

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

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

PREFACE

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

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

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

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

This manual covers only violations concerning forced marriage. It does not provide information about other abuses that may occur in conjunction with forced marriage, 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: Forced Marriage

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 forced marriage.

II. Defining Forced Marriage

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

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

1. A legal union between two parties
2. Coercion or lack of consent of at least one party
3. State action

B. What type of “union” is relevant for establishing a forced marriage?

The union must result in a marriage under a state’s domestic laws. Under international law, there is no explicit definition of marriage. However, a marriage is most commonly understood as a personal union between two people resulting in the formation of a familial unit. Typically, a marriage is a union which has been recognized by a competent civil or religious authority as a marriage and includes all the rights and duties that attach to the family.

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

Non-consensual or coercive circumstances in a forced marriage are situations where one or both parties are deprived of their free choice or enter into a marriage without full understanding of that agreement.* This includes situations of:

- Emotional pressure from family members²
- Intimidation
- Use of force
- Threats of harm to oneself or others
- Physical or mental impairment, such as a

Vocabulary Alert: Arranged Versus Forced Marriages



An arranged marriage refers to a common cultural practice where family members take a lead role in determining intended parties to a marriage. In an arranged marriage, both parties choose whether to accept the arrangements provided by their relatives. Because the parties freely consent to the marriage, an arranged marriage is not necessarily a forced marriage. However, an arranged marriage may be a forced marriage if one of the parties does not consent or some element of coercion is present.

* Consent and coercion should be determined from the perspective of the victim rather than the perpetrator. Actions that may not be considered coercive to the perpetrator may be highly coercive to the victim. Accordingly, it is important to focus on the experience of the victim to determine if the situation was non-consensual or coercive.

disability, age limitation, or influence of drugs, alcohol, or medication

D. What are some examples of a forced marriage?

Any marriage entered into without the free and full consent of one of the parties qualifies as a forced marriage. In some instances, common customary or traditional types of marriages may amount to a forced marriage in violation of international law. Examples of forced marriage include marriages entered into:³

- In exchange for forgiveness of debt, dowry, or economic gain
- As an inheritance (e.g., when a widow/er is forced to marry a relative of his/her dead spouse)
- After abduction or kidnapping
- After impregnation to avoid stigmatization
- To “protect” against promiscuity
- As compensation for a wrongful death in a family
- As a polygamous marriage
- By minors[†]

E. What is state action?

State action is necessary for a forced marriage 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 forced marriage 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.[§] For example, a state may be in violation of international law when private perpetrators of a forced marriage go unpunished.

Perpetrators: Non-State Actors



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

III. Asking the Critical Questions

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

[†] A marriage where one or both parties are under the age of 15 is automatically considered to be a forced marriage because it is generally accepted that minors lack the capacity to freely consent to a marriage.

[‡] 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.

to establish a violation of international law. The elements of a violation may provide a useful framework to ensure necessary information is collected.

1. *Establishing a union between two parties*

- Who entered into the marriage?
- What happened?
- Where did the marriage take place?
- When was the marriage formed?
- How was the marriage created?
- How do you know it was a marriage?

2. *Establishing lack of consent or coercive circumstances*

- Did you agree to enter into the marriage? Why or why not?
- What happened before/during/after entering into the marriage?
- Where did the marriage occur?
- Why did you enter into the marriage?
- How did you enter into the marriage?
- How do you know this information?

3. *Establishing state action*

- Who participated in the marriage? Who ordered it? Who knew about it? Who assisted in it?
- Did you report the marriage? Why or why not?
- What did the state do to prevent or respond to the marriage?
- 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. Relating Forced Marriage to Other Human Rights Violations

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

- **Rape and other forms of sexual violence:** Violations of rape and sexual violence includes coercive or non-consensual sexual acts. A forced marriage effectively confines a person into a relationship where sex is an expected and socially-accepted component. For a non-consenting spouse entrapped in a forced marriage, non-consensual sexual acts are likely consequences of the marriage. In addition to the marriage itself, such acts may also be violations of international law if all the elements are satisfied.⁵
- **Human trafficking:** Human trafficking involves the acquisition of persons by improper means for the purposes of exploitation. Forced marriage is one exploitative purpose for which people are trafficked.⁶

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

V. Practicing Documentation

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

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

A. Understanding the Context

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



Historical and Political Context of Forced Marriage 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. Forced marriage typically occurs in two ways in Burma. In the first scenario, non-Burman ethnic women and girls are forced, tricked, and pressured into marrying Burman SPDC soldiers.** In the second instance, non-Burman ethnic women and girls are trafficked against their will to other countries and “sold” as brides. While some Burman women and girls are forced into marriage, evidence points to a discriminatory ethnic component to the practice, especially when the marriage partner is part of the military.

