

**HUMAN RIGHTS DOCUMENTATION  
MANUAL SERIES:**

**DOCUMENTING FORCED LABOR IN BURMA**

**NETWORK FOR HUMAN RIGHTS DOCUMENTATION – BURMA**

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## ACKNOWLEDGEMENTS

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

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

## PREFACE

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

**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 labor.

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

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 labor.

### II. Defining Forced Labor

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

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

1. Work or service
2. Extracted involuntarily
3. Under menace of penalty
4. State action

#### B. What qualifies as “involuntarily” extracted work or service?

Involuntary extraction of work refers to how a person entered into the work arrangement. When work or service is entered into without consent or under coercive circumstances, it is considered to be extracted involuntarily. This includes situations of:<sup>2</sup>

- Birth or descent into “slavery” or bonded status
- Physical abduction or kidnapping
- Sale of a person into the ownership of another
- Physical confinement in a work location, such as in prison or in private detention
- Psychological compulsion, (e.g., threats)
- Induced indebtedness<sup>\*</sup>
- Deception or false promises about types and terms of work
- Withholding and non-payment of wages
- Retention of identity documents or other valuable personal possessions

#### C. What qualifies as “under menace of penalty”?

“Under menace of penalty” refers to the means used to keep a person in a forced labor situation. Work or service performed as the result of actual or threatened sanctions is considered performed under menace of penalty. This includes situations of:<sup>3</sup>

- Physical violence to the victim or relatives or associates of the victim
- Imprisonment or other form of physical confinement
- Financial penalties
- Denunciation to authorities

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<sup>\*</sup> Induced indebtedness includes situations created by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges.

- Dismissal from current employment
- Exclusion from future employment
- Exclusion from community and social life
- Removal of rights or privileges
- Deprivation of food, shelter or other necessities
- Shift to worse working conditions
- Loss of social status

#### D. When is forced labor permissible?

Forced labor is allowed only in a limited number of explicit circumstances. Only the following forms of compulsory work or service are permitted under international law.<sup>4</sup>

- **Compulsory military service:** Only activities of a “purely military character” (e.g., activities related to national defense rather than public works projects)<sup>†</sup>
- **Normal civic obligations:** For example, compulsory jury service or the duty to assist a person in danger.
- **Prison labor:** Compulsory work or service by convicted criminals performing work under the supervision of prison authorities; does not allow for prisoners to be forced to work for any sort of private enterprise
- **Cases of emergency:** Limited to a sudden and unforeseen event that requires immediate action, e.g. war, fire, flood, famine, earthquake, etc.; duration and extent of compulsory work or service must not go beyond what is necessary
- **Minor communal service:** Must be minor in nature (e.g., maintenance work or social services), directly benefit the community, and be agreed as necessary by the community itself

These five exceptions are the only instances when forced labor is permissible. All other forms of forced labor are prohibited by international law.

#### E. What is state action?

State action is necessary for forced labor to be a violation under international human rights law. State refers to “the national entity based in the capital city that attempts to regulate and reorder populations and resources throughout an internationally-recognized territory.”<sup>5</sup> State action, therefore, means that this entity was in some way responsible for or involved in the violation. For example, if a forced labor was perpetrated by a public official, the state action requirement would be satisfied.<sup>‡</sup> State action also includes instances when a violation takes place with official knowledge or consent,

##### 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.

<sup>†</sup> Military conscripts, however, may permissibly engage in non-military activities when such activity is covered under another exception (e.g., in cases of emergencies).

<sup>‡</sup> Public officials may include members of any organization operating with state authority, such as members of law enforcement agencies, paramilitary groups, and death squads.

or when the state fails to prevent or adequately respond to the violation.<sup>§</sup>

### 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 work or service*

- Who is the employer? Who is the employee?
- What type of work or service was performed?
- Where was the work or service performed?
- When was the work or service performed?
- For how long was this work performed?
- How do you know this information?

#### 2. *Establishing “involuntary extraction”*

- Was there an agreement to perform the work or service? Why or why not?
- Who arranged the work or service?
- What were the terms of the work agreement?
- Why was the work or service arrangement entered into?
- How do you know this information?

#### 3. *Establishing “under menace of penalty”*

- Who supervised the work or service?
- What were the terms of the work arrangement?
- What happened before/during/after performing the work?
- What would have happened if you refused to work or perform the service?
- Why was the work or service performed?
- How do you know this information?

