

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

**DOCUMENTING VIOLATIONS OF PROPERTY
RIGHTS IN BURMA**

NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA

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

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

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 property rights.

This manual covers only violations concerning violations of property rights. It does not provide information about other abuses that may occur in conjunction with violations of property rights, such as forced relocation, 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. Violations of Property Rights
9. Obstruction of Freedom of Property
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: Violations of Property Rights

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 property rights.

II. Defining Violations of Property Rights

A. What are the elements of violations of property rights under international law?

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

1. Interference with the rights of property
2. Illegality
3. State action

B. What qualifies as “interference”?

Any action by a public body that impedes on the rights of property 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 to the use and enjoyment of property or it is an absolute deprivation of property. The form of interference is also irrelevant and includes restrictive laws, decrees, orders, court decisions, and physical acts.²

C. What rights are included in the rights of property?

The right to property includes a bundle of rights. These rights include, but are not limited to, the right to control, use, manage, enjoy, benefit from, transfer or sell or otherwise dispose of, and exclude others from property.* There is also no single definition for property. Property includes any object, moveable and immovable, tangible and intangible, which is capable of having value.³ For example, a person’s body, personal property, land, cultural property, and intellectual property are considered forms of property.⁴

D. When is interference with the rights of property legal?

The rights of freedom of property are not absolute. States may legally restrict a person’s property rights. For example, in some situations, a state may deprive, confiscate, or otherwise limit a person’s use of his/her private property. However, restrictions are justified only in

International Law: Right to Property



Article 17 of the *Universal Declaration of Human Rights* (UDHR) is the only main international agreement to explicitly recognize the right to property. Other conventions, such as the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination against Women* examine the right to property through related issues, such as non-discrimination. Regional conventions, such as the *American Convention on Human Rights* and the *Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms* are more explicit in defining and developing the right to property.

* The right to acquire property, however, is not included within the rights of property. Therefore, a person must first have some legal possession over property for other rights of property to attach.

limited circumstances. Under international law, violations of property rights are valid only if all three of the following criteria are met:⁵

1. It is imposed by law.
2. It is in the public's interest.[†]
3. It is proportional to the public interest served.[‡]

Any restriction on the rights of property must satisfy *each part* of the above three-part test to be valid. Restrictions on the rights of property that fail any part of the test is not legal and likely a violation under international law.⁶

E. What is state action?

State action is necessary for a violation of property rights 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.”⁷ State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a violation of property rights 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.

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?

[†] Public interest is a broad concept involving an array of considerations including political, economic, and social issues. In the case of property rights, the state is assumed to possess a wide margin of latitude to interfere with an individual's property rights for the sake of public interest.

[‡] For the restriction to be proportional there must be a balance between the interests of the community and the property rights of the individual. When a restriction disproportionately interferes with the individual's property rights or the individual property owner bears “an individual and excessive burden,” the restriction is not proportionate. *Sporrong and Lonnroth v. Sweden*, European Court of Human Rights, A52, 1982, para. 73.

[§] 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.

- 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 the right to property*

- Whose property was it?
- What was the property?
- When was the property acquired?
- Where was the property located? Where is the property now?
- How much is the property worth?
- How do you know this information?

3. *Establishing that the interference was illegal*

- Under what authority was the interference enforced?
- Was the interference imposed by law? What law?
- What purpose did the restriction serve?
- Was the restriction proportionate?
- 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 violation of property rights 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 violations of property rights in Burma.



