight. Finally, when the sun was just beginning to come up, Nang Seng Sai gathered her daughters. They crept closer to the village slowly, making sure that it was safe to return.

To her horror, when they got back, Nang Seng Sai saw her husband’s body lying in blood in front of her house, a bullet wound in his chest and forehead. There were bodies of other members of the village too. Some were women, some were men, and some were children. Nang Seng Sai’s house was destroyed. Only the posts were left standing. The chickens and one cow they owned were missing too.

Nang Seng Sai searched the village for her son, Sai Ye Thip. She couldn’t find him. She asked other villagers who had also returned but no one had seen him. Other families were searching for loved ones as well. It seemed that every family knew someone who had been shot or who was missing.

Two days later, Nang Seng Sai went to the authorities. She told them about the raid, and explained to them that her son was missing. The local battalion authorities in MOUNG NI denied that the government was behind the raid, but said that they would begin a search for her son if he was still missing in a week. Nang Seng Sai continued to search. She visited neighboring villages, asking every one she met if they’d seen her son.

Soon after she buried her husband, she went back to the authorities. She told them again that her son was missing. They told her that he had likely run away and that there was nothing they could do to help. They told her to go home and to stop bothering them.

Nang Seng Sai has been devastated since that night. Her daughters Nang Mywe Horn and Nang Kham Seng are also in shock.

### **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***

Your husband was killed during the raid, right?

*Nang Seng Sai:* Yes. It was horrible. We had a burial service, but my daughters and I are still in mourning. I miss him. The girls keep asking me where their father and brother are. I have nothing to tell them.

And your husband was killed by the soldiers?

*Nang Seng Sai:* Yes.

And did the soldiers kill your son, too?

*Nang Seng Sai:* He's gone. I have no idea where he is. He is my first child. I miss him so much.

Was he taken by the soldiers?

*Nang Seng Sai:* Yes. I think so.

Were other people killed?

*Nang Seng Sai:* Yes.

#### **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 Nang Seng Sai 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, Nang Seng Sai 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 killings and disappearances, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as the destruction of her family's home and confiscation of their property.

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

## 2. Sample Interview: Good

Nang Seng Sai, can you tell me what happened in your village a few weeks ago?

*Nang Seng Sai:* Yes. It was horrible. I woke in the middle of the night to the sounds of soldiers raiding the village. I didn't see my husband, and I could hear gun shots. I took my children and ran to hide in the fields, but my son and I became separated. I still don't know where he is. When my daughters and I came back to the village, I saw my husband's dead body lying in the street.

Let's talk about your husband first. Do you know how he died?

*Nang Seng Sai:* He was shot by the soldiers.

How do you know that the soldier's killed your husband?

*Nang Seng Sai:* I didn't see the soldiers shoot my husband, but I found him lying in a pool of blood. He was shot in the head and chest. It was just after dawn when I found his body, a couple of hours after the raid. During the raid, I could hear gun shots being fired in the streets. Many families in the village have loved ones who were shot like my husband.

How do you know the men involved in the raid were soldiers?

*Nang Seng Sai:* I am certain that they were soldiers. They were wearing Burma Army uniforms and they accused our village of supporting the Shan armed opposition groups.

I also want to know about your son. What happened to him?

*Nang Seng Sai:* He's missing. I don't know.

When is the last time that you saw him?

*Nang Seng Sai:* I saw him during the raid. He was trying to run with us to the fields to hide. But the soldiers caught up with him. They knocked him down, and dragged him off. I thought he would get away and find us in the fields, but he never came. We waited until dawn and then went back to the village. He never came back.

Did you notify the authorities?

*Nang Seng Sai:* Yes. I went to the village headquarters a few days after the raid. I told them that soldiers raided our village, that my husband had been killed, and that my son was missing.

What did they tell you?

*Nang Seng Sai:* They are not good for anything. They blamed the raid on the Shan opposition groups. They told me to come back in a week if my son was still missing.