Particularly in ethnic territories, forced marriage is used by the Burma Army as a weapon to humiliate and terrorize non-Burman ethnic groups and as part of a larger ethnic cleansing campaign.⁷ Burma Army soldiers are promised financial incentives, preferable treatment, and military promotions if they marry ethnic women. Soldiers receiving such incentives to Burmanize and ethnically dilute the Chin, Shan, Karen, Kachin, and Arakanese have been documented.⁸

Forced marriage is frequently used to cover up rape. In some instances, soldiers force women whom they have raped into marriage in order to avoid punishment. The commander of the

** It is important to note that legitimate marriages between Burman SPDC soldiers and non-Burman women do take place, and that some women are forced to marry men of their same ethnic group.

offending soldier may try to normalize relations with villagers by brokering a marriage deal as a “compromise” to salvage the woman’s honor.⁹ Soldiers exploit cultural beliefs and traditions to coerce women whom they have raped into marriage by suggesting that they will be unacceptable to other men. Other women are threatened with severe punishment including death if they resist offers of marriage by Burma Army soldiers. Fearing stigmatization in their communities and punishment by the Burma Army, women have few options available and are forced into such marriages.¹⁰

Some women enter into a marriage with an SPDC soldier in the hopes that it will reduce the chances of rape, stop further acts of violence and human rights abuses, and decrease orders for forced labor and other demands.¹¹ Forced marriages, however, often provide little long-term protection from abuses. When a soldier’s deployment in an area ends, women are often left behind to deal with pregnancies, children, and other problems.¹²

Forced marriages contribute to a range of health and social problems for women in Burma, including physiological and psychological trauma, HIV/AIDS, forced pregnancies, and stigmatization by their communities.¹³ Soldiers involved in forced marriages act without accountability.¹⁴

Women hoping to find an escape from financial hardships and personal insecurities in Burma are also at risk of traffickers who agree to take them abroad but instead sell them as brides.¹⁵ (Please see the manual in this series entitled “Documenting Human Trafficking in Burma” for more information on Human Trafficking in Burma).

In recent years, many women from Burma, particularly those from Kachin and Shan State, Pegu, Sagaing, Rangoon and Mandalay Divisions, have been trafficked to China and sold as brides.¹⁶ A traditional view of male superiority and the one-child policy in China has pushed many Chinese families to abort female fetuses or abandon female babies, leading to a skewed male-female ratio, especially in rural areas.¹⁷ As a result, single Chinese men and their families pay anywhere from 4,000 to 20,000 yuan (US\$500 to 2,500) for a bride from Burma.¹⁸ Sometimes trafficked women are able to escape and make their way back to Burma, but language difficulties and unfamiliarity with the land have resigned many to remain as wives against their will.

B. Fact Pattern

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

1. A legal union between two parties
2. Coercion or lack of consent of at least one party
3. State action

Fact Pattern: Forced Marriage^{††}



Sixteen year old Ah Din was walking home from school using a short-cut through the jungle when suddenly three Burma Army soldiers appeared on the path. One of the soldiers asked her what she was doing in the jungle all alone. When Ah Din responded, the soldier approached her and said, “Young ladies shouldn’t be so far from their home.” He then grabbed her and pulled her towards him. Ah Din resisted, but he pushed her to the ground and tore off her sarong. The other two soldiers laughed and joked while the soldier raped Ah Din.

When the soldier was finished with Ah Din, he warned her not to tell anyone what had happened. After they left, Ah Din hurried home, frightened and ashamed. Her mother, Hkawn Ja, immediately noticed that something was wrong with her daughter and demanded to know what had happened. Ah Din broke down and told her mother everything. Knowing the futility of reporting the incident to the authorities and fearing that her daughter would be stigmatized in the community, Hkawn Ja decided it would be best to keep the incident a secret. Meanwhile, Ah Din tried to forget what happened in the jungle.

