

**HUMAN RIGHTS DOCUMENTATION
MANUAL SERIES:**

DOCUMENTING FORCED RELOCATION IN BURMA

NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA

OCTOBER 2008

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

ACKNOWLEDGEMENTS

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

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

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

The primary author of this manual is Amy Alexander. Members of ND-Burma provided extensive content supervision and editorial oversight to ensure the accuracy, completeness, and cohesion of this manual.

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

PREFACE

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

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 relocation.

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

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

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

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	I
PREFACE.....	II
CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION.....	- 1 -
I. VIOLATIONS OF HUMAN RIGHTS: FORCED RELOCATION	- 1 -
II. DEFINING FORCED RELOCATION	- 1 -
A. <i>What are the elements of forced relocation under international law?</i>	- 1 -
B. <i>What is an “arbitrary” relocation?</i>	- 1 -
C. <i>When is a forced relocation legal?</i>	- 2 -
D. <i>What is state action?</i>	- 2 -
III. ASKING THE CRITICAL QUESTIONS.....	- 3 -
IV. PRACTICING DOCUMENTATION.....	- 3 -
A. <i>Understanding the Context</i>	- 4 -
B. <i>Fact Pattern</i>	- 5 -
C. <i>Sample Interviews</i>	- 7 -
V. CONCLUSION	- 11 -
CHAPTER 2: ANALYSIS – EVALUATING THE EVIDENCE.....	- 12 -
I. ORGANIZING THE EVIDENCE	- 12 -
II. STRENGTHENING THE EVIDENCE	- 12 -
III. SERIOUS CRIMES UNDER INTERNATIONAL LAW: GENOCIDE AND CRIMES AGAINST HUMANITY.....	- 13 -
A. <i>Understanding the Magnitude of the Crimes</i>	- 13 -
B. <i>Defining Genocide</i>	- 13 -
C. <i>Defining Crimes against Humanity</i>	- 16 -
IV. CONCLUSION	- 17 -
CHAPTER 3: ADVOCACY – USING THE EVIDENCE	- 18 -
I. PRESENTING THE EVIDENCE.....	- 18 -
II. ROLE OF THE UNITED NATIONS	- 18 -
A. <i>UN Special Rapporteur on the Situation of Human Rights in Myanmar</i>	- 19 -
B. <i>UN Representative of the Secretary General on the Human Rights of Internally Displaced Persons</i>	- 20 -
C. <i>UN Special Rapporteur on Adequate Housing</i>	- 20 -
D. <i>UN Committee on Economic, Social, and Cultural Rights</i>	- 21 -
E. <i>Relevant Bodies at the United Nations</i>	- 21 -
III. CONCLUSION	- 23 -
ENDNOTES.....	- 24 -

CHAPTER 1: DOCUMENTATION – ESTABLISHING THE VIOLATION

I. Violations of Human Rights: Forced Relocation

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 relocation.

II. Defining Forced Relocation

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

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

1. A removal from a person's home or land
2. Arbitrary nature of the removal
3. Coercion or lack of consent
4. State action

B. What is an “arbitrary” relocation?

Relocations can be described as arbitrary if they are unjust, unpredictable, unreasonable, or not justified by public interest. For example, forced relocations are considered arbitrary when they are carried out:^{*}

- Based on policies aimed at or resulting in the altering of the ethnic, religious or racial composition of a population
- As a form of collective punishment or sanctions, judicially imposed or otherwise, against innocent victims

Vocabulary Alert: Forced Relocation



The term “forced relocation” is not definitive. Different organizations use various terms to categorize an incident involving a person being arbitrarily and involuntarily forced from his/her home or land. Some organizations use the term “forced eviction.” Others use “forced displacement.” Still others use the term “forced resettlement.” Each term, however, describes the same type of violation. For purposes of consistency, this manual uses the term “forced relocation.”