Historical and Political Context of Violations of Property Rights 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. Increased militarization, especially in armed conflict areas, is a leading cause of property rights violations in Burma. People have been deprived of their land and personal property due to forced relocations, state development and agricultural projects, and extortion.⁸

Forced relocations are persistently perpetrated by the military regime to exert control over the population, particularly in the ethnic nationalities areas. Current estimates indicate that over a million people in Burma have been displaced from their homes in the last decade.⁹ During forced relocations, people's land and personal property, including their homes, animals, crops, and private possessions, are often confiscated or destroyed by the Burma Army.¹⁰

The people of Burma are also deprived of their property rights due to widespread extortion practiced by the SPDC and other groups. Extortion in Burma takes the form of arbitrary fines, fees, donations, bribes and taxes, as well as demands for land, foodstuffs, and other goods. Such practices are particularly common in the rural and ethnic nationalities areas. In some cases, villagers are ordered to pay arbitrary fees with various stated reasons, including army base construction, SPDC-sponsored ceremonies, porters, and compensating the army for deserters.¹¹ Other times, no reasons are provided. Extorted fees can range anywhere from a couple hundred to a few thousand kyat. In addition, Burma Army troops often confiscate food supplies, livestock, and other valuable items from villagers without compensation.¹²

Unsustainable natural resource extraction and infrastructure development projects also lead to property violations. Villagers have been evicted from their homes and their lands expropriated to make way for gas and oil pipelines; logging, mining, and land concessions; and dams, roads, and other infrastructure projects.¹³ The Yadana-Yetagun Pipeline, which was built in Burma's Tenasserim Division and in Karen and Mon States from 1995 – 98 to carry natural gas from Burma to Thailand, resulted in the forced relocation of entire Karen, Mon, and Tavoyan communities without compensation. The impending Shwe Gas Project, expected to run from offshore gas fields in Western Burma through Arakan State, Magwe Division, Mandalay Division, Shan State, and ending in China, is likely to have similar consequences.¹⁴ Entire communities are also displaced to make way for gold and jade mines, especially in Kachin State.¹⁵ Large-scale dams planned for Burma's Salween, Irrawaddy, and Chindwin Rivers are expected to affect half a million people living downstream.¹⁶ The building of roads, railways, bridges, and other infrastructure projects has also led to displacement and related property violations.¹⁷

In some cases, villagers are deprived of their land, either in part or in full, in order to grow particular crops, such as *Jatropha* or tea plants, as ordered by SPDC.¹⁸ Villagers are often forced to purchase seeds and costly fertilizers from the SPDC at inflated prices.¹⁹ Villagers

typically receive no profit or benefit from the crops produced, which are confiscated by the SPDC.

B. Fact Pattern

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

1. Interference with the rights of property
2. Illegality
3. State action

Fact Pattern: Violations of Property Rights^{††}



Four months ago, the Burma Army came to Law Reh's village in Karenni State. The commanding officer called a meeting with the village council. As the village headman, Law Reh was ordered to make the necessary preparations for the meeting. The commander ordered Law Reh to collect a pig, several chickens, and some rice from the villagers for the meeting. Law Reh knew that many villagers had barely enough to provide for their own family. Fearing arrest or other consequences for refusing a commanding officer of the Burma Army, Law Reh did as he was told and collected the foodstuff from the villagers. Because Law Reh's house was centrally located in the village, the commanding officer also informed him that he and five of his soldiers would stay at Law Reh's house for the duration of their visit. Law Reh had no choice but to accommodate the soldiers.

During the village council meeting, the commanding officer informed Law Reh and the other members of the village council that the army intended to establish a new army base in the village, which would take up 4,000 acres of land. According to the order, the villagers would be required to give up their land. For the construction of the army base, the villagers would also be required to provide an allotment of wooden planks, roof thatching, and other material. The officer said Law Reh and the other village leaders would be held responsible to ensure the villagers complied with these orders. The officer warned that anyone who failed to comply would be arrested and imprisoned.

During the next week, Law Reh and the other village council members informed the villagers of the order. The land designated for the army camp included many farm fields, which the villagers relied on for their daily subsistence and livelihoods. Law Reh's farm was included in the land taken by the army. The villagers worked day and night to provide the material demanded by the army. Some deconstructed parts of their houses to fulfill the order.