One month after the incident, however, a knock came on their door. When Ah Din opened the door, she saw the soldier who had raped her. She screamed and almost fainted. Hearing her scream, Hkawn Ja came running to the door.

“I think your daughter remembers me from an earlier encounter we had in the jungle last month,” said the soldier. Realizing that this was the soldier who raped her daughter, Hkawn Ja instinctively raised her hand to slap him but he grabbed her arm before she could complete the action. “I knew she would not be able to keep her stupid mouth shut. Kachin women are all the same. They are only good for one thing, and I already had that in the jungle.”

Furious, Hkawn Ja asked, “What do you want? Haven’t you tormented my family enough?”

“I want your daughter. I’ve already had her so she is mine anyway. But I want it to be official so I can get the promotion I deserve,” said the soldier. “I will marry your daughter, and it doesn’t matter what you or your daughter want. If she resists, I will tell your whole village that she is a temptress who seduced me to sleep with her. No one will want to marry her.”

As he said this, Ah Din began to scream again, shaking in terror. “Don’t scream. You should be proud to marry a soldier, or aren’t you a patriotic family. There is plenty of room in jail for those who are not true patriots, you know.”

Understanding the gravity of the soldier’s threats, Ah Din agreed to marry the soldier. One week later, Ah Din and the soldier were married in a small civil ceremony. She cried as she signed her name to the marriage certificate.

Soon after being married, Ah Din’s new husband was called to lead a patrol to a neighboring village about three days walk away. Suffering nightly beatings and fearing for her life, Ah Din decided to flee. In the middle of the night, she started making her way to Thailand. She is now living as an undocumented migrant in Chiang Mai.

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

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 forced to marry someone, right?

Ah Din: Yes. That's true. I was raped by a Burma Army soldier and later forced to marry him.

Were you married in a church or by some official?

Ah Din: Yes. It was a small ceremony.

But you didn't consent to the marriage?

Ah Din: No. I didn't want to get married. I wanted to continue my studies.

Were you forced into the marriage?

Ah Din: Yes. I didn't have any choice.

And your husband was a Burma Army soldier?

Ah Din: That's right. He raped me then forced me to marry him.

Did you think it would be impossible to report this problem or refuse to marry him?

Ah Din: Yes. I didn't think anyone would do anything to help me and I was afraid of being arrested.

Thanks 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 Ah Din how she should answer. If she answers simply “yes” or “no,” she may be leaving out important details and the interviewer will miss important pieces of information. Also, Ah Din may be less likely to speak freely and more likely to give answers that she believes the interviewer wants to hear.

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

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

2. *Sample Interview: Good*

Ah Din, can you tell me what happened to you in Burma that made you decide to leave?

Ah Din: Yes. I was raped by a Burma Army soldier and later forced to marry him. He would beat me and treat me poorly. When he was called away for patrol duty, I decided to run to Thailand.

You said you were raped. I know this can be a difficult thing to talk about so please take your time and we can stop the interview at any time. Can you tell me how the rape happened?

Ah Din: About five months ago. It happened when I was walking home from school. I met three soldiers on my path and one of them held me down and raped me. I was so scared.

Did you report the rape?

Ah Din: No. My mother thought it would be pointless. The authorities would never believe me over one of their soldiers. Even when they know a soldier has committed a wrong, they never take any action against them.

What happened after the rape?

Ah Din: Nothing. I told my mother. It wasn't until one month later that the soldier came to my house and told me I had to marry him.

How were you married?

Ah Din: A military official married us. I didn't know him but I think he performs a lot of marriages for soldiers. We signed a marriage certificate. It was a small ceremony.

Is it possible to get a copy of the marriage certificate?

Ah Din: My mother has a copy. I could ask her to send it.

Did you want to marry the soldier?

Ah Din: No! I had no choice. I had to marry him.

Why did you have to marry him?

Ah Din: He threatened to tell the village that I had slept with him. If that happened, then no man would want to marry me. Without a husband I would be a burden to my family. Also, he ordered me to marry him. If I refused, I was afraid of being arrested.

Is there any way I might be able to speak with your mother?

Ah Din: No. She is still living in my village Burma and it would be difficult for you to contact her.