Did you go back?

*Nang Seng Sai:* Yes, I went back. I pleaded with them to help me find my son. I asked them to tell me where the soldiers might have taken him. They wouldn't tell me anything and said there was nothing that could be done. I am scared to go back and ask again.

Why are you scared to go back to the authorities?

*Nang Seng Sai:* Some of my friends have been threatened with further attacks on the village if they continue to ask about their missing relatives.

Is there anyone else I could talk to who knows what happened to you?

*Nang Seng Sai:* Anyone who is left in the village can tell you about the raid. They all have their horror stories. Everyone is devastated. You can talk to Sai Long La, Sai Aung Moon, and Nang Hseng Heng. They all live near me in the village.

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

*Nang Seng Sai:* The raid destroyed my life. They took my husband and my son. They also destroyed my house and stole our livestock. The entire village is devastated.

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

*Nang Seng Sai:* You can come back here to this village and talk to me any time. Please help me to find my son.

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



This interview is good because Nang Seng Sai 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, Nang Seng Sai has provided the following information about the killing:

**First**, Nang Seng Sai provided information to establish that her husband was killed. She said that she found her husband's body in a pool of blood after the raid and that he was shot in the head and chest. Evidence of his funeral will help to verify that he was killed.

**Second**, Nang Seng Sai provided details to establish that the killing was illegal. She indicated that he was killed without any reason or process and that other villagers had been killed in a similarly arbitrary manner. Based on her testimony, it appears that the killing was illegal.

**Lastly**, Nang Seng Sai indicated that the killing involved state actors. Although she did not see the killing take place, she indicated that Burma Army soldiers perpetrated the raid, that they were wearing Burma Army uniforms, and that she found her husband's body following the raid. This information is sufficient to show state involvement.

Nang Seng Sai also provided information to establish the disappearance of her son.

**First**, Nang Seng Sai provided information to establish that her son was abducted. She said that he was carried away during the raid, he has not returned, and she does not have any information regarding his whereabouts. Interviewing other villagers would help corroborate Nang Seng Sai's version of the events.

**Second**, Nang Seng Sai provided details to establish that her son's disappearance was committed against his will. She indicated that he was trying to escape the soldiers when they

caught him, knocked him down, and dragged him away. Based on her testimony, it appears that the act was carried out in a way that was involuntary.

**Third**, Nang Seng Sai indicated that the disappearance involved state actors. She said that she saw her son being dragged away by Burma Army soldiers and that this was the last time she saw him. This information is sufficient to show state involvement.

**Finally**, Nang Seng Sai provided information to establish state denial of the disappearance. She said she went to the authorities twice to report that her son was missing. She indicated that the state failed to provide information about her son's whereabouts, failed to take action to investigate the disappearance, and responded that there was nothing they could do. She also indicated that she was afraid to return to the authorities, fearing retaliatory raids.

The interview also provides evidence of other violations in connection with the killing and disappearance, such as the destruction of her home and confiscation of her cows and chickens. Interviewing her neighbors would help to verify Nang Seng Sai's account. Further questions may be necessary to establish other violations. The interview ends well because Nang Seng Sai has agreed to answer further questions and the interviewer knows how to contact her.

## **VII. Conclusion**

After reading this Chapter, you should be able to:

- recognize the elements of killings and disappearances under international law,
- develop critical questions in order to collect information about killings and disappearances, 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 killings and disappearances 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 a killing:

- What evidence exists to show a taking of human life?
- What evidence exists to show that the killing was illegal?
- What evidence exists to show state action was involved in the killing?

To establish a disappearance:

- What evidence exists to show a person was abducted or carried away?
- What evidence exists to show that the disappearance was committed against a person's will?
- What evidence exists to show state action was involved in the disappearance?
- What evidence exists to show state denial of the disappearance?

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.

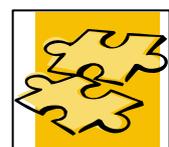
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

### 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 killings and disappearances by the authorities would likely have a greater impact than isolated incidents that do not indicate a pattern.