#### 3. *Establishing state action*

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

#### Interview Tips: Do's



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

#### Interview Tips: Don'ts



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

<sup>§</sup> Note that the element of state action is not required to prove genocide or crimes against humanity. For more information on proving genocide or crimes against humanity, see Chapter 2.

## 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 labor 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 labor in Burma.



#### **Historical and Political Context of Forced Labor 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. The State Peace and Development Council’s (SPDC) use of forced labor greatly increased after the 1988 uprising.<sup>6</sup> Forced labor is one of the most common and widespread human rights violations and a leading cause of displacement in Burma.<sup>7</sup> The Burma Army and ceasefire groups such as the Democratic Karen Buddhist Army (DKBA) have forced civilians and villagers to serve as laborers and porters to support army expansion and increased militarization against ethnic insurgents in armed conflict areas.<sup>8</sup>

Forced labor is particularly common in rural areas of Burma, where laborers are called many times in a year and forced to work for prolonged periods of time. The jobs assigned to forced laborers in Burma are often time-consuming, physically strenuous, and dangerous. Forced laborers are required to construct army camp barracks, sentry posts, and other military buildings, dig trenches, work on road construction projects and other development projects.<sup>9</sup> Increasingly, forced laborers are required to work on tea or jatropha plantations as part of the SPDC’s agro-economic program.<sup>10</sup> Forced laborers are typically required to provide all the necessary tools and materials to complete the assigned tasks, as well as their own daily food rations. Women, children, the elderly, and the sick are not exempt from forced labor or portering. The only way to avoid forced labor is by paying large sums of money to Burma Army officers.<sup>11</sup>

A common form of forced labor in Burma is portering. Porters are forcibly recruited by the Burma Army to carry army rations and supplies long distances by foot, sometimes for several days at a time.<sup>12</sup> In some cases, porters are forced to march at the front of Burma Army

columns to serve as human minesweepers.<sup>13</sup> Porters are commonly not provided with food provisions and are frequently subject to beatings by soldiers. Thousands have died as porters due to landmines, beatings, malnutrition, disease, and exhaustion.<sup>14</sup>

Forced labor severely undermines people’s livelihoods and general welfare, as villagers are required to spend prolonged periods of time away from their fields, businesses, educations, and families.<sup>15</sup> In addition, other human rights abuses, such as torture, rape, and extrajudicial killings, are commonly committed during forced labor operations.<sup>16</sup>

Since the early 1960s, the International Labor Organization has called on the military government of Burma to end practices of forced labor. In 1955, Burma ratified the Forced Labor Convention (1930). In 1991, however, the International Confederation of Free Trade Unions (ICFTU) reported serious and extensive forced labor abuses in Burma.

In response to continuing reports of abuse in Burma, the ILO designated a Commission of Inquiry and a High Level Team to make a comprehensive assessment of forced labor violations in Burma in 1999. The resulting report found that conditions in Burma were “grossly incompatible” with ILO membership and recommended the suspension of Burma from all ILO activities not related to implementing the recommendations. In the face of such sanctions, the SPDC issued a Supplementary order to its May 1999 No. 1/99, reaffirming the criminality of forced labor. More recently, the ILO and the SPDC agreed to a Supplementary Understanding on February 26, 2007, which establishes an individual complaint mechanism to report violations and seek redress for violations of forced labor.

Despite such measures, the Free Trade Union of Burma (FTUB) documented 3,405 cases of forced labor in Burma in 2007.<sup>17</sup>

## B. Fact Pattern

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

1. Work or service
2. Extracted involuntarily
3. Under menace of penalty
4. Involving state action

### Fact Pattern: Forced Labor\*\*



As Shar Reh, his young daughter, and pregnant wife sat down for dinner, there was a knock on their door. When Shar Reh answered the door, he was greeted by a member of the Village Peace and Development Council. The man said, “The VPDC has received orders from the SPDC to collect one member of each household for work. You are to report to the village center for work tomorrow morning.”

\*\*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.

Shar Reh supports his family through farming and his fields were ripe for harvesting. He knew that if he did not harvest soon, he could lose a substantial portion of his crops. However, there was no one else in his family to report for the work. He also knew that the consequence for failing to report for labor ordered by the SPDC was arrest or worse.

Without other options available, Shar Reh reported for work in the village center the next morning along with about 50 other villagers. They were sent to an army camp located several hours walk from the village and told to construct a perimeter fence around the camp. The villagers worked all day with only a short rest for lunch. Several soldiers supervised the villagers.

