

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

**DOCUMENTING OBSTRUCTION OF FREEDOM OF
MOVEMENT IN BURMA**

NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA

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

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

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

PREFACE

This manual is focused on obstruction of freedom of movement. It provides information on how to document violations, perform interviews, analyze whether there has been a breach of international law, and increase advocacy on these issues.

Chapter 1: Documentation: Chapter 1 sets out the relevant international law concerning obstruction of freedom of movement and provides guidelines on possible ways to document these violations. It then provides information about the historical and political context of obstruction of freedom of movement in Burma. Chapter 1 also provides a sample good and bad interview based on a hypothetical fact pattern involving obstruction of freedom of movement.

Chapter 2: Analysis: Chapter 2 discusses how to assess the evidence in order to establish a violation of international law. It discusses how to identify trends and patterns that will strengthen the evidence of violations. Chapter 2 also includes information on establishing serious crimes under international law such as genocide and crimes against humanity.

Chapter 3: Advocacy: Chapter 3 includes information on how to present evidence of human rights violations to international actors and bodies. This Chapter focuses on the role of the United Nations and provides an overview of the mechanisms that are available to deal with violations of freedom of movement.

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

About ND-Burma

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

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

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

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

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

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CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

I. Violations of Human Rights: Obstruction of Freedom of Movement

For a human rights abuse to be a violation under international human rights law, it is necessary to satisfy the essential key elements of a violation. Elements are the specific criteria or set of circumstances that must be present in order for an action to be against the law. The elements of human rights violations are derived from international human rights legal instruments. Before beginning to document any human rights violation, it is helpful to have a clear understanding of the elements necessary in order to establish a violation. This chapter explains the elements that are required in order to demonstrate a violation of a freedom of movement.

II. Defining Obstruction of Freedom of Movement

A. What are the elements of obstruction of freedom of movement under international law?

In order to document obstruction of freedom of movement as a human rights violation, evidence of *three elements* must be present:¹

1. Interference with freedom of movement
2. Illegality
3. State action

B. What qualifies as “interference”?

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

C. What rights are included in the rights to freedom of movement?

Freedom of movement is defined by international human rights law as encompassing three distinct rights. A violation of one of these rights qualifies as a violation of freedom of movement. The rights to freedom of movement are:

- | | | |
|--|--|---|
| 1. The right to: | 2. The right to: | 3. The right to: |
| <ul style="list-style-type: none">• Move freely within• A country | <ul style="list-style-type: none">• Leave*• Any country | <ul style="list-style-type: none">• Enter• One’s own country |

The rights of movement *within* a country and *to leave* a country are interpreted to apply broadly to any individual regardless of their legal status within a country. While the right of entry clearly applies to citizens of the country, it may also apply to an individual with close ties to a particular country and weak ties to any other country.

* The right to leave a country includes the right to depart a country for *any* length of time, including permanently. In accordance with this right, the state is required to provide necessary documents and procedures to exercise this right. For example, states are required to issue passports to its nationals. See, *Varela Núñez v. Uruguay*, Communication No. 108/1981, U.N. Doc. CCPR/C/OP/2, 1990.

D. When is interference with the rights to freedom of movement legal?

Only the right of entry into one's own country is absolute, meaning a state cannot legally impose any restriction on this right. Any restriction on a person's right to enter his/her own country is illegal. However, the other rights to freedom of movement are not absolute and states may legally impose restrictions on the right to move within and leave a country. However, restrictions are justified only in limited circumstances. Under international law, a restriction on movement is valid only in the following circumstances:³

1. It is imposed by law.
2. It serves one of the following legitimate purposes:[†]
 - For national security[‡]
 - For public order
 - For the protection of health or morals
 - For the protection of the rights and freedoms of others
3. It is necessary to serve the legitimate purpose.[§]

Any restriction on the rights to move within and leave a country must satisfy each part of the above three-part test to be valid. Restrictions on movement that fail any part of the test is not legal and likely a violation under international law.

E. What is state action?

State action is necessary for obstruction of freedom of movement 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.”⁴ State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a obstruction of freedom of movement was perpetrated by a public official, the state action requirement would be satisfied.^{**} State action also includes instances when a violation takes place with official knowledge or consent, or when the state fails to prevent or adequately respond to the violation.^{††}

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.

[†] The list of legitimate purposes is exclusive, meaning that these are the only purposes that may justify a restriction on the rights of expression.

[‡] For a state to impose a restriction of movement on the basis of national security, the restriction must be necessary to prevent a “clear, imminent and serious danger” to the state. *Strasbourg Declaration*, Art. 4 (d)

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

^{**} Public officials may include members of any organization operating with state authority, such as members of law enforcement agencies, paramilitary groups, and death squads.

^{††} Note that the element of state action is not required to prove genocide or crimes against humanity. For more information on proving genocide or crimes against humanity, see Chapter 2.

III. Asking the Critical Questions

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

1. *Establishing interference*

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

2. *Establishing movement*

- Who was moving or attempting to move?
- What is his/her legal status in relation to the country?
- From/to where was s/he going?
- When did this take place?
- How was s/he traveling?
- How do you know this information?

3. *Establishing that the interference is illegal*

- Under what authority was the interference enforced?
- Was the interference imposed by law? What law?
- What purpose did the restriction serve?
- Was the restriction necessary?
- Could the goal of the restriction be achieved some other way? How?
- How do you know this information?

4. *Establishing state action*

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

Interview Tips: Do's



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

Interview Tips: Don'ts



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

IV. Practicing Documentation

Finding the information necessary to establish a violation of international law takes time and practice. The essential elements of a violation are not always readily apparent. A fact-finder

must be able to elicit information about human rights abuses and properly identify the essential elements of a violation from the information collected.