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

- The same type of victim is targeted, such as members of the same



- political party or ethnic group.\*\*
- The same type of violation is committed, such as multiple instances of killings and disappearances 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 killings and disappearances.

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 Violations 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 killings and disappearances 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>16</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>17</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

#### 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.

\*\* 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.

important for human rights organizations to understand the legal definition of genocide and crimes against humanity in order to understand the range of options available under international law and to improve their analysis of the situation. Knowledge of the elements of genocide and crimes against humanity will help in this task.

## B. Defining Genocide

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

Genocide involves grave human rights violations designed to destroy a particular group of people, in whole or in part. To establish genocide under international law from evidence of human rights violations, the following evidence is needed:<sup>18</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 killings and disappearances qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that killings and disappearances amount to genocide. Genocide includes “killing members of the group,” “causing serious bodily or mental harm to members of a group,” and “deliberately inflicting conditions of life calculated to bring about physical destruction.” When any of these acts have been committed and when the other elements of genocide are met, killings and disappearances 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>19</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>20</sup>

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

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

“With intention” means purposeful. A person acts purposefully towards a result when his or her conscious objective is to cause that result. To prove this element of genocide, one must show that the alleged perpetrator had a particular reason for acting, i.e. that he or she intended to bring about the destruction, in whole or in part, of a national, racial, ethnic, or religious group.

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

**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?

**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>21</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>22</sup>

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

Evidence is necessary to demonstrate the intentions of the perpetrator, and direct evidence such as government statements or army orders is extremely helpful for proving genocide. However, intent can also be inferred from the situation.<sup>23</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>24</sup> Direct evidence showing intention, such as a document stating that certain members of a religious group suffered killings and disappearances 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 the crime they committed was part of a widespread or systematic attack against a civilian population.
- **Types of Victims:** Genocide requires that members of a religious, racial, ethnic or national group be targeted while crimes against humanity may also include other groups, such as social or political groups.
- **Types of Violations:** Acts that constitute genocide and crimes against humanity overlap but also have some differences.

## C. Defining Crimes against Humanity

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

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:<sup>25</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 killings and disappearances qualify as a crime against humanity?*

It is possible. Killings and disappearances are explicitly defined as crimes against humanity in the Rome Statute of the International Criminal Court when the other elements are met. The International Criminal Tribunals also recognize killings and disappearances as crimes against humanity. Affirming this principle, the tribunals for Rwanda and Yugoslavia have held perpetrators accountable for offenses of killings and disappearances.

### 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>26</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>27</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 commits a killing or disappearance against civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.<sup>28</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>29</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>30</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>31</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>32</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 killings and disappearances.

## 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 killings and disappearances, 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>33</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 killings and disappearances 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>34</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>35</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>36</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 killings and disappearances.

#### **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 Extrajudicial, Summary, or Arbitrary Executions\*\*\***

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

The Special Rapporteur is responsible for investigating and responding to reports of extrajudicial, summary or arbitrary executions.<sup>37</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.<sup>38</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>39</sup> The Office of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions 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/executions/model.htm>.

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

The Special Rapporteur will consider evidence of the following violations:<sup>40</sup>

- **Death penalty:** where the trial was unfair; where the prisoner is a minor, mentally retarded or insane person, a pregnant woman or a recent mother
- **Death threats:** where there are fears of imminent execution by state officials
- **Deaths in custody:** deaths from torture, life threatening conditions, or neglect
- **Deaths from force:** deaths from the excessive use of force by the state
- **Deaths from state led attacks:** deaths caused by state security forces or state supported groups

\*\*\* Since 2004, Philip Alston has served as the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

- **Violations of the right to life during armed conflicts:** including deaths from indiscriminate shelling
- **Expelling a person to a country where their life will be in danger**
- **Genocide**
- **Failure to investigate:** where the state has failed to investigate violations and bring perpetrators to account
- **Failure to compensate:** where the state has failed to compensate victims and their families