International Law: Right not to be Arbitrarily Displaced



Protection against arbitrary displacement is grounded in norms of customary international law, international human rights law and international humanitarian law. While the right is not explicitly defined in international law, it stems from a collection of established rights, such as the freedom of movement and choice of one's residence, right against arbitrary interference with one's home, and a right to housing.

The **Guiding Principles on Internal Displacement** (“**Guiding Principles**”) articulates the rights and protections relating to the displaced. Although the “Guiding Principles” is not a legally binding instrument, it is universally applicable insofar as it is a restatement of established customary norms and international law.

^{*} This list of examples is non-exhaustive. It is important to keep in mind **any** situation where a person is illegitimately or unjustly forced off his/her property is likely to qualify as a forced relocation in violation of international human rights law. Forced relocations are only justified in “the most exceptional circumstances.”

C. When is a forced relocation legal?

Forced relocations are allowed only when it is not arbitrary and is justified by public interest considerations. Relocations are justified only in “the most exceptional circumstances,”² meaning most forced relocations are not justified by public interest, particularly in Burma, where relocations are often ordered to implement illegitimate and discriminatory policies.[†] For example, forced relocations may be justified:

- In situations of armed conflict or violence where relocation is necessary for critical military reasons[‡] or to protect civilians from grave danger
- In cases of large-scale development projects where there are compelling and overriding public interests³
- In cases of disasters where the health and safety of the affected population requires evacuation

Even where a relocation is considered legitimate due to overriding public interest considerations, states may violate their obligations under international law if the implementation of the relocation fails to meet certain minimal requirements.⁴

D. What is state action?

State action is necessary for a relocation 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.”⁵ State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a relocation 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 forced relocation 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.

[†] Forced relocations cannot be justified on any grounds that serve merely as a pretext to implement discriminatory policies or commit human rights violations.

[‡] These reasons must be carefully examined and must be within the public’s interest. Political motives would not justify a forced relocation. For example, relocations ordered merely to exert control over or deny aid to an opposition group are impermissible. Anytime the authorities seek to remove citizens from an area of insecurity, it is important to question why they would not have left their homes voluntarily.

[§] Public officials may include members of any organization operating with state authority, such as members of law enforcement agencies, paramilitary groups, and death squads.

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

III. Asking the Critical Questions

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

1. *Establishing the relocation*

- Who was relocated?
- What happened?
- When did the incident occur?
- Where were people relocated from/to?
- How many others were relocated?
- How do you know what happened?

2. *Establishing that the relocation was arbitrary*

- What led to the relocation?
- What was the reason given for the relocation?
- What opportunity was there to challenge the relocation?
- How was the relocation process implemented?
- How do you know this information?

3. *Establishing that the relocation was involuntary*

- Who ordered you to leave?
- What do you think would have happened if you refused to leave?
- Why did you leave?
- Did you want to leave? Why or why not?
- Were you threatened? How? By whom?

4. *Establishing state action*

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

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 forced relocation 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 relocation in Burma.



Historical and Political Context of Forced Relocations 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 relocations have been 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.⁶ Many have been forcibly relocated multiple times. Some have spent over 40 years without a permanent residence.⁷

The primary causes of forced displacement in Burma includes: human rights violations committed largely against ethnic minority villagers, armed conflict between junta-supported troops and ethnic opposition groups, development projects, land confiscations, and urban displacement.

Forced Relocations Due to Human Rights Abuses:

Human rights abuses are the single most significant cause of forced relocations in Burma, particularly in the ethnic areas and areas of substantial militarization. Many villagers and civilians in Burma are exposed to a range of human rights violations at the hands of the military regime, including brutal attacks, torture, forced labor and portering, forced conscription, deprivation of livelihood as well as ethnic, religious, and political persecution. In the hopes of escaping such abuse or threats of abuse, many civilians have fled from their homes.⁸

Forced Relocations Due to Armed Conflict:

Fighting between ethnic opposition groups and the military regime has been ongoing for decades. Since the mid-1970s, the military regime has implemented a “Four Cuts Policy” with the purpose of severing food, funds, recruits, and information to the resistance groups. In accordance with the policy, villagers located in “black” (areas controlled by resistance fighters) and “brown” areas (contested areas) are forcibly relocated to “white” areas (areas controlled by the military). Relocations under the Four Cuts Policy have been implemented on a massive scale since 1996. Hundreds of thousands of villagers have been affected. In

addition, many villagers located in areas of armed conflict have fled their homes to avoid being caught in the crossfire of ethnic opposition groups and the military regime.⁹

Development-Induced Forced Relocations:

Development projects account for a large number of forced relocations in Burma. The types of projects that contribute to the relocation of communities include: (1) energy and water supply projects such as dams, power stations, irrigation canals, and reservoirs; (2) urban infrastructure projects such as development of industrial estates, public buildings, ports, roads, and canals; and (3) natural resource extraction such as mining, oil exploration and extraction, and the construction of pipelines. Tens of thousands of villagers in Burma have been forcibly relocated due to development projects or as an indirect result of such projects.¹⁰

Forced Relocations Due to Land Confiscations:

Forced relocations also occur due to land confiscations by the military regime, particularly in ceasefire areas. The confiscated land is often used to construct or expand military installations, establish agricultural projects or plantations, or develop commercial industries such as shrimp farms. Typically land owners not only suffer a loss of from his/her land and livelihood, but are also recruited as forced laborers on their former land. In areas dominated by ethnic or religious minority groups, land is sometimes confiscated to dilute the composition of the population by resettling ethnic Burman Buddhists on the confiscated land.¹¹

Villagers forced to relocate must leave behind a majority of their belongings. Property and possessions of the displaced are typically confiscated or destroyed by military troops. Often entire villages are burned to the ground. Most landowners are never adequately compensated for their loss of land or livelihoods. In addition, most forced relocations perpetrated by the military regime are accompanied by reports of other human rights violations including rapes, killings, and forced labor.

Some villagers are moved to tightly controlled, large military relocation centers. Others flee into hiding in the jungles. Without deprived of basic resources, livelihoods, and protection from military abuses, displaced villagers are vulnerable to starvation, attacks, and illnesses. The military regime refuses to recognize or provide assistance to displaced villagers. Moreover, the regime has hampered all efforts by international organizations and agencies attempting to access and respond to the needs of the displaced.

B. Fact Pattern

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

1. A removal from a person's home or land
2. Arbitrary nature of the removal
3. Coercion or lack of consent
4. State action

Fact Pattern: Forced Relocation^{††}



Naw Paw Wah was working in her field with her husband, Saw Hla Win, when she saw smoke coming from the village. She dropped the basket she was carrying and yelled to her husband. They both began running towards the village.

Naw Paw Wah and her family live in a Karen village in the hills of Karen State. Two weeks ago, several SPDC soldiers came to the village and posted notices around the village. The notice said that the villagers were located on land that did not belong to them. The notice said that the area would be flooded once the dam on the Salween River was built and that they would have to leave their homes by the end of the month. The notice also provided information on an area designated for their relocation. Most of the villagers had not yet left.

Naw Paw Wah's village is also located in a "brown" area where the Karen National Liberation Army (KNLA), the armed wing of the opposition Karen National Union, is active. Although there are no KNLA bases and KNLA soldiers have no permanent presence in the surrounding area, several nearby villages had been attacked and destroyed by the SPDC within the last few weeks.

As Naw Paw Wah and her husband approached the village, they could hear screams and some gunfire. Several houses were in flames. Soldiers in official SPDC uniforms were all around the village. When Naw Paw Wah and her husband got to their house, they saw one of their neighbors running down the main path towards the center of town. An SPDC soldier was running after him. The soldier fired his gun and Naw Paw Wah's neighbor fell in the middle of the path. Naw Paw Wah heard the soldier say, "You dirty Karen are all alike. The world will be a better place when you're all gone."