To practice identifying the elements of a violation, this section provides a fact pattern containing evidence of a typical obstruction of freedom of movement in the Burma context. Based on this fact pattern, this section also offers examples of good and bad interviewing techniques. For more information on interviewing and tips on conducting effective fact-finding, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

A. Understanding the Context

Before beginning any fact-finding mission or conducting an interview to uncover human rights information, it is important to understand the historical and political context in which violations are taking place. Understanding the context may help the fact-finder to develop meaningful questions and gain insight into the current situation. Even for experienced fact-finders, it can be helpful to review background information before starting a fact-finding mission. Below is some background information on the historical and political context of obstruction of freedom of movement in Burma.



Historical and Political Context of Obstruction of Freedom of Movement in Burma

Since 1962, when General Ne Win led a military coup to gain control over Burma, successive military regimes have ruled the country through tactics of intimidation and unspeakable brutality. Over the years, the SPDC has used and continues to use methods to monitor and restrict the movement of its citizens. Efforts to regulate the population’s movement have gradually intensified after nationwide protests in 1988. Policies to check citizen movement have affected internal migration and foreign travel, with ethnic nationalities and women disproportionately affected.

All citizens are required to carry identification cards, which must be produced at SPDC and Burma Army checkpoints.⁵ Without these documents, individuals are subject to arrest and extortion. However, obtaining these documents can be costly and some ethnic nationalities, such as the Rohingya, are not eligible as the SPDC does not consider them to be citizens of Burma.⁶ The SPDC also requires the registration of all overnight guests with local authorities. Failure to register such guests can result in severe penalties, including arrest, fines, and imprisonment.

Through its Four Cuts Policy, the SPDC has heavily restricted movement in the ethnic nationality areas where ethnic opposition groups operate in an attempt to weaken these groups by denying them food, funds, recruits, and information. These measures include strict curfews, confinement to specific areas, and the fencing in of villages and relocation areas. Other methods include checkpoints, shoot-on-site policies, and the deployment of landmines.⁷ Villagers must pay for travel permits if they wish to leave their communities.⁸ Even with a travel pass, rural travelers must pay money to be allowed through checkpoints.⁹

In terms of international travel restrictions, obtaining an official passport is a slow, corrupt, and costly process making it difficult for most citizens to obtain a passport.¹⁰ Without

passports, many cannot legally leave the country for work or educational opportunities. As a result, many migrate illegally. In addition, some political activists have been barred from either leaving or returning to their native Burma.¹¹ The operations of humanitarian and aid agencies working in Burma are also hampered by restrictions on their travel and delays in issuing travel permits. NGOs, UN agencies, and local community-based organizations have been denied access to conflict areas and places affected by natural disasters.¹²

B. Fact Pattern

Below is a fact pattern of a typical obstruction of freedom of movement in the Burma context. This fact pattern may be useful to practice identifying the key elements of a violation. Remember, in order to establish a violation of freedom of movement in accordance with international human rights standards, there must be:

1. Interference with freedom of movement
2. Illegality
3. State action

Fact Pattern: Obstruction of Freedom of Movement^{##}



Za Ngung Thang made a living as a cross-border trader between Chin State, Burma and Mizoram, India by purchasing goods from Tiddim Town and carrying them by foot to the India border, which is about a two-day journey. Through this work, he supports his elderly parents and five siblings.

Three months ago, the SPDC instituted travel restrictions between Tiddim Town and the border after suspecting the Chin National Front (CNF), an ethnic opposition group, of using the route for their operations. Villagers living along the route are now required to first obtain permission to travel outside their village. The SPDC also set up checkpoints along the main road, where travelers are required to present their identification cards and travel documents and to pay a fee. These new restrictions have been imposed without a formal policy or written order.

Due to these new practices, Za Ngung Thang's cross-border trading business has become increasingly difficult and prohibitively expensive. Without any other means to support his family, Za Ngung Thang began to circumvent the SPDC's policies for the past two months by waiting until evening to leave his village through an unmonitored gate and using alternative routes to the border.

Two weeks ago, as Za Ngung Thang was carrying his goods along a path on his way to India, he saw five SPDC soldiers approaching. One of the soldiers asked him why he was not using the main road. Fearing trouble, he lied and said that he planned to visit his cousin who lives in a village located along the path before continuing on to India. They then asked to see his travel documents and identification. Za Ngung Thang gave them his identification card but he did not have travel documents. "If you have no permission to travel, then why are you traveling? You Chin snakes are always trying to avoid the rules," said the soldier. The

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

soldiers tied him up and confiscated his goods. “Some time in jail should teach you to obey our rules,” said the soldier.

The soldiers forced Za Ngun Thang to walk the entire day as they headed towards their army camp. As night approached, the soldiers prepared to rest for the evening. They brought out flasks of whiskey and drank heavily. As they drank, they harassed Za Ngun Thang calling him ethnic slurs. Eventually they drank themselves to sleep and Za Ngun Thang saw his opportunity to escape. He managed to free his hands and quietly fled.

Fearing his fate if the army ever found him, he decided to continue onto India. He ran the entire night, reaching the border in the afternoon the next day. When he reached the border, instead of the usual orderly flow of merchants and travelers, he saw a chaotic mass of angry people. When he asked what was going on, a woman said, “The immigration officials closed the border. They aren’t allowing anyone out or in.” When Za Ngun Thang asked why they closed the border, the woman exclaimed, “They have no good reason! It’s only their hatred of us Chin! They said it is because they suspect opposition groups in the area but the opposition groups are smarter than to come here. They just want to punish us and hurt our livelihoods.”

Za Ngun Thang knew he had to get out of Burma somehow. He had heard about a secret crossing further south from the official checkpoint. He quickly left the scene at the border and found the unofficial route into India. He is now living in Mizoram State and working as a temporary laborer.

C. Sample Interviews

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

1. Sample Interview: Bad

The SPDC violated your freedom of movement, right?

Za Ngun Thang: I guess so. They required travel permits to leave the village and set up checkpoints along the main route. To conduct my business, I traveled regularly. But these requirements made it difficult to travel.

Did they interfere with your ability to travel?

Za Ngun Thang: Yes. I found it almost impossible.

Was there a law that imposed these requirements?

Za Ngun Thang: I don’t know. One day, the SPDC just started requiring travel permits and set up checkpoints.