#### ***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>41</sup>

### **C. UN Working Group on Enforced or Involuntary Disappearances**

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

The Working Group is composed of five independent experts.<sup>†††</sup> The Group meets three times a year.<sup>42</sup>

#### ***2. What is the Working Group's role?***

The Working Group monitors and investigates cases of disappearances. The Working Group receives individual complaints. Based on such complaints, the Working Group notifies governments of disappearances that need to be investigated.<sup>†††</sup> To develop a full understanding of the situation in a particular country and to engage in direct dialogue with state actors and members of civil society, the Working Group conducts field visits.<sup>43</sup> The Working Group submits annual reports to the Human Rights Council.<sup>44</sup>

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

The Working Group receives information and will consider communications from family members or friends of the disappeared. Human rights organizations may also send communications to the Working Group on behalf of family members of the disappeared. However, they must be able to show that they have permission from the represented parties and that they will communicate the results of the case. States, human rights organizations, and other interested parties may also submit information to the Working Group.<sup>45</sup>

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

The Working Group may take urgent action in cases where a disappearance either poses a serious threat to the person's life or circumstances warrant urgent action. Urgent cases are sent directly to the Foreign Affairs Minister of the concerned state rather than the state's Permanent Representative to the United Nations, which is the usual practice. The Working Group will ask that the state take appropriate measures to protect the rights of the person(s) at risk.<sup>46</sup>

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<sup>†††</sup> Since 2004, Santiago Corcuera has served as the Chairperson of the Working Group.

<sup>†††</sup> It also informs governments once a year of the number of disappearances which have not been clarified and twice a year of the number of unresolved urgent action cases. The Working Group can receive individual complaints about any country, even if the concerned country is not a party to relevant international conventions. However, the Working Group will not remain involved in the case once the missing person's whereabouts become known, even if the person is found dead.

**Summary of the Working Group's Procedure<sup>47</sup>**



1. If a disappearance occurred within three months of the report, the Working Group will send an urgent appeal to the government's foreign minister.
2. If a disappearance occurred more than three months before the report, the case will be sent to government's Permanent Representative to UN.
3. If the government replies, the Working Group will send the reply to the organization to pass on to the relevant family members.
4. If the family is satisfied with the explanation, no further action is necessary and the case will be considered "clarified."
5. If the family has reasonable grounds to challenge reply, the organization must inform the Working Group within six months of the date on which the Working Group received the government's reply.
6. If the Working Group decides the challenges are reasonable, it may send the organization's comments to the government with requests for more information.
7. If the Working Group decides the challenges are **unreasonable** it will consider the case to have been "clarified."

A reply must be made to Working Group within six months of the date that the Working Group received the government's reply (not the date on which the reporting organization received the government's reply from the Working Group) to avoid the case being closed.

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

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

**Contact Information**



Organization	Contact Details	Useful Websites
UN Secretary General, Ban Ki-Moon	Secretary General: Ban Ki-Moon Headquarters: 1st Ave. and 46th street New York, NY 10017 USA Tel: +1 (212) 963 1234 Fax: +1 (212) 963 4879	To learn more about the Secretary-General, visit: <a href="http://www.un.org/sg/biography.shtml">http://www.un.org/sg/biography.shtml</a>  For contact details of the permanent missions to the United Nations in New York see: <a href="http://www.un.org/Overview/missions.htm">http://www.un.org/Overview/missions.htm</a>
Human Rights Council <sup>§§§</sup>	To submit complaints to the Council under the 1503 Procedure:  Treaties and Human Rights Council Branch 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 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