Naw Paw Wah and her husband quickly slipped inside their house. Naw Paw Wah found her two children and her mother huddled in the corner of the main room. She told them to gather up as much as they could and that they had to leave immediately.

As Naw Paw Wah was packing up the family's store of rice, a knock came at the front door. Saw Hla Win opened the door and was confronted by an SPDC soldier. The soldier said, "You and your family are ordered to leave immediately. We suspect this village has been providing aid to the KNLA."

Carrying what they could, Naw Paw Wah and her family left their house and joined several villagers heading towards the designated relocation area. As they were leaving the village, they saw several homes being looted by the SPDC soldiers. Several houses were burnt to the ground and others were being torched. Naw Paw Wah looked back towards her house and saw it engulfed in flames.

When they arrived at the relocation area, the villagers found that it was located on a steep hillside slope within SPDC controlled territory. There were no buildings or structures of any sort on the land. Due to the terrain, it would be very difficult for the villagers to produce crops. Furthermore, travel required the payment of substantial bribes at military checkpoints

^{††}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.

making it impossible to travel to their fields. All the villagers had to survive on were the meager portions they brought with them. After two days, Naw Paw Wah realized she and her family could not remain in these conditions. In the middle of the night, she fled into the jungle with her family. She and her family have been living in the jungle ever since.

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*

So you were forced to leave your home by the SPDC?

Naw Paw Wah: Yes. It was really hard on my family. We lost our house and our fields. We have no way to survive.

Was it because of the dam that the SPDC is planning to construct on the Salween River?

Naw Paw Wah: Well, I guess so. I know they posted a sign in our village a few weeks before the soldiers forced us to leave. It said that we had to leave because of the dam. But we didn't have to leave for another two weeks.

And you left because the soldiers forced you to go?

Naw Paw Wah: Yes. He came to our house and said we had to go.

Then you went to the designated relocation area?

Naw Paw Wah: Yes. But we didn't stay.

Were other people also relocated?

Naw Paw Wah: Yes.

Why is this interview **bad**?



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

Second, most of these questions are “leading” questions. This means that they suggest to Naw Paw Wah 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, Naw Paw Wah 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 relocation, like this example, often occur in addition to other human rights abuses. Conducting a detailed interview may provide evidence of numerous crimes, such as killing that occurred during the relocation.

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

2. *Sample Interview: Good*

Naw Paw Wah, can you tell me what happened in your village a few weeks ago?

Naw Paw Wah: Yes. My husband and I were working in the fields when we saw smoke coming from the village. My mother and children were at home at the time so we ran to the village. There were several SPDC soldiers all around the village. They were setting fire to some of the houses. They told us we had to leave.

When did the soldiers come to your village?

Naw Paw Wah: I don't know exactly when they arrived because my husband and I were working in our field but it was around mid-day when we saw the smoke coming from the village.

Do you know why they wanted you to leave?

Naw Paw Wah: I'm not sure but a couple weeks earlier some soldiers had posted a notice telling us we'd have to leave because a dam was being built on the Salween River and our village would be flooded. However, we didn't have to leave for another two weeks when the soldiers arrived. I think they wanted us to leave because they thought we were helping the KNLA.

What made you think that?

Naw Paw Wah: Well, an SPDC soldier came to our house and told us that we had to leave immediately because the SPDC thought our village had helped the KNLA. Also, I heard that several other villages in the area were attacked for helping the KNLA.

How do you know the soldier was from the SPDC?

Naw Paw Wah: He was wearing an SPDC uniform. I don't know the battalion number, but I think it was the same battalion that attacked the other villages in the area.

Was your village in any danger because of the conflict between the KNLA and the SPDC?

Naw Paw Wah: No, most of the actual fighting occurs very far from our village. In fact, I hardly ever see KNLA soldiers in the area. Their bases aren't located nearby.

Is there any other reason why the soldiers might have forced your village to relocate?