As the villagers worked, the soldiers often threatened and harassed them. At one point, Shar Reh saw the soldier beating an old man. Shar Reh tried to intervene, but the soldier hit him in the side with the butt of his rifle, breaking two of his ribs. The soldier said, “Get back to work. This is between me and an old, useless dog.” Shar Reh turned to resume his activities. Later he saw two soldiers dragging the lifeless body of the old man away from the worksite.

At the end of the week, the villagers were released from their work obligations and allowed to return to their regular lives. When Shar Reh got to his fields, he found that many of his crops had already spoiled. He began to work as quickly as he could to harvest the remaining crops.

While he was at work in his field, he saw some SPDC soldiers approaching him. They asked him if he knew the way to a nearby village. He said that he did and that it was about a two days walk. The commanding soldier then handed Shar Reh the pack he had been carrying and told him to lead the way. Shar Reh tried to object, explaining that he had just completed a week of labor for the SPDC and that his fields had to be harvested or else his family would starve. In response, the soldier asked, “Will your field get harvested and your family eat when you are in jail for refusing an order?” Shar Reh picked up the pack and began the journey to the neighboring village.

As evening approached and the soldiers began to prepare to sleep, Shar Reh became more concerned about the well-being of his family if they lost the entire harvest. He then decided to escape and return to his village that night, hoping the army would not track him. He walked the entire night and reached his house at daylight.

The next day Shar Reh returned to his fields and resumed harvesting his crops. In the mid-afternoon one of his neighbors came running into his field and warned him that soldiers had surrounded his house. Fearing that they would soon find him, he fled immediately. Several days later he crossed the border into Thailand, where he is now living near a refugee camp.

### **C. Sample Interviews**

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

#### ***1. Sample Interview: Bad***

You were a forced laborer, right?

*Shar Reh:* That’s why I left. I was forced to work for the military and I couldn’t support my family any longer.

You had to do work for the military?

*Shar Reh:* Yes.

Did you do the work voluntarily?

*Shar Reh:* I didn’t have any other choice. When the military issues an order, we must comply. They say the work is voluntary but in reality we have no choice.

So you were forced to do the work?

*Shar Reh:* Yes.

And were there consequences if you refused to work?

*Shar Reh:* Yes. I was afraid they would arrest me.

The military was responsible for the forced labor, right?

*Shar Reh:* Yes, that’s right.

Thank you for your time.

### Why is this interview **bad**?



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

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

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

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

## 2. Sample Interview: Good

Shar Reh, can you tell me what happened in Burma that made you decide to leave?

*Shar Reh:* I left because I couldn't provide for my family any longer. I am a farmer but because the military kept calling me for forced labor, I couldn't tend to my fields. During this last harvest, I was called to construct a fence around an army camp. After one week, I returned to my fields and found them half dead.

How many times have you been called for forced labor?

*Shar Reh:* So many times. I can't count how many. The military calls us to work for them several times a year. During this last harvest season, I was called once for one week. Then I was called again to guide a patrol of soldiers to the next village, two days away. That's when I fled.

What happened the first time you were called?

*Shar Reh:* It was just as the harvest season was getting underway and I needed to be in my fields. But the village council member came and told me the military had issued an order for one person per household to report for work. Because there was only me in my household who could work, I had no other choice.

What type of work did you do?

*Shar Reh:* They had us construct a fence around an army camp. We worked for one week with very little rest.

Were you compensated for the work?

*Shar Reh:* No. They say the work is voluntary but in reality we have no choice.

What would have happened if you refused to work?

*Shar Reh:* It is impossible to refuse. Anyone who refuses will be arrested or worse. Even those who do not work hard enough are beaten. While I was working on the fence, I saw a soldier beating an old man who did not have the strength to do the work. I think he may have beaten the man to death because later I saw two other soldiers dragging the man's body away.

Were you beaten or threatened while performing the work?

*Shar Reh:* We are threatened all the time. They tell us we are lazy and call us bad names. When I saw the soldier hitting the old man, I tried to make the soldier stop. But the soldier hit me in the ribs with his rifle. I think he may have broken some ribs. I still have pain where he hit me.

Have you visited a doctor about this problem?

*Shar Reh:* I visited the free clinic in town and they said that two of my ribs appear bruised and may be broken but I would have to go to a larger clinic to confirm.

Is it okay if I contact this clinic for a copy of your medical report?

*Shar Reh:* It is not a problem.

Who issued the work order?

*Shar Reh:* I think it was the military command post near our village. I'm not sure of their number. Usually the village council receives the order and makes the necessary arrangements.

Who supervised the fence construction project?

*Shar Reh:* Burma Army soldiers.

What happened after you fulfilled the one-week fence construction labor order?