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

Chapter 3: Advocacy- Using the Evidence

	<p>To submit communications to the Council under the Special Procedures:</p> <p>Office of the United Nations High Commissioner for Human Rights Palais des Nations 8-14, avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 (0)22 917 90 06 E-mail: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a></p>	<p>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></p>
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	<p>UN Office of the High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Tel: +41 22 917 9000</p>	<p>To learn more about the UN Office of the High Commissioner for Human Rights, visit: <a href="http://www.ohchr.org/EN/Pages/WelcomePage.aspx">http://www.ohchr.org/EN/Pages/WelcomePage.aspx</a></p>
UN Office of the High Commissioner for Human Rights, Southeast Asia Office, Regional Representative Homayoun Alizadeh	<p>OHCHR Southeast Asia Regional Office UNESCAP UN Secretariat Building, 6th Fl., Room A-601 Rajdamnern Nok Av. Bangkok 10200, Thailand Tel.: (66) 2 288 1235 Fax: (66) 2 288 3009 <a href="mailto:ohchr.bangkok@un.org">ohchr.bangkok@un.org</a> Homayoun Alizadeh: <a href="mailto:alizadeh@un.org">alizadeh@un.org</a></p>	<p>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>.</p>
UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomás Ojea Quintana	<p>UN Special Rapporteur on the situation of Human Rights in Myanmar OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06</p> <p>For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a></p>	<p>For documents on the Special Rapporteur, visit: <a href="http://www.unhcr.ch/html/menu2/7/a/mmya.htm">http://www.unhcr.ch/html/menu2/7/a/mmya.htm</a></p>
UN Special Envoy of the Secretary-General for Myanmar	<p>There is no specific process for sending information to the Special Envoy.</p> <p>Currently, the post of the Special Envoy is vacant.</p>	<p>To get updated information on the post of the Special Envoy, visit: <a href="http://www.un.org/News/ossg/srsg/table.htm">http://www.un.org/News/ossg/srsg/table.htm</a></p>
Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, Philip Alston	<p>Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, OHCHR-UNOG Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006</p> <p>For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a></p>	<p>For more information on the Special Rapporteur, visit: <a href="http://www.ohchr.org/english/issues/executions/index.htm">http://www.ohchr.org/english/issues/executions/index.htm</a></p>
Working Group on Enforced or Involuntary Disappearances	<p>Working Group on Enforced or Involuntary Disappearances c/o OHCHR-UNOG CH-1211 Geneva 10 Switzerland Tel: (41-22) 917 9176 Fax: (+41-22) 917 90 06 E-mail: <a href="mailto:wgeid@ohchr.org">wgeid@ohchr.org</a></p>	<p>For more information on the Working Group, visit: <a href="http://www.ohchr.org/english/issues/disappear/index.htm">http://www.ohchr.org/english/issues/disappear/index.htm</a></p>

### **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 killings and disappearances, and
- understand how to submit information to the UN.

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

## APPENDIX 1 – MODEL QUESTIONNAIRE FOR REPORTING EXTRAJUDICIAL, SUMMARY, AND ARBITRARY EXECUTIONS\*\*\*\*

### SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS - MODEL QUESTIONNAIRE

#### GENERAL INFORMATION

The Special Rapporteur undertakes action in the following cases:

- (a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, or in case of a breach of the right to appeal or the right to seek pardon or commutation of sentence. He also intervenes if the convicted is a minor, a mentally retarded or insane person, a pregnant woman or a recent mother;
- (b) Death threats and fear of imminent extrajudicial executions by state officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above;
- (c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;
- (d) Deaths owing to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- (e) Deaths owing to attacks by security forces of the State, by paramilitary groups, death squads or other private forces cooperating with or tolerated by the Government;
- (f) Violations of the right to life during armed conflicts, especially of the civilian population, contrary to humanitarian law;
- (g) Expulsion or refoulement of persons to a country where their lives are in danger;
- (h) Genocide;
- (i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;
- (j) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

Address:

Reports of extrajudicial, summary or arbitrary executions may be transmitted to the following address:

Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions  
c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland  
Fax: (+41 22) 917 90 06

or e-mailed to:

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

Note: 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.