As the villagers were busy producing the material demanded by the Burma Army, soldiers continuously patrolled the village and made further demands on the villagers, including rice and chickens. One day, as Law Reh was feeding his pigs in the shed near his house, three soldiers approached him. One of them said, "My friends are hungry, old man. We're going to

^{††} 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.

eat that pig of yours.” Before Law Reh could protest, the soldier drew his gun and shot the pig dead.

As the soldiers began to haul the dead pig away, Law Reh became enraged and started yelling at the three soldiers. One of the soldiers grabbed Law Reh by the neck and said, “You had better learn your place, old man, or else we will show you your place.” The soldiers then began to beat Law Reh and tied him to a pole in the pig shed. “This is your place, old man,” they said. Then they lit some oily rags on fire and threw it into the shed. Fortunately, before Law Reh was burned alive, a neighbor heard his screaming and untied him. He escaped along with his one remaining pig, but the shed burned to the ground. Fearing further problems with the army, Law Reh fled to Thailand, where he now lives in a refugee camp.

C. Sample Interviews

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

1. Sample Interview: *Bad*

You were deprived of your property, right?

Law Reh: Yes. I guess so. They took my farm and burned my pig shed down.

Did the army interfere with your property?

Law Reh: Yes.

Is there a law that allows the army to interfere with your property?

Law Reh: I don’t know. I just know that the army is the law. Whatever they want, they take. There is nothing we can do to stop them.

And is it within the public’s interest when they take people’s property?

Law Reh: Not that I know of. They took our land to build an army camp. Nothing good can come from an army camp.

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

Law Reh: It was a battalion with 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 Law Reh 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, Law Reh 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. Property violations, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as torture.

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

2. *Sample Interview: Good*

Law Reh, can you tell me why you left Burma?

Law Reh: While I was out feeding my pigs, three soldiers came up and shot one of my pigs. I was so angry because my family has so little to survive on, especially after the army confiscated our farm land. I started to yell at the soldiers but they grabbed me and tied me in the pig shed. Then they lit the shed on fire. I would have died if my neighbor hadn’t rescued me.

Why did they kill your pig?

Law Reh: Because they were hungry. They do this all the time. Anything they want, they just take it. The soldiers have been going through the village and demanding all sorts of things from the villagers – rice, chickens, vegetables. We are afraid of them so we just give them what they want.

Are they acting under any written order or law?

Law Reh: They don’t need anything in writing. They are the law.

What harm does this cause for the villagers?

Law Reh: We can barely survive now because of their actions. We have very little food to feed our families. My family only has rice left to eat while the army enjoys pork and chicken.

Who were the soldiers?

Law Reh: I don’t know them by name but they are all from the same battalion – LIB #134. They are building a camp at our village. That is why they have taken our fields.

How have they taken your fields?

Law Reh: The commanding officer called a meeting and told us that they need 4,000 acres to construct an army camp. They said anyone who failed to comply would be arrested and imprisoned. For that reason, we had to give up our land.

Was there a written order?

Law Reh: There may have been but I never saw it. The commanding officer just informed us at the meeting. They don't need a written order.

What purpose does the army camp serve?

Law Reh: It serves only the army's interests. Now with a camp in our village, the army will be monitoring our every movement to ensure we don't help the ethnic opposition groups. We had little freedom before., Now we will have none.

What does the loss of your fields mean to you?

Law Reh: It means my family will starve. We are all farmers. Our fields are our livelihoods. Without our fields, we cannot produce the crops that we live on. I don't know how my family will survive now that the army has taken over our fields.

Have you had any other problems with the Burma Army since they arrived in your village?

Law Reh: The commanding officer also ordered all the villagers to provide construction material to build the army camp. Some people have destroyed part of their houses to provide the supplies. We have been working day and night to fulfill these orders. We have no time for our own livelihoods.

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

Law Reh: Sure. There are plenty of people coming now from my village. We have all had problems since the army arrived. If you'd like to interview some of my neighbors, I can ask them to come tomorrow.