And there is no legitimate justification to explain why the SPDC instituted these measures?

Za Ngun Thang: The reason they gave was to limit the activities of the ethnic opposition groups. But I rarely saw these groups in the area.

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

Za Ngun Thang: I was arrested by soldiers of the Burma Army.

Thank you for your time.

Why is this interview bad?



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

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

Third, this interview focuses only on the violation the interviewer initially suspected, and does not ask questions that would provide evidence of other violations. Violations of freedom of movement, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as confiscation of property.

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

2. Sample Interview: Good

Za Ngun Thang, can you tell me what happened in Burma that made you decide to leave?

Za Ngun Thang: I started having problems after the SPDC began to require travel permits and set up checkpoints along the main road from Tiddim Town to the India border. Some soldiers arrested me because I didn’t have a travel permit.

How did the travel permits and checkpoints interfere with your work?

Za Ngun Thang: As a cross-border trader, I travel frequently from my village to the border. Every time I traveled, I had to apply for a permit, which took a long time to receive and cost some fee. Also, if I traveled along the main road, I had to pay fees at every checkpoint. I could not afford these additional expenses.

How much were the fees?

Za Ngun Thang: They varied. For the travel permit, the authorities required 2,000 Kyat. But in order to be granted the permit in a timely manner, we have to pay extra bribe money to the official. At the check point, the fees are not set. Rather, the guards demand some fee for permission to cross. Traders are always required to pay more because they know we are traveling for business.

Do you know if there was a law prohibiting travel without a permit and requiring checkpoints?

Za Ngun Thang: I don't know. I think the military ordered it. We never saw any order.

Do you know the reason for instituting the travel permit and checkpoints?

Za Ngun Thang: The reason they gave was to limit the activities of the ethnic opposition groups. But I rarely saw these groups in the area.

How did you continue your business?

Za Ngun Thang: I would leave the village at night through an unmanned gate, and I traveled on a smaller path to the border.

What happened when the soldiers arrested you?

Za Ngun Thang: I was traveling on the path when some soldiers approached and asked for my travel permit. Because I didn't have a travel permit, they tied me up to bring me to their army camp. Fortunately, I managed to escape and came to India.

What reason did the soldier's provide for restricting your travel?

Za Ngun Thang: They didn't provide any reason. They just said we Chin always try to avoid the rules. They were very rude.

Who were the soldiers who arrested you?

Za Ngun Thang: They were Burma Army soldiers but I'm not sure of their battalion.

What happened after you escaped from the soldiers?

Za Ngun Thang: I ran all night and on until the next day. However, when I finally made it to the border, the authorities had closed the border. They did not allow anyone to leave the country. I knew I could not stay so I crossed the border through a jungle path.

Is there anyone else I can speak with you might know about your situation?

Za Ngun Thang: Yes. There are always cross-border traders coming to the border from my village. They could tell you about the SPDC restrictions on us. If you'd like to meet some of them, I can bring you to where they stay.

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

Za Ngun Thang: I don't think I have anything more to add.

Thank you so much for sharing your experience with me. And if I need to speak with you again, how can I contact you?

Za Ngun Thang: I live and work in this shop so if you want to speak with me again, you can find me here.

Why is this interview good?



This interview is good because Za Ngun Thang has told his story. The initial questions were open-ended and there were follow-up questions. His answers help document each element to establish a violation. For example, Za Ngun Thang has provided the following information about the violations of the rights of movement:

First, Za Ngun Thang provided information to establish an interference with the rights of movement. He indicated that the authorities required travel permits to travel outside his village, which were not affordable and not issued in a timely manner. He also said that the authorities set up checkpoints and demanded fees at them. In addition, he indicated that the immigration officials closed the India border crossing and refused to allow people to leave the country. Interviewing other cross-border traders may help to verify this information.

Second, Za Ngun Thang provided details to establish that he was exercising his rights of movement. By traveling from his village to the border, he was traveling within his country. He also indicated that he tried to leave Burma but the border was closed. His testimony suggests that he was exercising his rights of movement.

Third, Za Ngun Thang provided details to establish that the interference was illegal. While he was unsure whether a law existed establishing the travel permit requirement and checkpoints, it is unlikely that such a prohibition would serve a legitimate purpose. The justification of limiting the operations of ethnic opposition groups would unlikely to qualify as legitimate and necessary. Therefore, it appears that the interference was illegal.

Lastly, Za Ngun Thang indicated that the violation involved state actors. He indicated that Burma Army soldiers interfered with his right to free movement by arresting him for failing to have a travel permit. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the violation of obstruction of freedom of movement, such as property violations and extortion. Za Ngun Thang indicated that the authorities required bribes to obtain travel permits in a timely manner and to cross checkpoints. Also, he indicated that the soldiers confiscated the goods he was transporting to India. Interviewing Za Ngun Thang's friend would help to verify his account. Further questions may be necessary to establish other violations. The interview ends well because Za Ngun Thang has agreed to answer further questions and the interviewer knows how to contact her.

V. Conclusion

After reading this Chapter, you should be able to:

- recognize elements of obstruction of freedom of movement under international law,
- develop critical questions in order to collect information about obstruction of freedom of movement, and
- conduct an effective interview in order to determine if a violation has taken place.

The next Chapter of this manual discusses how to evaluate evidence of obstruction of freedom of movement in more detail.

CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE

I. Organizing the Evidence

Once a sufficient amount of evidence has been gathered, it is important to organize and evaluate it in a way that clearly and persuasively demonstrates a violation under international law. Remember that to establish a violation under international human rights law, every element of the violation must be satisfied. When beginning to analyze the information, it may be helpful to organize the evidence using the elements of the particular violation as a framework. For example, to establish obstruction of freedom of movement:

- What evidence exists to show interference with freedom of movement?
- What evidence exists to show that the interference was illegal?
- What evidence exists to show state action was involved?