#### I. Identity of the Person Concerned:

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\*\*\*\* Please note that this document has been reproduced from [www.unhchr.com](http://www.unhchr.com). There is no affiliation between ND-Burma and the Office of the High Commissioner for Human Rights. The document is simply provided for training purposes.

Appendix 1: Model Questionnaire for Killings

Note: if more than one person is concerned, please fill out separate questionnaires for each person

1. Family name:.....

2. First name:.....

3. Sex: \_\_ male \_\_ female

4. Birth date or age:.....

5. Nationality(ies):.....

6. Civil status (single, married, etc.):

7. Identity document:.....

No.:.....

Issued by:.....

Date of issue:.....

8. Profession and/or activity (e.g. trade union, political, religious, humanitarian/solidarity/human rights, etc.) .....

9. Address of usual residence

:  
:  
:

10. Is there a link to other cases/ persons? Please specify:

:  
:  
:

**II. Information Regarding the Incident:**

1. Date:.....

2. Place:.....

3. Time:.....

4. The nature of the incident: Please describe the circumstances of the incident, including the following categories:

(a) death penalty, or fair trial guarantees, please detail (unfair laws or proceedings, charges, eventual appeals, execution is imminent, etc.)

(b) imminent violation of the right to life is feared (death threats, imminent expulsion or refoulement leading to a life-threatening situation, etc.), please detail.

(c) others (death in custody, death during an armed conflict, death due to excessive use of force by law enforcement officials, death due to attacks by security forces of State, paramilitary or private forces, breach of obligation to investigate, etc.):

:  
:  
:



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

(b) in case of complaints by the victim or its family, how have the organs dealt with them? What is the outcome of those proceedings?  
.....  
.....  
.....  
.....  
.....

**VI. Identity of the Person Submitting the Case**

1. Family name:.....

2. First name(s):.....

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

4. Address (telephone, fax, e-mail):  
.....  
.....  
.....  
.....

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

Date:

Signature of author:

## ENDNOTES

<sup>1</sup> The main international agreements explicitly protecting the right to life include:

- *Universal Declaration of Human Rights* (Article 3)
- *International Covenant on Civil and Political Rights* (ICCPR) (Article 6)
- *Geneva Conventions* (Common Article 3) which are part of the Laws of War, of which Burma is a party.
- *The Covenant on the Rights of the Child* (Article 6), which applies where a victim is under 18. Burma is a party to this treaty, with reservations.

Regional agreements like the European Convention on Human Rights (Article 2) and the American Convention on Human Rights (Article 4) also protect the right to life. Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments aimed at protecting the right to life include *the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty; the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. In particular, *the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions* require governments to provide judicial or other forms of protection to people who are in danger of such executions, including those who receive death threats. Further, Article 1 of *the Principles* states that even exceptional circumstances such as internal political instability or other public emergencies do not justify executions. Article 20 provides that the victim's family be compensated within a reasonable period of time. See *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*: Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, Article 1, <http://www.unhchr.ch/html/menu3/b/54.htm> (last visited July 31, 2008) and *Fact Sheet No 11 (Rev. 1), Extrajudicial, Summary or Arbitrary Executions*, <http://www.unhchr.ch/html/menu6/2/fs11.htm> (last visited Nov 1, 2005).

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.

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 right to life 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, *Fact Sheet No 11 (Rev. 1), Extrajudicial, Summary or Arbitrary Executions*, <http://www.unhchr.ch/html/menu6/2/fs11.htm> (last visited 1 November 2005).

<sup>2</sup> See, *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (Article 1) and *Fact Sheet No 11 (Rev. 1): Extrajudicial, Summary or Arbitrary Executions*, <http://www.unhchr.ch/html/menu6/2/fs11.htm> (last visited 1 November 2005).