Naw Paw Wah: The SPDC have always hated the Karen people and we are often the targets of SPDC abuses. This is just one more way to make us suffer.

Chapter 1: Documentation- Establishing the Violation

What did you do after you were told to leave?

Naw Paw Wah: We took whatever we could carry and left the village. We joined up with other villagers and went to the area set aside for us by the SPDC.

Who in your family left?

Naw Paw Wah: My mother, my two children and my husband. We all left together.

Why did you leave?

Naw Paw Wah: We were afraid of what the soldiers would do to us. I saw one of my neighbors get shot by an SPDC soldier. We couldn't stay. The soldiers were destroying everything in the village. Before we left, I saw our house in flames.

How many others left?

Naw Paw Wah: I'm not sure the exact number but basically everyone in the village fled. The SPDC was forcing everyone to leave. No one could stay.

How long did you stay at the area designated by the SPDC?

Naw Paw Wah: We only stayed two days.

Why didn't you stay longer?

Naw Paw Wah: The conditions were really bad. The area is on the side of a steep hill. There was nothing there and it would be difficult to build anything there, let alone grow anything. All we had was what we brought. And we were scared of the soldiers. The SPDC had a camp very close by.

How did you leave the relocation site?

Naw Paw Wah: It wasn't easy. There are a lot of soldiers in that area and they don't let the villagers travel freely. We waited until night to leave. When we got to the main road, we met one soldier on patrol in the area. Luckily, I had some money saved up that I brought with me before we left the village. We paid him some money and he let us pass.

Where did you go then?

Naw Paw Wah: We couldn't go back to the village. It was completely destroyed by the soldiers. So we fled into the jungle. We have been living in the IDP camp ever since.

You mentioned that your neighbor was shot, was anyone else hurt or killed during the relocation?

Naw Paw Wah: I think so. I heard a lot of gunfire and screaming. I spoke to one of my friends afterwards and she said that her husband had been shot and killed by the SPDC.

Is it possible for me to talk to her?

Naw Paw Wah: I know she fled the relocation area around the same time I did. I think I know where she went. I could ask her to come to meet you.

If it wouldn't put you or her in any danger, I would like to speak with her. Do you know of other people who might speak with me about the relocation of your village?

Naw Paw Wah: Several of the villagers from my village are in hiding with me. They all have similar experiences. I'm sure they would not mind speaking to you. I can introduce you to Saw Htun and Naw Kyin Shwe.

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

Naw Paw Wah: Just that my family and my entire village lost everything. Our houses, our possessions, our livestock, our fields are all gone. We have nothing. And at the relocation site, we could not survive. We couldn't get to our fields and we couldn't grow anything on the land. Now that we are in the jungle, we are barely surviving.

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

Naw Paw Wah: I will be staying in this area for awhile. You can come back to speak with me whenever you'd like.

Why is this interview good?



This interview is good because Naw Paw Wah 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, Naw Paw Wah has provided the following information about the forced relocation:

First, Naw Paw Wah provided information to establish that she was actually removed from her land. She said they were ordered to leave and they took whatever they could carry before the SPDC set their home on fire. Interviewing the other members of her family would help corroborate Naw Paw Wah's version of the events.

Second, Naw Paw Wah provided details to establish the arbitrary nature of the forced relocation. She identified several reasons for the relocation, including the building of a dam on the Salween River, the armed conflict with the KNLA, and ethnic persecution. She also indicated that they were not given sufficient time to prepare for the relocation and that the conditions at the designated relocation area were uninhabitable. Based on her testimony, it appears that the relocation was carried out in a way that was unjust, unpredictable, and unreasonable.

Third, Naw Paw Wah established that she and her family were forced to leave. She spoke about how an SPDC soldier explicitly ordered her family out of their home and later she saw her house in flames. She also indicated that she was afraid of the SPDC, particularly after she saw her neighbor shot.