After picking out the essential elements, additional evidence may be used to more fully describe the violation. In addition to the elements, it is also important that who, what, where, why, when, and how is completely answered. For example:

- *Who*: Identify the victim(s) and perpetrator(s) and witness(es).
- *What*: Identify any potential violation(s) and the events surrounding the violation(s).
- *Where*: Indicate the location of the event.
- *Why*: Determine the cause(s) or possible cause(s) of the event.
- *When*: Determine when the event took place.
- *How*: Explain how the events unfolded.

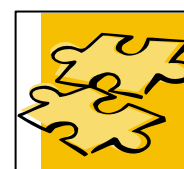
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

II. Strengthening the Evidence

Evidence of human rights violations can be strengthened when it is possible to show a trend or pattern of violations, rather than focusing on one, single incident. While all violations are significant and deserve international attention, responsive action may be more forthcoming if there are numerous, connected violations. For example, a report drawing conclusions from 50 cases of members from a particular ethnic group who experienced obstruction of freedom of movement 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 obstruction of freedom of movement in a particular area.
- The same type of perpetrator is responsible, such as the same military unit consistently targeting a particular group of people.



^{§§} When members of a group are targeted specifically for their membership in the group, the harm they suffer may constitute a more serious crime under international law because of the discriminatory nature of the violation(s). The issue of discrimination will be taken up in future editions of this manual and the others in this series.

- The state provides the same types of responses, such as repeated denials of knowledge or obstruction of freedom of movement.

These patterns can assist in deciding if the state took a leading role in the violations. They may also assist in recognizing other human rights violations to produce a stronger message for international action.

III. Serious Crimes under International Law: Genocide and Crimes against Humanity

Patterns of serious violations may result in the determination that a more serious human rights violation has occurred. For example, evidence of widespread or systematic obstruction of freedom of movement 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.¹³ They represent severe violations of the most basic principles of human rights. As such, the prohibition against genocide, crimes against humanity, and war crimes is universally applicable. Therefore, in principle, states and individuals can be held accountable for acts of genocide, crimes against humanity, or war crimes without formally agreeing to abide by particular standards.¹⁴ This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions.

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

Analysis Tip: Seeking Advice



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

B. Defining Genocide

1. *What are the elements of genocide?*

Genocide involves grave human rights violations designed to destroy a particular group of people, in whole or in part. To establish genocide under international law from evidence of human rights violations, the following evidence is needed:¹⁵

1. The victims belong to a particular national, ethnical, racial, or religious group.***
2. Any of the following acts were committed:
 - Killing members of the group
 - Causing serious bodily or mental harm to members of the group
 - Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part
 - Imposing measures intended to prevent births within the group
 - Forcibly transferring children of the group to another group
3. The acts were committed with the intention to destroy that particular group, in whole or in part.

Vocabulary Alert: Genocide



Genocide is typically understood to refer to only large-scale killings. However, under international law, the definition of genocide refers to an intention to destroy a particular group (national, ethnic, racial, or religious) in whole or in part. According to the legal definition, certain human rights violations that do not automatically bring to mind a crime of genocide, such as rape and other forms of sexual violence, *may* meet the requirements of genocide.

2. Can obstruction of freedom of movement qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that obstruction of freedom of movement amounts to genocide. If freedom of movement has been obstructed in a way that deliberately inflicts on the group “living conditions calculated to bring about its physical destruction in whole or in part,” and when the other elements of genocide are met, obstruction of freedom of movement 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.¹⁶ 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.¹⁷

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

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

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?

*** 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.

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

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

The perpetrator's intention is crucial to whether the crime can be defined as genocide. The question is whose intention is relevant. The general rule is that both the people who directly and publicly incite genocide; plan or order an act of genocide, such as high ranking government officials; and those who carry out the act, such as soldiers or even next door neighbors, can be prosecuted, even if the soldiers or other individuals were "just following orders."¹⁸ 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.¹⁹

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.²⁰ 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.²¹ Direct evidence showing intention, such as a document stating that certain members of a religious group suffered obstruction of freedom of movement 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 can also include other groups, such as social or political groups.
- **Types of Violations:** Acts that constitute genocide and crimes against humanity overlap but also have some differences.

C. **Defining Crimes against Humanity**

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

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:²²

1. Any of the following acts were committed:
 - Murder and extermination (including imposing living conditions that are likely to cause death)
 - Enforced disappearances
 - Enslavement (including trafficking)
 - Deportation or forcible transfer of population (both within and outside national borders)
 - Imprisonment or other severe deprivation of physical liberty in violation of international law
 - Torture

- Rape, sexual slavery, enforced pregnancy, and enforced sterilization
 - Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law
2. The act(s) were part of a widespread or systematic attack.
 3. The attack was against a civilian population.
 4. The perpetrator knew about the attack.

2. Can obstruction of freedom of movement qualify as a crime against humanity?

It is possible. “Severe deprivation of physical liberty” and the “forcible transfer of population (both within and outside national borders)” are explicitly defined as a crime against humanity in the Rome Statute of the International Criminal Court. Forcible transfer of a population is defined as the forced displacement of concerned persons by expulsion or coercion from areas where they are lawfully present.²³

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.²⁴ 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.²⁵ However, it is not necessary to prove that the plan was part of the state’s or the organization’s official policy. For example, if the state or other organization committed a violation against civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.²⁶

“**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.²⁷ 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.²⁸

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.²⁹

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.³⁰ Specific documentation setting out such knowledge or intention is helpful, but not essential.

IV. Conclusion

After reading this Chapter, you should be able to:

- organize the evidence to clearly and persuasively demonstrate a human rights violation,
- strengthen the evidence of violations by identifying patterns and trends, and
- recognize and identify the elements of more serious crimes under international law, such as genocide and crimes against humanity.

The next Chapter of this manual discusses advocacy strategies for dealing with obstruction of freedom of movement.