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

Law Reh: I just want to thank you for your concern. My village is very poor. We have so little and now the army is taking away even the little property we have on this earth. I don't know how we will survive if this continues.

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

Law Reh: I am alright for the moment. But thank you for the offer.

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

Law Reh: I am waiting to be registered in this camp so I have no plans to leave. You can find me here if you have any other questions for me.

Why is this interview good?



This interview is good because Law Reh 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, Law Reh has provided the following information about the property violations:

First, Law Reh provided information to establish interference with several property rights. He spoke about the soldiers shooting his pig and burning down his shed. He indicated that the army confiscated his farm land. Further interviews with his neighbors will help to verify his account.

Second, Law Reh provided details to establish that the interference was illegal. He was unaware of any written orders to confiscate his property. The orders do not appear to serve any public interest purpose. Regardless, the orders are not proportionate the ill affects they cause for the villagers. Based on his testimony, it appears that the act was carried out in a way that was illegal.

Lastly, Law Reh indicated that the violations of property rights involved state actors. He said the commanding officer and soldiers were all from battalion LIB #134. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the property violations, such identify torture. He said that he was beaten, tied to a pole, and almost burned alive by the soldiers who shot his pig. His neighbors may be able to verify Law Reh's account. Further questions may be necessary to establish other violations. The interview ends well because Law Reh has agreed to answer further questions and the interviewer knows how to contact him.

V. Conclusion

After reading this Chapter, you should be able to:

- recognize the elements of violations of property rights under international law,
- develop critical questions in order to collect information about violations of property rights, 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 violations of property rights 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 violations of property rights:

- What evidence exists to show interference with the rights of property?
- What evidence exists to show 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.

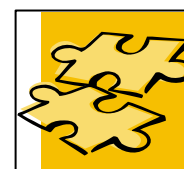
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

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 violations of property rights 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 violations of property rights in a particular area.



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

- The same type of perpetrator is responsible, such as the same military unit consistently targeting a particular group of people.
- The state provides the same types of responses, such as repeated denials of knowledge of violations of property rights.

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 violations of property rights 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.²⁰ 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.²¹ 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:²²

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 violations of property rights qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that violations of property rights amounts to genocide. Genocide includes deliberately inflicting living conditions calculated to bring about the physical destruction of a group. Conditions that rise to this level have been interpreted to include:

- Deprivation of proper housing
- Restricting access to suitable living accommodations
- Systemic expulsion from homes²³

When any of these acts have been committed and when the other elements of genocide are met, a violation of property rights may amount to genocide. Based on this definition, international tribunals have held violations of property rights to qualify as a crime of genocide.²⁴

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.²⁵ 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.²⁶

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.

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

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

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

The perpetrator’s intention is crucial to whether the crime can be defined as genocide. The question is whose intention is relevant. The general rule is that both the people who directly and publicly incite genocide; plan or order an act of genocide, such as high ranking government officials; and those who carry out the act, such as soldiers or even next door neighbors, can be prosecuted, even if the soldiers or other individuals were “just following orders.”²⁷ 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.²⁸

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.²⁹ 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.³⁰ Direct evidence showing intention, such as a document stating that certain members of a religious group suffered a property violation on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

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



- **Mental Element:** To prove a crime against humanity you do not need to prove the perpetrator intended to bring about the destruction of a particular group. Instead, you need to show they “knew” that they crime they committed was part of 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:³¹

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 violations of property rights qualify as a crime against humanity?*

It may be difficult to show that violations of property rights amount to a crime against humanity. However, it may qualify as a crime against humanity if it amounts to “persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds” when the other elements are met.^{***}

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.³² 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.³³ 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 commit a property violation against civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.³⁴

“**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.³⁵ 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.³⁶

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.³⁷

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

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.³⁸ 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 violations of property rights.