Finally, Naw Paw Wah indicated that the forced relocation involved state actors. Although Naw Paw Wah could not clearly identify the specific battalion responsible for the forced relocation, she indicated that they were wearing government uniforms and that there had been similar attacks in the area by the SPDC. This information may be sufficient to show state involvement.

The interview also provides evidence of other violations in connection with the relocation, such as killings and destruction of property. She indicated that her neighbor was shot by the SPDC soldier. She also said that her house and others were burned down. Interviewing other villagers involved in the relocation will help to verify her account. Further questions may be necessary to establish other violations. The interview ends well because Naw Paw Wah has agreed to answer further questions and the interviewer knows how to contact her.

V. Conclusion

After reading this Chapter, you should be able to:

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

- What evidence exists to show a person was removed from his/her land?
- What evidence exists to show that it was arbitrary?
- What evidence exists to show that it occurred against his/her will?
- 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.

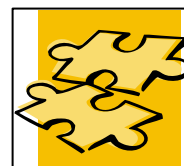
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

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 relocations 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 relocations 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 relocations.

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 relocations 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.¹² 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.¹³ 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:¹⁴

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 forced relocations qualify as an act of genocide?

It is possible. There may be sufficient evidence to show that forced relocations amount 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 homes¹⁵

When any of these acts have been committed and when the other elements of genocide are met, a forced relocation may amount to genocide. Based on this definition, international tribunals have held forced relocations to qualify as a crime of genocide.¹⁶

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.¹⁷ 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.¹⁸

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

^{§§} 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.

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

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?

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.”¹⁹ 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.²⁰

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.²¹ 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.²² Direct evidence showing intention, such as a document stating that certain members of a religious group suffered a forced relocation on a certain date in order to bring about their destruction, may not be necessary if strong circumstantial evidence of intention exists.

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



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

C. Defining Crimes against Humanity

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

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:²³

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 relocations qualify as a crime against humanity?*

It is possible. The forcible transfer of civilians is defined as a crime against humanity in the Rome Statute of the International Criminal Court as the forced displacement of concerned persons by expulsion or coercion from areas where they are lawfully present.²⁴

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.²⁵ 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.²⁶ 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 forcibly relocate civilians based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.²⁷

“**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.²⁸ 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.²⁹

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.³⁰

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.³¹ 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 relocations.

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 relocation, 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.³² 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 relocation 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.³³ 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.³⁴

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.³⁵

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 relocation.

^{***} 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.

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):

- **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 Representative of the Secretary General on the Human Rights of Internally Displaced Persons⁺⁺⁺

1. What is the Representative's role?

The Representative is responsible for lobbying the pertinent UN agencies, governments, and other influential bodies to increase recognition of the rights and protection of displaced persons. Based on information received from various sources, the Representative makes general recommendations and submits annual reports to the Human Rights Council and the General Assembly.³⁶

2. Who may give information to the Representative?

The Representative receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Based on this information, the Representative engages in awareness raising exercises to enhance the protection of the human rights of displaced persons. The Representative also holds consultations with displaced communities in order to learn their views, provide information about available resources, and to communicate their concerns to the international community.³⁷

C. 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. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.³⁸

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

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

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.³⁹

D. 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.⁴⁰

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 state's reports and provides recommendations.⁴¹

3. Who can submit information to the Committee?

The Committee receives periodic reports from states relating to the progress of implementing provisions contained in the Covenant on Economic, Social and Cultural Rights. Only states that have signed onto the Covenant are obligated to submit reports to the Committee.⁴² 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.⁴³

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.⁴⁴

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

**** Since January 2007, Philippe Texier has acted as the Chairperson of the Committee.

		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
UN Committee on Economic, Social, and Cultural Rights	UN Committee on Economic, Social and Cultural Rights c/o 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 22	To learn more about the UN Committee on Economic, Social and Cultural Rights, visit: http://www.unhchr.ch/html/menu2/6/cescr.htm
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	For documents on the Special Rapporteur, visit: http://www.unhchr.ch/html/menu2/7/a/mmya.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.