Is there anyone else who I can speak with who knows about your problems in Burma?

Ah Din: Yes. My cousin is working here with me in this restaurant. She came here after I fled. She knows all about what happened to me and why I had to leave our village. She will be here in the evening if you would like to speak with her.

Thank you. That would be great. I don't have any more questions for you, but is there anything else you would like to add or do you have any questions for me?

Ah Din: I don't have any questions for you.

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.

Ah Din: Well, I am wondering how I can get a divorce or separate myself from my husband. I don't ever want to go back to him, but I hope to someday have a good marriage and raise children of my own. Do you know how I can do this?

I don't know myself, but I can try to find someone who might know. I can't make any promises but I will do my best to help. And if I need to speak with you again, how can I contact you?

Ah Din: I am always working at this restaurant in the afternoons. Please come by anytime to visit.

Why is this interview good?



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

First, Ah Din provided information to establish a marital union between herself and the soldier. She indicated that there was a ceremony conducted by an official who acknowledged the marriage. The signed marriage certificate would help to verify her account.

Second, Ah Din provided details to establish the non-consensual and coercive nature of the marriage. Ah Din indicated that she had been earlier raped by the soldier. She also indicated that the soldier threatened her well-being if she refused his proposal. Based on her testimony, it appears that the act was carried out in a way that was non-consensual and under coercion.

Lastly, Ah Din indicated that the forced marriage involved state actors. The man who forced Ah Din into the marriage was a soldier in the Burma Army. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the forced marriage, such as rape. Ah Din indicated that she was raped by the soldier who later forced

her to enter into a marriage. Interviewing Ah Din's cousin will help to verify her account. Further questions may be necessary to establish other violations. The interview ends well because Ah Din has agreed to answer further questions and the interviewer knows how to contact her.

VI. Conclusion

After reading this Chapter, you should be able to:

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

The next Chapter of this manual discusses how to evaluate evidence of forced marriage in more detail.

CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE

I. Organizing the Evidence

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

- What evidence exists to show a legal union between two parties?
- What evidence exists to show the union was entered into without the consent of at least one party or under coercive circumstances?
- What evidence exists to show state action was involved?

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

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

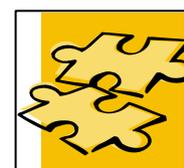
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

II. Strengthening the Evidence

Evidence of human rights violations can be strengthened when it is possible to show a trend or pattern of violations, rather than focusing on one, single incident. While all violations are significant and deserve international attention, responsive action may be more forthcoming if there are numerous, connected violations. For example, a report drawing conclusions from 50 cases of members from a particular ethnic group who experienced forced marriages 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



^{††} 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.

of forced marriage in a particular area.

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

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

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

Patterns of serious violations may result in the determination that a more serious human rights violation has occurred. For example, evidence of widespread or systematic forced marriages 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.¹⁹ 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.²⁰ 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:²¹

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 a forced marriage qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that forced marriages amount to genocide. Genocide includes “causing serious bodily or mental harm to members of a group,” “deliberately inflicting conditions of life calculated to bring about physical destruction,” and “imposing measures intended to prevent births within the group.” When any of these acts have been committed and when the other elements of genocide are met, forced marriage 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.²² 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.²³

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?

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

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

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

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.”²⁴ 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.²⁵

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.²⁶ 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.²⁷ Direct evidence showing intention, such as a document stating that certain members of a religious group suffered forced marriages on a certain date in order about their destruction may not be necessary if strong circumstantial evidence of intention exists.

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



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

C. Defining Crimes against Humanity

1. What are the elements of crimes against humanity?

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:²⁸

1. Any of the following acts were committed:
 - Murder and extermination (including imposing living conditions that are likely to cause death)
 - Enforced disappearances
 - Enslavement (including trafficking)

- Deportation or forcible transfer of population (both within and outside national borders)
 - Imprisonment or other severe deprivation of physical liberty in violation of international law
 - Torture
 - Rape, sexual slavery, enforced pregnancy, and enforced sterilization
 - Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law
2. The act(s) were part of a widespread or systematic attack.
 3. The attack was against a civilian population.
 4. The perpetrator knew about the attack.