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 property rights, 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.³⁹ 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 violations of property rights 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.⁴⁰ 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.⁴¹

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.⁴²

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 violations of property rights.

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 Adequate Housing^{§§§}

1. What is the Special Rapporteur's role?

The Special Rapporteur is responsible for investigating and responding to reports of violations of housing rights and other violations of adequate living standards. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.⁴³

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.⁴⁴

C. 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.⁴⁵

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.⁴⁶

3. Who can submit information to the Committee?

^{§§§} As of 2008, Raquel Rolnik serves as the Special Rapporteur on Adequate Housing.

^{****} Since January 2007, Philippe Texier has acted as the Chairperson of 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.⁴⁷ 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.⁴⁸

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.⁴⁹

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: 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/mi

		ssions.htm
Human Rights Council ^{††††}	<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>
UN Committee on Economic, Social, and Cultural Rights	<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/men u2/6/cescr.htm</p>
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	<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>
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 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>
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 c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10</p>	<p>For documents on the Special Rapporteur, visit: http://www.unhchr.ch/html/men u2/7/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>Switzerland Fax: +41 22 917 90 06</p> <p>For urgent appeals, email: urgent-action@ohchr.org</p>	
<p>UN Special Envoy of the Secretary-General for Myanmar</p>	<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/srsg/table.htm</p>
<p>UN Special Rapporteur on Adequate Housing, Raquel Rolnik</p>	<p>UN Special Rapporteur on Adequate Housing 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://www.ohchr.org/english/issues/housing/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 property rights, and
- understand how to submit information to the UN.

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

ENDNOTES

¹ The main international agreements explicitly protecting the rights of property include:

- *Universal Declaration of Human Rights*, Article 17
- *International Covenant on Civil and Political Rights*, Articles 26 and 27
- *Convention on the Elimination of All Forms of Racial Discrimination*, Article 5
- *Convention on the Elimination of All Forms of Discrimination against Women*, Article 16
- *Convention Relating to the Status of Refugees*, Articles 13 and 14
- *Convention Relating to the Status of Stateless Persons*, Article 13
- *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Article 15

Regional agreements also expressly prohibit obstruction of the freedom of property, such as in the Americas, the *American Convention on Human Rights* (Art. 21) and the *American Declaration on the Rights and Duties of Man* (Art. 23); in Europe, *Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms* (Art. 1); in Africa, *African Charter on Human Rights and Peoples' Rights* (Arts. 13 and 14). Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments and other conventions aimed at prohibiting obstruction of the freedom of property include the *Declaration on the Elimination of Discrimination against Women* (Art. 6), *Declaration on Social Progress and Development* (Art. 6), *Declaration on the Rights of Disabled Persons* (Art. 13), *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live* (Art. 5), *Convention Establishing World Intellectual Property Organization*, *Paris Convention for the Protection of Industrial Property*.

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

Property rights and protection of such rights are not well-defined by the main international agreements. Rather, these agreements examine the right to property through other related issues, such as non-discrimination and indigenous rights. Regional agreements, such as the *American Convention on Human Rights* and the *Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, have a more developed legal regimen to protect the rights of property. For this reason, this manual relies on the definitions provided by these regional agreements and case law stemming from the Inter-American and European Courts of Human Rights.

² Icelandic Human Rights Center, "Interference Leading to Limitation in the Enjoyment of Property," <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/comparativeanalysis/therighttoproperty/leading/> (last visited 4 November 2008).

³ See, *The Case of the Mayagna (Sumo) Awas Tingini Community v. Nicaragua*, Judgement, Inter-American Court, Series C, no. 79, 31 August 2001, para. 144. See also, *General Recommendation No. 21*, Committee on the Elimination of Discrimination against Women.

⁴ Francis Cheval, *Property Rights as Human Rights*, Swiss Human Rights Book, Vol. 1, 2001. Monica Carss-Fisk, *Right to Property: A Guide to the Implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights*, Human Rights Handbook, No. 4, 2001. *International Convention on Civil and Political Right* (Art. 27).