CHAPTER 3: ADVOCACY – USING THE EVIDENCE

I. Presenting the Evidence

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

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

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

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

The United Nations (UN) is a particularly significant audience to address when dealing with human rights violations. By raising issues to the UN, human rights organizations are able to make violations more visible to the international community, which in turn helps to increase pressure on the targeted government. Because there are several UN bodies able to respond to violations of freedom of movement, this Chapter focuses on UN-based advocacy. For more information on addressing other audiences and detailed information on the enforcement mechanisms of the UN, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

II. Role of the United Nations

In Burma, UN action is highly circumscribed due to regime-imposed restrictions on access and movement throughout the country. The regime imposes strict visa regulations on international staff of NGOs as well as UN staff and also limits access within the country for those who have acquired visas. There are only a small number of UN agencies operating inside Burma and those operations are highly restricted. The UN, however, continues to monitor Burma and is generally receptive to information on human rights violations occurring there.

Advocacy Tip: Benefits of Contacting the United Nations



At times, states simply ignore recommendations of UN officials and agencies. However, the UN provides a strong mechanism to report violations to the international community. Repeated reports by the UN on human rights violations in a particular country may also pressure that state to take action to prevent violations.

There are two main ways that NGOs and human rights groups can submit information to the UN:^{†††}

1. To the UN Human Rights Treaty-Based Monitoring Bodies
2. To the UN Human Rights Council’s Special Procedures

Unlike the UN monitoring bodies, the UN Human Rights Council’s Special Procedures process does not have ratification prerequisites for groups and individuals to submit individual complaints or communications. Claims of human rights violations can be addressed to the Special Rapporteur on the Situation of Human Rights in Myanmar in addition to the various thematic rapporteurs, special representatives, and working groups.³¹ For more information on the UN human rights system, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

Below are brief descriptions of some of the major UN-level agencies and individuals that are working on issues related to obstruction of freedom of movement in Burma.

A. UN Special Rapporteur on the Situation of Human Rights in Myanmar^{†††}

1. What is the Special Rapporteur’s role?

The Special Rapporteur is responsible for monitoring and reporting on the human rights situation in Burma and following any progress made towards transfer of power to a civilian government, the drafting of a legitimate constitution, the end of restrictions on personal freedoms, and the restoration of human rights in Burma.³² 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.³³

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.³⁴

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

The Special Rapporteur will consider evidence of all human rights violations occurring in Burma, including obstruction of freedom of movement.

Sending Information to Special Rapporteurs



Submissions to Special Rapporteurs should be submitted in writing and provide **at least** the following information pertaining to the violation(s):

^{†††} Of the nine core international human rights treaties, at the time of writing Burma has signed and ratified (with reservations) only two – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Therefore, the only treaty-based monitoring bodies currently accepting information from NGOs and human rights groups are the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

^{†††} As of May 2008, Thomás Ojea Quintana is the UN Special Rapporteur on the Situation of Human Rights in Myanmar.

- **Incident:** date and place of the incident; how the incident occurred; and a description of any law, practice or policy contributing the violation
- **Victims:** number of victims; victims' names, ages, sexes, professions; victims' residences or places of origin
- **Perpetrators:** any information regarding the alleged perpetrators, including why they are suspected; if they are not a government official, include information about how the government failed to act with due diligence to prevent, investigate, punish, or ensure compensation
- **Violation:** identify the rights that were violated, referring to specific provisions of international law if possible, and a detailed description of the violation
- **Source:** the reporting organization's full name and address

** For **urgent appeals**, provide the above information **and** the reasons why there is a fear of imminent violations.

Address Details

Individual communications can be emailed, mailed, or faxed to: Special Procedures Division, c/o Office of the High Commissioner for Human Rights, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland; **Fax:** + 41 22 917 9006; **Email:** SPDInfo@ohchr.org or urgent-action@ohchr.org. Remember to specify the relevant Special Rapporteur on the envelope or in the subject line of e-mail or fax communications.

B. UN Special Rapporteur on the Human Rights of Migrants^{§§§}

1. What is the Special Rapporteur's role?

The Special Rapporteur is responsible for investigating and responding to reports of violations of the human rights of migrants and their families.³⁵ Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.³⁶

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.³⁷ The Office of the Special Rapporteur on the Human Rights of Migrants provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www2.ohchr.org/english/issues/docs/mmig-quest.doc>.

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

The Special Rapporteur will consider evidence of the following violations:³⁸

- Information regarding individual cases of alleged violations of the human rights of migrants
- Information regarding general situations concerning the human rights of migrants in a specific country

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

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

^{§§§} As of August 2005, Jorge A. Bustamante is the UN Special Rapporteur on Human Rights of Migrants.

C. UN Representative of the Secretary General on the Human Rights of Internally Displaced Persons****

1. What is the Representative's role?

The Representative is responsible for lobbying the pertinent UN agencies, governments, and other influential bodies to increase recognition of the rights and protection of displaced persons. Based on information received from various sources, the Representative makes general recommendations and submits annual reports to the Commission on Human Rights and the General Assembly.⁴⁰

2. Who may give information to the Representative?

The Representative receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Based on this information, the Representative engages in awareness raising exercises to enhance the protection of the human rights of displaced persons. The Representative also holds consultations with displaced communities in order to learn their views, provide information about available resources, and to communicate their concerns to the international community.⁴¹

D. UN Committee on Migrant Workers

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

The Committee on the Migrant Workers is composed of 10 independent experts in the field of migrant issues. Each member serves a four-year term. The Committee meets one time each year.

2. What is the Committee's role?

The Committee monitors the implementation of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to ensure states are in compliance with international standards. The Committee receives and reviews states' reports and provides recommendations. The Committee submits annual reports to the concerned state and the General Assembly.⁴²

3. Who can submit information to the Committee?

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Only states that have signed onto the Convention are obligated to submit reports to the Committee.⁴³ The Committee is also receptive to information from human rights organizations. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee's meeting.⁴⁴

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

Under Article 77 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families the Committee may receive communications by individuals or groups.⁴⁵ However, this provision will only become operative once 10 states parties have made the necessary declaration. The complaint must also concern a state that has ratified the

**** As of May 2004, Walter Kälin is the UN RSG on Human Rights of IDPs.

Convention. Burma has not ratified the Convention, therefore the complaint mechanism is not available to individuals from Burma under the Convention.