2. Can forced marriage qualify as a crime against humanity?

It is possible. Although forced marriage is not explicitly defined as a crime against humanity in the Rome Statute of the International Criminal Court, it is considered a crime against humanity under customary international law.²⁹ The International Criminal Tribunals also recognize forced marriage as a crime against humanity. Affirming this principle, the Special Court for Sierra Leone has held perpetrators accountable for offenses of forced marriages.³⁰

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.³¹ 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.³² However, it is not necessary to prove that the plan was part of the state’s or the organization’s official policy. For example, if the state or other organization force civilians into marriage based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.³³

“**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.³⁴ 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.³⁵

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.³⁶

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.³⁷ Specific documentation setting out such knowledge or intention is helpful, but not essential.

IV. Conclusion

After reading this Chapter, you should be able to:

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

The next Chapter of this manual discusses advocacy strategies for dealing with forced marriage.

CHAPTER 3: ADVOCACY – USING THE EVIDENCE

I. Presenting the Evidence

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

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

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

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

The United Nations (UN) is a particularly significant audience to address when dealing with human rights violations. By raising issues to the UN, human rights organizations are able to make violations more visible to the international community, which in turn helps to increase pressure on the targeted government. Because there are several UN bodies able to respond to violations of forced marriage, 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.³⁸ For more information on the UN human rights system, please see the manual in this series entitled, "Documenting Human Rights Violations in Burma."

Below are brief descriptions of some of the major UN-level agencies and individuals that are working on issues related to forced marriage 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.³⁹ 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.⁴⁰

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.⁴¹

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

The Special Rapporteur will consider evidence of all human rights violations occurring in Burma, including forced marriage.

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 Violence against Women, its Causes, and Consequences^{*}**

1. What is the Special Rapporteur's role?

The Special Rapporteur is responsible for investigating and responding to reports of violence against women, including rape and other forms of sexual violence. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.⁴²

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.⁴³ The Office of the Special Rapporteur on Violence against Women, its Causes, and Consequences provides a model questionnaire to assist individuals in submitting complaints. A copy of this questionnaire is provided in the Appendix and may be accessed online at <http://www.ohchr.org/english/issues/women/rapporteur/complaints.htm>.

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

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.⁴⁴

C. UN Committee on the Elimination of Discrimination against Women

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

^{***} As of August 2003, Dr. Yakin Erturk is the UN Special Rapporteur on Violence against Women, its Causes, and its Consequences.

The Committee on the Elimination of Discrimination against Women is composed of 23 independent experts in the field of women's issues.^{§§§} Each member serves a four year term. The Committee meets for two weeks each year.⁴⁵

2. What is the Committee's role?

The Committee monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to ensure states are in compliance with international standards. The Committee receives and reviews states' reports and provides recommendations. The Committee submits annual reports to the Economic and Social Council through the Commission on the Status of Women.⁴⁶

3. Who can submit information to the Committee?

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in CEDAW. Only states that have signed onto CEDAW are obligated to submit reports to the Committee.⁴⁷ The Committee is also receptive to information from human rights organizations. To submit information to the Committee, organizations must write to the Secretariat of the Committee several months prior to the Committee's meeting. The Committee also accepts oral testimony from human rights organizations usually on the first day of the pre-sessional working group meeting as well as on the second day of its regular session. It may also be possible to schedule informal meetings with Committee members by contacting the Secretariat.⁴⁸

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

Yes. Under Article 2 of the Optional Protocol to CEDAW, the Committee may receive communications by individuals or groups.⁴⁹ However the complaint must concern a state that has ratified the Optional Protocol to CEDAW.⁵⁰ Burma has not ratified the Optional Protocol, therefore the complaint mechanism is not available to individuals from Burma under CEDAW.

D. Commission on the Status of Women (CSW)

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

The Commission is composed of 45 members elected by the Economic and Social Council.^{****} Each member serves a four year term. The Commission meets once a year in February-March.⁵¹

2. What is the Commission's role?

The Commission monitors the implementation of measures to promote the advancement of women. The Commission is responsible for developing recommendations and initiatives to respond to concerns in the field of women's issues. The Commission reports to the Economic and Social Council.⁵²

3. Who may give information to the Working Group?

The Commission receives and reviews reports from the Committee on Elimination of Discrimination against Women. The Commission also receives information and accepts oral testimony from human rights organizations. Human rights organizations may also participate

^{§§§} As of March 2008, Dubravka Šimonović is the Chairperson of the Committee.