<sup>3</sup> Many believe that international law prohibits the death penalty altogether. At a minimum, international law prohibits the death penalty from being imposed on a minor, a pregnant woman, new mother, or insane person: See, *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, ECOSOC resolution 1984/50 of 25 May 1984, [http://www.unhchr.ch/html/menu3/b/h\\_comp41.htm](http://www.unhchr.ch/html/menu3/b/h_comp41.htm) (last visited 1 November 2005); see also Article 6(5) of the *International Covenant on Civil and Political Rights*, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument) (last visited 1 November 2005) and *General Comment No. 06: The Right to life* (Art. 6).

<sup>4</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.

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<sup>5</sup> See, *Declaration on the Protection of all Persons from Enforced Disappearance*, <http://www.ohchr.org/english/law/disappearance.htm> (last visited 30 November 2005).

The Declaration states that systematic enforced disappearances not only violate the rights listed in the text but also constitute a crime against humanity. Further, Article 7 states that even internal political instability or the threat of war are **not** justifiable excuses for enforced disappearances.

The Declaration also requires that the government maintains a register of all people in detention (Article 10(3)). Further, the government has a duty to fully investigate all alleged disappearances (Article 13) and to provide family members and other interested parties with accurate information on the detention of their loved ones (Article 10(2)). The Government must also take steps to limit any reprisals or fear of reprisals against those who inquire about the whereabouts and well-being of a disappeared person (Article 13(3)).

The Declaration does not apply to non-state actors (e.g., armed opposition groups).

<sup>6</sup> See, *Preamble of the Declaration on the Protection of all Persons from Enforced Disappearance*, <http://www.ohchr.org/english/law/disappearance.htm> (last visited 30 November 2005).

<sup>7</sup> The mandate of the Working Group on Enforced Disappearances not only includes investigating disappearances but also taking steps to protect family members from reprisals. Therefore, even if the field worker does not have evidence of the state denial, which is the last element, s/he should still document the other elements of the crime and provide reasons for why investigations about the disappearance have not been carried out. See *Fact Sheet No. 6 (Rev. 2) Enforced or Involuntary Disappearances*, Officer of the High Commissioner for Human Rights, <http://www.unhcr.ch/html/menu6/2/fs6.htm>; <http://www.ohchr.org/english/issues/disappear/members.htm> (last visited 1 November 2005).

<sup>8</sup> *Country Report on Human Rights Practices*, U.S. State Department, 2003, <http://www.state.gov/g/drl/rls/hrrpt/2003/27765.htm> (last visited 1 November 2005).

<sup>9</sup> *Burma Human Rights Yearbook*, Human Rights Documentation Unit, National Coalition Government of the Union of Burma, 2004, <http://www.burmalibrary.org/show.php?cat=1803&lo=d&sl=1> (last visited 1 November 2005).

<sup>10</sup> *Country Report on Human Rights Practices*, U.S. State Department, 2003, <http://www.state.gov/g/drl/rls/hrrpt/2003/27765.htm> (last visited 1 November 2005).

<sup>11</sup> Report of the UN Special Rapporteur for Burma at 12 (2004). Available at <http://www.ibiblio.org/obl/docs3/GA2005-SRM-rep-en.pdf> (last visited 1 November 2005).

<sup>12</sup> Commissioned by Vaclav Havel and Bishop Desmond Tutu and Prepared by DLA Piper, Rudnick, Gray, and Cary, A *Threat to Peace: A Call for the UN Security Council to Act in Burma*, 20 September 2005, <http://www.burmacampaign.org.uk/reports/Burmaunscreport.pdf> (last visited 24 November 2007).

<sup>13</sup> *Ibid.* at 10.

<sup>14</sup> *Country Report on Human Rights Practices*, U.S. State Department, 2004, <http://www.state.gov/g/drl/rls/hrrpt/2004/41637.htm> (last visited 1 November 2005).

<sup>15</sup> *Ibid.* at 11. For example, in its 2002 report, "License to Rape," the Shan Women's Action Network found that 25% of the incidents of rape that its fieldworkers documented resulted in death.