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

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

The Committee on Economic, Social, and Cultural Rights is composed of 18 independent experts in the field of human rights.^{††††} Each member serves a four year term. The Committee meets twice a year in May and November/December with sessions lasting three weeks.⁴⁶

2. What is the Committee's role?

The Committee monitors the implementation of the International Covenant on Economic, Social and Cultural Rights to ensure states are in compliance with international standards. The Committee receives and reviews states' reports and provides recommendations.⁴⁷

3. Who can submit information to the Committee?


The Committee receives periodic reports from states relating to the progress of implementing provisions contained in the Covenant on Economic, Social and Cultural Rights. Only states that have signed onto the Covenant are obligated to submit reports to the Committee.⁴⁸ The Committee also receives information and accepts oral testimony from human rights organizations during the first day of each session. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee's meeting.⁴⁹

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

Presently, the Committee cannot receive individual complaints. However, a draft Optional Protocol is under consideration by the Committee, which may allow the Committee to receive individual complaints pertaining to violations under the Covenant at some later time.⁵⁰

F. Relevant Bodies at the United Nations

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

Contact Information		
		
Organization	Contact Details	Useful Websites
UN Secretary General, Ban Ki-Moon	Secretary General: Ban Ki-Moon Headquarters: 1st Ave. and 46th street New York, NY 10017 USA Tel: +1 212 963 1234 Fax: +1 212 963 4879	To learn more about the Secretary-General, visit: http://www.un.org/sg/biography.shtml For contact details of the permanent missions to the United Nations in New York see: http://www.un.org/Overview/missions.htm

^{††††} Since January 2007, Philippe Texier has acted as the Chairperson of the Committee.

<p>Human Rights Council^{****}</p>	<p>To submit complaints to the Council under the 1503 Procedure:</p> <p>Treaties and Human Rights Council Branch c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 11 E-mail: CP@ohchr.org</p> <p>To submit communications to the Council under the Special Procedures:</p> <p>c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 E-mail: urgent-action@ohchr.org</p>	<p>To learn more about the Human Rights Council, visit: http://www.ohchr.org/english/bodies/hrcouncil/</p> <p>To learn more about the complaint mechanism available under the Council’s 1503 Procedure, visit: http://www2.ohchr.org/english/bodies/chr/complaints.htm</p> <p>To learn more the Special Procedures of the Council, visit: http://www2.ohchr.org/english/bodies/chr/special/index.htm</p>
<p>UN Committee on Economic, Social, and Cultural Rights</p>	<p>UN Committee on Economic, Social and Cultural Rights c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 22</p>	<p>To learn more about the UN Committee on Economic, Social and Cultural Rights, visit: http://www.unhchr.ch/html/menu2/6/cescr.htm</p>
<p>UN Office of the High Commissioner for Human Rights, Navanethem Pillay</p>	<p>UN Office of the High Commissioner for Human Rights Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Tel: +41 22 917 90 00</p>	<p>To learn more about the UN Office of the High Commissioner for Human Rights, visit: http://www.ohchr.org/EN/Pages/WelcomePage.aspx</p>
<p>UN Office of the High Commissioner for Human Rights, Southeast Asia Office, Regional Representative Homayoun Alizadeh</p>	<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 E-mail: ohchr.bangkok@un.org alizadeh@un.org</p>	<p>To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional Office, visit http://www.un.or.th/ohchr/index.html.</p>
<p>UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomás Ojea Quintana</p>	<p>UN Special Rapporteur on the situation of Human Rights in Myanmar c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland</p>	<p>For documents on the Special Rapporteur, visit: http://www.unhchr.ch/html/menu2/7/a/mmya.htm</p>

**** 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.

	<p>Fax: +41 22 917 90 06</p> <p>For urgent appeals, email: urgent-action@ohchr.org</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: http://www.un.org/News/ossg/rsg/table.htm</p>
UN Special Rapporteur on the Human Rights of Migrants, Jorge A. Bustamante	<p>UN Special Rapporteur on the Human Rights of Migrants c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06</p> <p>For urgent appeals, email: urgent-action@ohchr.org</p>	<p>To learn more about the Special Rapporteur, visit: http://www2.ohchr.org/english/issues/migration/rapporteur/index.htm</p>
Representative to the UN Secretary General on the Human Rights of Internally Displaced Persons, Walter Kälin	<p>Representative to the UN Secretary General on the Human Rights of Internally Displaced Persons c/o OHCHR-UNOG Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006</p>	<p>To learn more about the RSG on the HR of IDPs, visit: http://www.ohchr.org/english/issues/idp/index.htm</p>
UN Committee on Migrant Workers	<p>UN Committee on Migrant Workers Petitions Team c/o OHCHR-UNOG Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9022 E-mail: tb-petitions@ohchr.org</p>	<p>To learn more about the Committee, visit: http://www2.ohchr.org/english/bodies/cmw/index.htm</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 obstruction of freedom of movement, 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 ALLEGATIONS OF VIOLATIONS OF MIGRANT RIGHTS^{§§§§}

MODEL QUESTIONNAIRE FOR ALLEGATIONS OF VIOLATIONS OF MIGRANT RIGHTS

NOTES:

- The objective of this questionnaire is to have access to precise information on alleged violations of the human rights of migrants. The Special Rapporteur may raise her concerns about the incidents reported and request Governments to make observations and comments on the matter.
- Please indicate whether the information provided is confidential (in the relevant sections).
- Should the information you wish to provide relate to conditions/policies/practices or laws (i.e., more general situations), which affect the human rights of migrants, please do not use this form. A special form will be provided at a later date to address the issue of good practice and/or negative developments with regards to the protection of the human rights of migrants. Meanwhile you may send that type of information without completing a form to the contact numbers indicated at the end of the questionnaire.
- Do not hesitate to attach additional sheets, if the space provided is not sufficient.