^{****} In 2008, Olivier Belle is the Chairperson of the Commission.

in Commission round-tables and special events. To submit information and participate in Commission events, organizations must be accredited with the Economic and Social Council.⁵³ The Commission also provides comprehensive guidelines for organizations interested in submitting information or participating in Commission sponsored activities.⁵⁴

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

Yes. The Commission does receive communications and complaints from individuals and groups. The Commission, however, does not take direct action against violators. Rather, they rely on communications and complaints to analyze trends and patterns of discrimination in order to develop policy recommendations.⁵⁵

E. 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
Human Rights Council ^{††††}	To submit complaints to the Council under the 1503 Procedure: Treaties and Human Rights Council Branch OHCHR-UNOG 1211 Geneva 10, Switzerland Fax: (41 22) 917 90 11 E-mail: CP@ohchr.org To submit communications to the Council under the Special Procedures: Office of the United Nations High Commissioner for Human Rights Palais des Nations 8-14, avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 (0)22 917 90 06 E-mail: urgent-action@ohchr.org	To learn more about the Human Rights Council, visit: http://www.ohchr.org/english/bodies/hrcouncil/ To learn more about the complaint mechanism available under the Council's 1503 Procedure, visit: http://www2.ohchr.org/english/bodies/chr/complaints.htm To learn more the Special Procedures of the Council, visit: http://www2.ohchr.org/english/bodies/chr/special/index.htm

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

Chapter 3: Advocacy- Using the Evidence

UN Office of the High Commissioner for Human Rights, Navanethem Pillay	UN Office of the High Commissioner for Human Rights 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Tel: +41 22 917 9000	To learn more about the UN Office of the High Commissioner for Human Rights, visit: http://www.ohchr.org/EN/Pages/WelcomePage.aspx
UN Office of the High Commissioner for Human Rights, Southeast Asia Office, Regional Representative Homayoun Alizadeh	OHCHR Southeast Asia Regional Office UNESCAP UN Secretariat Building, 6th Fl., Room A-601 Rajdamnern Nok Av. Bangkok 10200, Thailand Tel.: (66) 2 288 1235 Fax: (66) 2 288 3009 ohchr.bangkok@un.org Homayoun Alizadeh: alizadeh@un.org	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 .
UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomás Ojea Quintana	UN Special Rapporteur on the situation of Human Rights in Myanmar OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 For urgent appeals, email: urgent-action@ohchr.org	For documents on the Special Rapporteur, visit: http://www.unhcr.ch/html/menue2/7/a/mmya.htm
UN Special Envoy of the Secretary-General for Myanmar	There is no specific process for sending information to the Special Envoy. Currently, the post of the Special Envoy is vacant.	To get updated information on the post of the Special Envoy, visit: http://www.un.org/News/ossg/srsg/table.htm
UN Special Rapporteur on Violence against Women, its Causes, and Consequence, Dr. Yakin Ertürk	Special Rapporteur on Violence against Women OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 For urgent appeals, email: urgent-action@ohchr.org	To learn more about the Special Rapporteur, visit: http://www.ohchr.org/english/issues/women/rapporteur/
Committee on Elimination of Discrimination against Women	The Committee on the Elimination of Discrimination Against Women c/o Division for the Advancement of Women Room DC2-1220 P.O. Box 20 United Nations New York, NY 10017 USA Fax: +1-212-963-3463	To learn more about the Committee, visit: http://www.un.org/womenwatch/daw/cedaw/committee.htm
Commission on the Status of Women	Commission on the Status of Women c/o Division for the Advancement of Women Room DC2-1220 P.O. Box 20 United Nations New York, NY 10017 USA Fax: +1-212-963-3463 Email: daw@un.org	To learn more about the Commission, visit: http://www.un.org/womenwatch/daw/csw/index.html

III. Conclusion

After reading this Chapter, you should be able to:

- present the evidence in a clear and precise manner,
- identify who to address at the UN regarding violations of forced marriage, 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 FORCED MARRIAGE^{*}**

Confidential Violence against Women Information Form

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

(a) Name of person/organization:

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

(b) Relationship to victim(s).....

(c) Address:

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

(d) Fax/tel/e-mail, web-site:.....