	Switzerland Fax: +41 22 917 90 06 For urgent appeals, email: urgent-action@ohchr.org	
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/rsg/table.htm
Representative to the UN Secretary General on the Human Rights of Internally Displaced Persons, Walter Kälin	Representative to the UN Secretary General on the Human Rights of Internally Displaced Persons Office of the High Commissioner for Human Rights Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006	To learn more about the RSG on the HR of IDPs, visit: http://www.ohchr.org/english/issues/idp/index.htm
Special Rapporteur on Adequate Housing, Raquel Rolnik	Special Rapporteur on Adequate Housing Office of the High Commissioner for Human Rights Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006 For urgent appeals, email: urgent-action@ohchr.org	To learn more about the Special Rapporteur, visit: http://www.ohchr.org/english/issues/housing/index.htm

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 relocation, 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 Protection against forced relocation is not explicitly guaranteed by international agreements. However, the right not to be arbitrarily displaced is implicit in the expression of other basic human rights, such as the freedom of movement and choice of one's residence, freedom from arbitrary interference with one's home, and the right to housing. The main international instruments protecting these derivative rights include:

- *Universal Declaration of Human Rights* (Article 12, 13, and 25);
- *The International Covenant on Civil and Political Rights* (Article 12 and 17), not signed by Burma;
- *The International Covenant on Economic, Social and Cultural Rights* (Article 11), not signed by Burma;
- *The Covenant on the Rights of the Child* (Article 27) which applies where a victim is under 18. Burma is a party to this treaty, with reservations.
- *The Convention on the Elimination of All Forms of Discrimination against Women* (Article 14, paragraph 2(h)), which Burma is a party, with reservations.
- *The International Convention on the Elimination of All Forms of Racial Discrimination* (Article 5(e)(iii)), not signed by Burma.
- *The 1949 Geneva Convention* (Article 33 and 49) and *Additional Protocol* (Article 17), which is part of the Laws of War. Burma is a party.
- *The ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries* (Article 16)

Other relevant documents pertinent to the protection against forced relocation, particularly with regard to housing rights include the Declaration on Social Progress and Development, The Declaration of the Rights of the Child, the Vancouver Declaration on Human Settlements of 1976, and the Declaration on Race and Racial Prejudice, the Declaration on the Right to Development. For copies of these documents, see <http://www.ohchr.org/english/law/> (last visited 17 May 2006). In addition, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (renamed the Sub-Committee for the Promotion and Protection of Human Rights) has issued several resolutions affirming that "the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing."

The right of protection against arbitrary displacement is also accepted as a norm of customary international law (CIL). CIL is a body of legal rules developed from general state practice that over time has become accepted as binding law. The right to housing and obligations assigned to the state with regards to housing has been codified in over fifty state constitutions, signifying a widespread acceptance of housing rights. A state may be exempted from a particular CIL rule only if the state has persistently objected to the rule. Although Burma has not signed some of the above treaties, Burma has not demonstrated a sufficient level of opposition with regard to arbitrary displacement to be absolved from CIL.

Recognizing from the survey of international human rights law, international humanitarian law and customary international law that the right to be protected against arbitrary displacement is a fundamental human right, the UN Commission on Human Rights adopted the Guiding Principles on Internal Displacement in 1998. The Guiding Principles provide a legal framework to ensure the rights of the displaced are protected, including the right to be protected from displacement. Although the Guiding Principles are not a legally binding instrument, as a restatement of international agreements and norms that do have the force of law, the Guiding Principles are generally accepted as authoritative. The Commission on Human Rights and the Economic and Social Council as well as regional bodies such as the Inter-American Commission on Human Rights of the Organization of American States (OAS) and the Organization of African Unity (OAU) have issued resolutions acknowledging the Guiding Principles.

² *The Guiding Principles on Internal Displacement*, Office for the Coordination of Humanitarian Affairs, http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html (last visited 14 November 2007).