1. GENERAL INFORMATION: (Please mark with an X when appropriate)

Does the incident involve an individual _____ or a group_____?

If it involves a group please state the number of people involved _____ and the characteristics of the group:

Number of Men _____

Number of Women _____

Number of Minors _____

Country in which the incident took place:

Nationality of the victim(s):

2. IDENTITY OF THE PERSONS CONCERNED:

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

1. Family name:

2. First name:

3. Sex: __ male __ female

4. Birth date or age:

5. Nationality(ies):

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

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

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

8. Status in the country where the incident took place:

Undocumented _____

Transit _____

Tourist _____

Student _____

Work Permit _____

Resident _____

Refugee _____

Asylum seeker _____

Temporary protection _____

Other (please specify):

3. INFORMATION REGARDING THE ALLEGED VIOLATION

1. Date:

2. Place:

3. Time:

4. The nature of the incident: Please describe the circumstances of the incident:

5. Was any consular official contacted by the alleged victim or the authorities? (Please explain)

6. Was the alleged victim aware of his/her right to contact a consular official of his/her country of origin? (Please explain)

7. Agents believed to be responsible for the alleged violation

State agents (specify):

Non – state agents (specify):

If it is unclear whether they were state or non – state agents please explain why?

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

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

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

(a) Indicate if complaints have been filed, when, by whom, and before which organ.

(b) Other steps taken:

(c) Steps taken by the authorities:

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

In case of complaints by the victim or its family, how have the organs dealt with them? What is the outcome of those proceedings?

5. IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

Institution:

Individual:

Name:

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

Fax:

Tel:

Email:

Date you are submitting this form:

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

PLEASE RETURN TO:

**THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
OHCHR-UNOG
1211 GENEVA 10
SWITZERLAND
Fax: +41 22 917 9006
E-mail: urgent-action@ohchr.org**

ENDNOTES

¹ The main international agreements explicitly protecting the rights to freedom of movement include:

- *Universal Declaration of Human Rights*, Article 13
- *UN Covenant on Civil and Political Rights*, Article 12
- *UN Convention on Elimination of All Forms of Racial Discrimination*, Article 5(d)(i) and (ii)
- *UN Convention Relating to the Status of Refugees*, Article 26
- *UN Convention on the Protection of the Rights of all Migrants Workers and Members of their Families*, Article 8 and 39

Non-binding international instruments aimed at protecting the rights to freedom of movement include *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live* (Art. 5).

Regional agreements also expressly protect the rights to freedom of movement, such as in the Americas, *American Convention on Human Rights "Pact of San Jose, Costa Rica"* (Art. 22) and *American Declaration of the Rights and Duties of Man* (Art. 8); in Europe, *Fourth Protocol of the European Convention on Human Rights* (Art. 2); in Africa, *African Charter on Human and Peoples' Rights* (Art. 12) and *Kampala Declaration on Intellectual Freedom and Social Responsibility* (Art. 4); in the Middle East, *Arab Charter on Human Rights* (Art. 20 and 21). Similar agreements have not yet been signed by ASEAN nations.

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

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

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

² Interference with the rights of freedom of movement is interpreted to include not just physical restrictions but also psychological restrictions. For example, surveillance has been deemed intrusive on the right to move freely. See, *Cooper v. Union of India*, 1 Supreme Court Reporter 512, 1971.

³ *UN International Covenant of Civil and Political Rights*, Article 12, 1966

⁴ Mary Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence*. Washington, DC: East-West Center Washington, 2007, p. vii, explaining that in Burmese, there is no equivalent for this meaning of state. Instead one might use *asoya* (government) or *naing-ngan* (country), depending on the context.

⁵ Belak, Brenda, "Migration and Trafficking," in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, <http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf> (last visited 26 August 2008), pg. 169.

⁶ Human Rights Documentation Unit, *Burma Human Rights Yearbook 2006*, National Coalition Government of the Union of Burma, 2006, <http://www.ncgub.net/BHRY/2006/movement.html#Introduction>, (last visited 25 August 2008). Internal Displacement Monitoring Centre, "Myanmar (Burma): Rakhine (Arakan) State: Human Rights Abuses against the Rohingya Population is Increasing," December 2005, [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/1C29E4E5A2D5D280C125716A0040E2F6?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/1C29E4E5A2D5D280C125716A0040E2F6?OpenDocument), (last visited 26 August 2008).

⁷ Human Rights Documentation Unit, *Burma Human Rights Yearbook 2006*, National Coalition Government of the Union of Burma, 2006, <http://www.ncgub.net/BHRY/2006/movement.html#Introduction>, (last visited 25 August 2008).

⁸ Burma Issues, *Shoot on Sight: The ongoing Offensive Against Villagers in Northern Karen State*, December 2006, <http://www.burmaissues.org/En/reports/OSP.pdf>, (last visited 25 August 2008).

⁹ McCoy, Cliff, *Turning Treasure into Tears*, EarthRights International, January 2007, p. 27.

¹⁰ Bureau of Democracy, Human Rights, and Labor, “Burma: Country Reports on Human Rights Practices – 2007,” US Department of State, 11 March 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100515.htm> (last visited 25 August 2008).

¹¹ Van Biak Thang, “Professor Dr. Salai Tun Than To Stage Hunger Strike Over Burma's Referendum In New York,” *Chinland Guardian*, 1 April 2008, <http://www.chinlandguardian.com/index.php/Home/301>, (last visited 26 August 2008). “Comedian Zarganar Denied Passport,” *Irrawaddy*, 23 June 2006, http://www.bma-online.org/BMW_2006_Apr_Jun.html#6 (last visited 26 August 2008).

¹² BBC, “Burma 'Closes' Red Cross Offices,” 27 November 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/6188020.stm>, (last visited 26 August 2008). Medecins Sans Frontieres, “Why the French Section of MSF has Ended its Activities in Myanmar,” 30 March 2006, http://www.msf.org/msfinternational/invoke.cfm?objectid=4613E1EB-0D4F-C582-2770E8597606F085&component=toolkit.article&method=full_html, (last visited 26 August 2008). Yuki Akimoto, *Post-Nargis Analysis: The Other Side of the Story*, October, 2006, pp. 11-12.