*Shar Reh:* I rushed back to my fields to try to salvage what remained of the harvest. While I was working in my fields, some soldiers came by and forced me to guide them to next village, which was two days away. I brought them half way then I ran back to my fields, hoping they wouldn't follow me. But they did. I was afraid they would arrest me so I fled.

Is there anyone else I can speak with who can corroborate your account?

*Shar Reh:* There are friends from my village who just recently came to the border. They know my story and I think they would be willing to speak with you.

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

*Shar Reh:* I am worried about my family back in Burma. It is just my wife who is pregnant and my 3-year old daughter. There is no one to tend our fields or look after them. I am trying to earn money to bring them here. Otherwise, I don't know how they will survive. This is very hard for me to think about.

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.

*Shar Reh:* I would like that.

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

*Shar Reh:* I am working in the market in town. If I am not here, you can find me at work in town.

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



This interview is good because Shar Reh has told his story. The initial questions were open-ended and there were follow-up questions. His answers help document each element to establish a violation. For example, Shar Reh has provided the following information about forced labor:

First, Shar Reh provided information to establish that he was engaged in work or service. Shar Reh indicated that he worked on constructing a fence for an army camp. He also said that he had to guide soldiers to the next village. Information from Shar Reh's friend from his village will help to verify his account.

Second, Shar Reh provided details to establish the work was extracted involuntarily. He indicated that he received the order to report for work from a member of the village council who was ordered by the military to collect workers. He also suggested that he had no choice, fearing arrest. Based on his testimony, it appears that the work was extracted involuntarily.

Third, Shar Reh established that the work was performed under menace or penalty. He suggested that he would be arrested if he refused to perform the work demanded by the soldiers. When Shar Reh tried to avoid serving as a guide to the soldiers, he said they threatened him with arrest. He also indicated that the soldiers threatened and beat the laborers. While working on the construction project, Shar Reh said he witnessed an old man being beaten and he was hit in the ribs with a rifle butt, possibly fracturing two of his ribs. Records from his doctor will help to verify his account.

Lastly, Shar Reh indicated that the violation involved state action. Shar Reh said that the military issued the work order and that Burma Army soldiers supervised the workers. Soldiers also ordered him to serve as a guide to the next village. This information is sufficient to show state involvement.

The interview also provides evidence of other violations in connection with forced labor, such as a possible killing. Shar Reh indicated that he witnessed a soldier beating an old man and later saw two soldiers dragging his body away from the worksite. Interviewing Shar Reh's friend would help to verify this account. Further questions may be necessary to establish other violations. The interview ends well because Shar Reh has agreed to answer further questions and the interviewer knows how to contact him.

## **V. Conclusion**

After reading this Chapter, you should be able to:

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

- What evidence exists to show work or service?
- What evidence exists to show involuntary extraction of work or service?
- What evidence exists to show extraction of work or service under menace of penalty?
- 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.

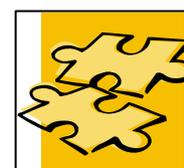
Using this method to organize the evidence helps to ensure the information is presented in a clear and persuasive way.

### 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 labor 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.<sup>††</sup>
- The same type of violation is committed, such as multiple instances of forced labor in a particular area.



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

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

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 labor against political opponents or statements from a particular commander that “soon anyone suspected of supporting the Karen resistance movement will no longer exist” may indicate a discriminatory intent, or the intent to target a specific group, and the possible existence of acts of genocide or crimes against humanity and require further research.

#### A. Understanding the Magnitude of the Crimes

Genocide, crimes against humanity, and war crimes are among the most serious crimes in international law.<sup>18</sup> They represent severe violations of the most basic principles of human rights. As such, the prohibition against genocide, crimes against humanity, and war crimes is universally applicable. Therefore, in principle, states and individuals can be held accountable for acts of genocide, crimes against humanity, or war crimes without formally agreeing to abide by particular standards.<sup>19</sup> This manual and others in this series address genocide and crimes against humanity. War crimes will be covered in future editions.