<sup>16</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

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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/ictt/](http://www.un.org/ictt/) (last visited 27 July 2008).

<sup>17</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>18</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>19</sup> See, *Prosecutor v Jelusic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

<sup>20</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>21</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); Stigmayer, 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>22</sup> Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

<sup>23</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>24</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>25</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

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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>26</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>27</sup> *Ibid.*

<sup>28</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>29</sup> *Ibid.*

<sup>30</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>31</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>32</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>33</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>34</sup> Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

<sup>35</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>36</sup> Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

<sup>37</sup> In particular, the Special Rapporteur’s mandate includes paying special attention to executions of women, children, minorities and individuals carrying out peaceful activities, such as demonstrations. He is also in charge of monitoring compliance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. See *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*; E.CN.4/2005/7, 22 December 2004, <http://www.ohchr.org/english/issues/executions/annual.htm> (last visited 1 November 2005).

<sup>38</sup> See *Fact Sheet No 11 (Rev. 1), Extrajudicial, Summary or Arbitrary Executions*, Office of the High Commissioner for Human Rights <http://www.unhchr.ch/html/menu6/2/fs11.htm> (last visited 1 November 2005).

<sup>39</sup> See, *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions – Mandate*, Office of the High Commissioner for Human Rights, [http://www.unhchr.ch/html/menu2/7/b/execut/exe\\_mand.htm#violations](http://www.unhchr.ch/html/menu2/7/b/execut/exe_mand.htm#violations) (last

visited 1 November 2005). The Special Rapporteur may also include information in the annual report to the Human Rights Council.

<sup>40</sup> See, *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions – Mandate*, Office of the High Commissioner for Human Rights, [http://www.unhchr.ch/html/menu2/7/b/execut/exe\\_mand.htm#violations](http://www.unhchr.ch/html/menu2/7/b/execut/exe_mand.htm#violations) (last visited 1 November 2005).

<sup>41</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>42</sup> *Working Group on Enforced or Involuntary Disappearances*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/disappear/index.htm> (last visited 24 November 2007).

<sup>43</sup> Field visits are conducted by invitation from concerned states. Considering that requests for visits by the Special Rapporteur on the Situation of Human Rights in Myanmar and the Special Envoy of the Secretary-General for Myanmar and other UN representatives and agencies have been denied by Burma, it is unlikely that the regime would voluntarily invite the Working Group on Enforced and Involuntary Disappearances to conduct a field visit.

<sup>44</sup> See *Fact Sheet No. 6 (Rev. 2) Enforced or Involuntary Disappearances*, Officer of the High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu6/2/fs6.htm>; <http://www.ohchr.org/english/issues/disappear/members.htm> (last visited 1 November 2005).

<sup>45</sup> *Ibid.*

<sup>46</sup> For a case to be included in the urgent action procedure, it must have occurred within the three months preceding receipt of the report by the Working Group. Where there have been allegations of intimidation, persecution or reprisal against relatives or other individuals involved in investigating the disappearance, the Chairman may also use the urgent action procedure to notify the government that immediate action is necessary to protect the fundamental rights of these people. See *Fact Sheet No. 6 (Rev. 2) Enforced or Involuntary Disappearances*, Officer of the High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu6/2/fs6.htm>; <http://www.ohchr.org/english/issues/disappear/members.htm> (last visited 1 November 2005).

<sup>47</sup> The information in this table and the next table on contacting the Working Group was compiled from *Fact Sheet No. 6 (Rev. 2) Enforced or Involuntary Disappearances*, Officer of the High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu6/2/fs6.htm>; <http://www.ohchr.org/english/issues/disappear/members.htm> (last visited Nov 1, 2005) and Frontline Defenders, Working Group on Enforced or Involuntary Disappearances, [http://www.frontlinedefenders.org/manual/en/wgid\\_m.htm](http://www.frontlinedefenders.org/manual/en/wgid_m.htm) (last visited Nov. 30, 2005)