(e) Date petition sent:.....

(f) Other:

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

2. ALLEGED INCIDENT

(i) Information about the victim(s):

(a) Name:

(b) Sex:

(c) Date of Birth or Age:

(d) Nationality:.....

(e) Occupation:.....

(f) Ethnic / religious / social background, if relevant:.....

(g) Address:

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

(h) Other relevant information: *(such as passport, identity card number)*:
.....

(i) Has the victim(s) given you her consent to send this communication on her behalf?

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

Appendix 1: Model Questionnaire for Forced Marriage

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

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

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

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

(ii) Information regarding the incident:

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

(b) Date: (c) Time:

(d) Location/country:

(e) Number of assailants:

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

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

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

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

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

When?

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

If so, which authorities?.....

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

When?.....

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

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

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

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

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

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

ENDNOTES

¹ The main international agreements prohibiting forced marriage include:

- *Universal Declaration of Human Rights*, Article 16(2)
- *International Covenant on Civil and Political Rights (ICCPR)*, Article 23(3), not signed by Burma.
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 10, not signed by Burma.
- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, Article 16(1)(b), as expanded by General Recommendation No. 21. Burma is a party to this treaty with reservations.
- *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, Article 1(1), not signed by Burma.
- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Article 1(c), not signed by Burma.

Regional agreements also expressly prohibit forced marriage, such as the *Council of Europe Resolution 1468*, 5 October 2005 and the *Declaration of the Organization of the Islamic Conference* (Article 5). Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments aimed at prohibiting forced marriage include the *UN Declaration on the Elimination of Discrimination Against Women* (Article 6(2)(a)).

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

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

Forced marriage is also considered to be prohibited under the rules of customary international law. So, even if Burma has not signed some of the above treaties, it will still be subject to associated CIL norms (unless it can demonstrate a pattern of persistent objections to be bound by the law). See, *Prosecutor v. Brima et. al*, Special Court of Sierra Leone, Appeals Chamber, 22 February 2008.

² Sigma Huda, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, January 2007, stating “[a] marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family’s standing in the community, can also be understood as forced.”

³ This list of examples is non-exhaustive. It is important to keep in mind any marriage entered into without the consent of both parties is likely to qualify as a violation of international law. Sigma Huda, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, Human Rights Committee, 24 January 2007.

⁴ 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.

⁵ Michael P. Scharf and Suzanne Mattler, *Forced Marriage: Exploring the Viability of the Special Court for Sierra Leone’s New Crime Against Humanity*, Case Research Paper Series in Legal Studies, October 2005.

⁶ David Weissbrodt, *Abolishing Slavery and its Contemporary Forms*, Office of the UN High Commissioner for Human Rights, 2002.

⁷ Amnesty International, “Rape as a Tool of War: A Fact Sheet”, <http://www.amnestyusa.org/violence-against-women/rape-as-a-tool-of-war/page.do?id=1108441&n1=3&n2=39> (Last visited 26 May 2008).

⁸ Women’s League of Chinland, “Hidden Crimes against Chin Women: The Preliminary Report,” 28 March 2007, [http://www.chinwomen.org/media/reports/The%20Preliminary%20Report\(Hidden%20Crimes%20Against%20](http://www.chinwomen.org/media/reports/The%20Preliminary%20Report(Hidden%20Crimes%20Against%20)

[Chin%20Women\).pdf](#), (last visited 27 August 2008). Belak, Brenda, "Violence Against Women," in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, pp. 77-78, <http://burmalibrary.org/docs/GS08.violence-against-women.pdf>, (last visited 27 August 2008).

⁹ Belak, Brenda, "Violence Against Women," in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, pp. 77-78, <http://burmalibrary.org/docs/GS08.violence-against-women.pdf>, (last visited 27 August 2008).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Apple, Besty and Veronika Martin, *No Safe Place: Burma's Army and the Rape of Ethnic Women*, Refugees International, April 2003, p 46.

¹³ Amnesty International, "Rape as a Tool of War: A Fact Sheet", <http://www.amnestyusa.org/violence-against-women/rape-as-a-tool-of-war/page.do?id=1108441&n1=3&n2=39> (Last visited 26 May 2008).