⁵ *UN International Covenant of Civil and Political Rights*, Article 19, 1966

⁶ Monica Carss-Fisk, *Right to Property: A Guide to the Implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights*, Human Rights Handbook, No. 4, 2001.

⁷ 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.

⁸ Centre on Housing Rights and Evictions (COHRE), *Displacement and Dispossession: Forced Migration and Land Rights – Burma*, Country Report, November 2007, p. 56.

⁹ Thailand Burmese Border Consortium, *Internally Displaced People and Relocations Sites in Eastern Burma*, September 2002, p. 3.

¹⁰ US Campaign for Burma, “Learn about Burma,” <http://uscampaignforburma.org/learn-about-burma>, (last visited 20 March 2008).

¹¹ Human Rights Documentation Unit, “Burma Human Rights Yearbook 2006,” National Coalition Government of the Union of Burma, <http://www.ncgub.net/BHRY/2006/livelihood.html#farmers>, (last visited 3 September 2008).

¹² *Ibid.*

¹³ EarthRights International, “Another Yadana: The Shwe Natural Gas Pipeline Project (Burma-Bangladesh-India),” 27 August 2004, http://www.earthrights.org/burmareports/another_yadana_the_shwe_natural_gas_pipeline_project_burma-bangladesh-india.html (last visited 20 March 2008).

¹⁴ The Shwe Gas Movement, “Human Rights Abuses,” 14 November 2006, <http://www.shwe.org/issues/militarisation-and-human-rights-abuses>, (last visited 20 March 2008).

¹⁵ Internal Displacement Monitoring Centre, “Myanmar (Burma) - Kachin state: land confiscation leads to displacement,” June 2005, [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/91A5A1C4FDE7CCFF802570B8005AABCD?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/91A5A1C4FDE7CCFF802570B8005AABCD?OpenDocument), (last visited 3 September 2008).

¹⁶ Salween Watch, “Burma’s Salween Dams Threaten Over Half a Million Lives Downstream,” 8 May 2007, <http://www.salweenwatch.org/>, (last visited 20 March 2008).

¹⁷ Centre on Housing Rights and Evictions (COHRE), *Displacement and Dispossession: Forced Migration and Land Rights – Burma*, Country Report, November 2007, p. 91.

¹⁸ Moo Ko Htee, “Mission Impossible: Surviving under the Burmese Regime,” *Burma Issues*, April 2008, <http://www.burmaissues.org/En/Newsletter/BINews2008-04-01.html>, (last visited 3 September 2008).

¹⁹ Human Rights Documentation Unit, “Burma Human Rights Yearbook 2006,” National Coalition Government of the Union of Burma, <http://www.ncgub.net/BHRY/2006/livelihood.html#farmers>, (last visited 3 September 2008).

²⁰ 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).

²¹ 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).

²² 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).

²³ See, *Prosecutor v. Kayishema and Ruzindana*, ICTR Trial Judgement, 21 May 1999, para 115-18; *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998; Rome Statute, Footnote to Article 5(c).

²⁴ *Ibid.*

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

²⁶ 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).

²⁷ *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).

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

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

³⁰ *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).

³¹ 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).

³² 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.

³³ *Ibid.*

³⁴ 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).

³⁵ *Ibid.*

³⁶ 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).

³⁷ *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).

³⁸ See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

³⁹ 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).

⁴⁰ 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).

⁴¹ 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).

⁴² 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).

⁴³ *UN Special Rapporteur on Housing*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/housing/index.htm> (last visited 20 November 2007).

⁴⁴ *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.

⁴⁵ *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).

⁴⁶ *Ibid.*

⁴⁷ Burma is not a party to the International Covenant on Economic, Social, and Cultural Rights.

⁴⁸ *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).

⁴⁹ *Ibid.*