¹³ Recently, the international community has reiterated the importance of preventing genocide. For example, as well as the International Criminal Court’s focus on the crime, the Secretary General of the United Nations recently established the position of Special Adviser on the Prevention of Genocide, currently held by Francis Deng. See Office of the Special Adviser on the Prevention of Genocide, http://www.un.org/Depts/dpa/prev_genocide/index.htm (under construction when last visited 27 July 2008). Further, the Secretary General’s High-level Panel on Threats, Challenges and Change has suggested that the Security Council should authorize military intervention where a country is unwilling or powerless to prevent genocide. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have both prosecuted genocide and crimes against humanity as part of their jurisdiction. See generally for the ICTY, www.un.org/icty/ (last visited 27 July 2008) and for the ICTR, www.un.org/icttr/ (last visited 27 July 2008).

¹⁴ As the most serious of offenses in international law, it is generally accepted that the violation of genocide is universally applicable, meaning that it applies to states and individuals even if they have not signed onto a treaty or agreement to prevent genocide. This idea has been referenced by the International Court of Justice, the 1971 Barcelona Traction and in several statements by the U.N. Secretary General. Regardless, Burma is a party to the Convention on the Prevention and Punishment of the Crime of Genocide (with reservations).

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

¹⁵ Genocide is prohibited under several treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the Rome Statute for the International Criminal Court (ICC), as well as customary international law. It is prohibited during times of war and peace. Both state and non-state actors, such as armed opposition groups, may be guilty of genocide.

Since 1956, Burma has been a party to the Genocide Convention and is also subject to customary international law.

The International Criminal Court provides a useful summary of the elements of genocide. See, *Elements of Crimes*, Article 6, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

¹⁶ See, *Prosecutor v Jelusic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

¹⁷ Regarding the number of people who need to be harmed for genocide to apply, the International Criminal Court suggests that the number simply needs to be one or more, highlighting that there does not need to be evidence of the extermination of the whole or even most of the population. See, *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

¹⁸ *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Judgment, 2 September 1998; *Kosovo Backgrounder: Sexual Violence as International Crime*, Human Rights Watch, 10 May 1999, <http://www.hrw.org/backgrounder/eca/kos0510.htm> (last visited 27 July 2008); Stiglmayer, Alexandra, "Sexual Violence: Systematic Rape," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/sexual-systematic-rape.html> (last visited 27 July 2008).

¹⁹ Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

²⁰ See, *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

²¹ *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).

²² The definition is taken from the *Rome Statute of the International Criminal Court*, Article 7. Crimes against humanity were identified formally as breaching international law in the Charter of the Nuremberg Tribunal in 1945. In 1946, the United Nations' General Assembly recognized that international law prohibits crimes against humanity. The ICC also prosecutes crimes against humanity. Burma is not directly subject to the ICC's jurisdiction but is subject to the prohibition against crimes against humanity under customary international law. See, *Rome Statute of the International Criminal Court* (1998), Article 7, [http://untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf) (last visited 2 August 2008); Amnesty International, *The International Criminal Court: Fact Sheet 4 – Prosecuting Crimes Against Humanity*, <http://web.amnesty.org/library/index/engior400052000> (last visited 27 July 2008); see also, Bassiouni, C. and Hampson, F. et al., "Crimes against Humanity and Universal Jurisdiction," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 27 July 2008).

²³ *Rome Statute of the International Criminal Court*, Article 7(1) and (2), 17 July 1998.

²⁴ 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.

²⁵ *Ibid.*

²⁶ See, Human Rights Watch, *Targeting the Anuak: Human Rights Violations and Crimes against Humanity in Ethiopia's Gambella Regio*, section on Crimes Against Humanity in International Law, citing *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998, para 580, http://hrw.org/reports/2005/ethiopia0305/10.htm#_ftn201 (last visited 28 July 2008).

²⁷ *Ibid.*

²⁸ 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).

²⁹ *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).

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- ³⁰ See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).
- ³¹ 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).
- ³² Office of the High Commissioner for Human Rights. "Situation of human rights in Myanmar," Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).
- ³³ 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).
- ³⁴ Office of the High Commissioner for Human Rights. "Situation of human rights in Myanmar," Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).
- ³⁵ The Special Rapporteur on the Human Rights of Migrants receives and considers reports of violations concerning all countries regardless of whether they are signatories to the International Convention on the Protection of Migrant Workers and Members of their Families. The Special Rapporteur also does not require the exhaustion of domestic remedies before taking action.
- ³⁶ *Special Rapporteur on the Human Rights of Migrants - Introduction*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/migration/rapporteur/> (last visited 22 October 2008).
- ³⁷ *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.
- ³⁸ *Special Rapporteur on the Human Rights of Migrants - Communications*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/migration/rapporteur/complaints.htm> (last visited 22 October 2008).
- ³⁹ *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.
- ⁴⁰ *Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/idp/> (last visited 20 November 2007)
- ⁴¹ *Ibid.*
- ⁴² *Committee on Migrant Workers*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cmw/index.htm> (last visited 22 October 2008).
- ⁴³ Burma is not a signatory to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- ⁴⁴ *Committee on Migrant Workers*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cmw/index.htm> (last visited 22 October 2008).
- ⁴⁵ Under Article 74 of the Convention, the Committee is also empowered to consider inter-state complaints, meaning complaints from one state party against another state party. To make an inter-state complaint, however, both states must be a party to the Convention. *Ibid.*
- ⁴⁶ *Committee on Economic, Social, and Cultural Rights*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cescr/> (last visited 28 July 2008).

Endnotes

⁴⁷ *Ibid.*

⁴⁸ Burma is not a party to the International Covenant on Economic, Social, and Cultural Rights.

⁴⁹ *Committee on Economic, Social, and Cultural Rights*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/cescr/> (last visited 28 July 2008).

⁵⁰ *Ibid.*