¹⁴ Martin, Veronika and Betsy Apple, "Terrorizing refugees: Burma uses rape against minorities," International Herald Tribune, 23 April 2003, http://www.ihf.com/articles/2003/04/25/edmartin_ed3_.php, (last visited 27 August 2008).

¹⁵ Belak, Brenda, "Violence Against Women," in *Gathering Strength: Women from Burma on Their Rights*, Images Asia, January 2002, pp. 77-78, <http://burmalibrary.org/docs/GS08.violence-against-women.pdf>, (last visited 27 August 2008).

¹⁶ Interview with the Kachin Women's Association of Thailand, Chiang Mai, Thailand, 16 June 2008.

¹⁷ Human Rights Documentation Unit, Burma Human Rights Yearbook 2006, National Coalition Government of the Union of Burma, <http://www.ncgub.net/BHRY/2006/women.html#marriage>, (last visited 27 August 2008).

¹⁸ *Ibid.*

¹⁹ 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).

²⁰ 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).

²¹ 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).

²² *See, Prosecutor v Jelacic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

²³ 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).

²⁴ *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Judgment, 2 September 1998; *Kosovo Backgrounder: Sexual Violence as International Crime*, Human Rights Watch, 10 May 1999, <http://www.hrw.org/backgrounder/eca/kos0510.htm> (last visited 27 July 2008); Stigmayer, Alexandra, "Sexual Violence: Systematic Rape," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/sexual-systematic-rape.html> (last visited 27 July 2008).

²⁵ Orentlicher, Diane F., "Genocide," in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

²⁶ *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 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).

²⁸ 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).

²⁹ *See, Prosecutor v. Brima*, SCSL-2004-16A, Appeals Chamber Judgment, 22 February 2008, recognizing forced marriage as a crime against humanity under customary international law.

³⁰ *Prosecutor v. Brima*, SCSL-2004-16A, Appeals Chamber Judgment, 22 February 2008.

³¹ *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.

³² *Ibid.*

³³ 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#_fn201 (last visited 28 July 2008).

³⁴ *Ibid.*

³⁵ 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).

³⁶ *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).

³⁷ See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

³⁸ 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).

³⁹ Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

⁴⁰ 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).

⁴¹ Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

⁴² *Special Rapporteur on Violence Against Women, its Causes, and Consequences- Introduction*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/women/rapporteur> (last visited 3 August 2006).

⁴³ *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.

⁴⁴ *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.

⁴⁵ Proposals have been submitted and are currently under consideration by the General Assembly to extend the meeting time for the Committee. These proposals have not yet taken effect. See, *Meeting of States parties to the Convention on the Elimination of All Forms of Discrimination against Women*, 14th Meeting, 23 June 2006, <http://www.un.org/womenwatch/daw/cedaw/statesmeeting/fourteenth.htm> (last visited 14 August 2006).

⁴⁶ See, CEDAW, Article 21, 18 December 1979; *Fact Sheet No. 22 - Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).

⁴⁷ Burma is a signatory to CEDAW and, therefore, is responsible for submitting periodic reports. As of November 2007, Burma has submitted an initial report and a combined second and third report. To view these reports, visit, *Country Reports*, Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/reports.htm#m> (last visited 20 November 2007).

⁴⁸ *Fact Sheet No. 22 - Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).

⁴⁹ *Optional Protocol to CEDAW*, Article 2, 22 December 2000.

⁵⁰ *Ibid.*

⁵¹ See, CEDAW, Article 21, 18 December 1979; *Fact Sheet No. 22 - Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006).

⁵² *Ibid.*

⁵³ For information on becoming accredited with the Economic and Social Council, visit *How to Obtain Consultative Status with ECOSOC*, Economic and Social Council, NGO Section, <http://www.un.org/esa/coordination/ngo/> (last visited 20 November 2007)

⁵⁴ For more information on how to submit information or participate in Commission sponsored activities, visit, *NGO Participation in CSW Sessions*, Commission on the Status of Women, Division for the Advancement of Women, http://www.un.org/womenwatch/daw/csw/csw51/NGO.html#not_received (last visited 20 November 2007)

⁵⁵ *Fact Sheet No. 22 – Discrimination Against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs22.htm> (last visited 23 August 2006). See also, *Women’s Rights the Responsibility of All: Basic Information Kit No. 2*, Commission on the Status of Women, 10 November 1997.