³ The Guiding Principles do not elaborate on what exactly qualifies as a "compelling and overriding public interest." Rather, development projects must be considered on a case-to-case basis. However, any type of development project that results in forced relocations requires a high degree of scrutiny. Many international financial institutions have developed guidelines for such projects. The World Bank Operative Directive 4.30 and Organization for Economic Co-operation and Development (OECD) Guidelines for Aid Agencies on Internal Displacement and Resettlement in Development Projects require that "all viable alternative project designs" be

explored when there is a possibility that a development project may cause forced relocations. They emphasize that forced relocations should be avoided or minimized where possible. For example, alternative location or project specifications must be considered to determine if changes would reduce the number of relocations. The OECD Guidelines also highlight the importance of giving due weight to the environmental and societal impact of the project in the decision-making process. The Asian Development Bank (ADB) has similar procedures and guidelines to avoid and minimize development-induced displacement. For further information, see www.worldbank.org, www.oecd.org, www.adb.org.

⁴ According to *The Guiding Principles on Internal Displacement*, Principles 6-8, for the relocation not to violate international law, the following measures must be met:

- All feasible alternatives must be explored and measures taken to minimize displacement and the adverse effects of displacement.
- Displacement must not last longer than required by the circumstances;
- Proper accommodation must be provided to those affected by the relocation, which includes safety, nutrition, health, hygiene, as well as family unity;
- The relocation must be implemented in a way that does not violate any other human rights.

⁵ Mary Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence*. Washington, DC: East-West Center Washington, 2007, p. vii, explaining that in Burmese, there is no equivalent for this meaning of state. Instead one might use *asoya* (government) or *naing-ngan* (country), depending on the context.

⁶ Thailand Burmese Border Consortium, *Internally Displaced People and Relocations Sites in Eastern Burma*, September 2002, p. 3.

⁷ Refugees International, *Ending the Waiting Game: Strategies for Responding to Internally Displaced People in Burma*, June 2006, p. 2.

⁸ Internal Displacement Monitoring Center, *Myanmar: Worst Army Attacks in Years Displace Thousands- A Profile of the Internal Displacement Situation*, 10 May 2006, p. 8.

⁹ See Refugees International, *Ending the Waiting Game: Strategies for Responding to Internally Displaced People in Burma*, June 2006, p. 5-6; Internal Displacement Monitoring Center, *Myanmar: Worst Army Attacks in Years Displace Thousands- A Profile of the Internal Displacement Situation*, 10 May 2006, p. 38.

¹⁰ See Internal Displacement Monitoring Center, *Myanmar: Worst Army Attacks in Years Displace Thousands- A Profile of the Internal Displacement Situation*, 10 May 2006, p. 21-23.

¹¹ *Ibid.* at p. 71-72.

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ 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).

¹⁶ *Ibid.*

¹⁷ See, *Prosecutor v Jelisic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

¹⁸ 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).

¹⁹ *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).

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

²¹ See, *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

²² *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).

²³ 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).

²⁴ *Rome Statute of the International Criminal Court*, Article 7(1) and (2), 17 July 1998.

²⁵ 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.

²⁶ *Ibid.*

²⁷ 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).

²⁸ *Ibid.*

²⁹ 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).

³⁰ *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).

³¹ See *Elements of Crimes*, http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf (last visited 29 July 2008).

³² 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).

³³ 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).

³⁴ 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).

³⁵ 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).

³⁶ *Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/english/issues/idp/> (last visited 20 November 2007)

³⁷ *Ibid.*

³⁸ *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).

³⁹ *Ibid.* The Special Rapporteur may also include information in the annual report to the Human Rights Council.

⁴⁰ *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).

⁴¹ *Ibid.*

Endnotes

⁴² Burma is not a party to the International Covenant on Economic, Social, and Cultural Rights.

⁴³ *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).

⁴⁴ *Ibid.*