Due to the seriousness that genocide and crimes against humanity represent, very strong evidence is generally required before international action is taken. Sometimes, even with strong evidence, regional and international political issues inhibit the political will to take action to protect survivors and punish those responsible. At the same time, many groups may be suffering from abuse that rises to the level of such crimes but may not realize that it meets the requirements to establish such a serious violation. It is 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:<sup>20</sup>

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

**Vocabulary Alert: Genocide**



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

**2. Can forced labor qualify as an act of genocide?**

It is possible. There may be sufficient evidence to show that forced labor amounts to genocide. Genocide includes “deliberately inflicting living conditions calculated to bring about is physical destruction in whole or in part.”<sup>21</sup> Such conduct has been interpreted to include enslavement through forced labor. When these acts have been committed and when the other elements of genocide are met, forced labor may amount to genocide. Based on this definition, international tribunals have held forced labor to qualify as a crime of genocide.<sup>22</sup>

**3. Does there need to be evidence of deaths to prove genocide?**

No. The common perception of genocide is that the term refers only to mass killings and, in the past, international tribunals have largely focused on cases involving the actual deaths of a significant number of people in findings of genocide.<sup>23</sup> However, an act of genocide does not necessarily require evidence of actual death. The definition of genocide includes conditions that are imposed in order to cause a slow death of a group or even conditions which do not amount to death, such as acts of torture or of rape.<sup>24</sup>

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

“With intention” means purposeful. A person acts purposefully towards a result when his or her conscious objective is to cause that result. To prove this element of genocide, one must show that the alleged perpetrator had a particular reason for

**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?

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

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."<sup>25</sup> Alleged perpetrators have been found guilty of genocide-related crimes for "knowingly and substantially" aiding others who committed genocide, even if it was not proven that they themselves intended destruction of a group.<sup>26</sup>

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

Evidence is necessary to demonstrate the intentions of the perpetrator, and direct evidence such as government statements or army orders is extremely helpful for proving genocide. However, intent can also be inferred from the situation.<sup>27</sup> For example, intent may be inferred from a systematic pattern of coordinated acts, such as the use of derogatory language against a group or by the physical targeting of a group or their property.<sup>28</sup> Direct evidence showing intention, such as a document stating that certain members of a religious group suffered forced labor on a certain date in order to bring about its destruction, may not be necessary if strong circumstantial evidence of intention exists.

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



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

## **C. Defining Crimes against Humanity**

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

A crime against humanity has to be committed as part of a widespread or systematic attack against a civilian population. To establish crimes against humanity, the following evidence is needed:<sup>29</sup>

1. Any of the following acts were committed:
  - Murder and extermination (including imposing living conditions that are likely to cause death)
  - Enforced disappearances
  - Enslavement (including trafficking)
  - Deportation or forcible transfer of population (both within and outside national borders)

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

## ***2. Can forced labor qualify as a crime against humanity?***

It is possible. Forced labor is considered a form of enslavement, which is explicitly defined as a crime against humanity in the Rome Statute of the International Criminal Court when the other elements are met.<sup>30</sup> The International Criminal Tribunals also recognize forced labor as a crime against humanity. Affirming this principle, the International Criminal Tribunal for the former Yugoslavia has held perpetrators accountable for offenses of forced labor.<sup>31</sup>

## ***3. What qualifies as “a widespread or systematic attack” for purposes of proving a crime against humanity?***

“**Widespread**” commonly means that a large number of people have been affected.<sup>32</sup> As with genocide, however, there is no specific number designated to deem an attack as widespread.

“**Systematic**” means that an attack is part of a common plan involving substantial private or public resources.<sup>33</sup> However, it is not necessary to prove that the plan was part of the state’s or the organization’s official policy. For example, if the state or other organization orders civilians into forced labor based on an informal policy or practice, there may be sufficient evidence to establish that a “system” is in place.<sup>34</sup>

“**Attack,**” for the purposes of establishing a crime against humanity, is not restricted to conduct during hostilities but extends to the treatment of those not involved in the conflict. However, there must be evidence that an attack was **either** widespread **or** systematic. There is no need for evidence that an attack was widespread *and* systematic.<sup>35</sup> Further, a widespread or systematic attack can be something other than a military attack, such as an administrative or legal measure, e.g. forced displacement.<sup>36</sup>

## ***4. How to decide if a civilian population has been targeted as part of a crime against humanity?***

A population will still be considered “civilian” even if there are a few combatants among its population. Evidence must show that the population was “predominantly civilian” and that the civilians were the “primary object” of the abuse.<sup>37</sup>

## ***5. How to prove that the perpetrator “knew” about the attack in relation to a crime against humanity?***

To prove that the perpetrator “knew” about the attack, it is not necessary to prove that he or she knew about all of the details of the attack. Evidence that the perpetrator intended to assist or allow the attack to proceed is sufficient evidence of “knowledge” for crimes against

humanity.<sup>38</sup> Specific documentation setting out such knowledge or intention is helpful, but not essential.

## **IV. Conclusion**

After reading this Chapter, you should be able to:

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

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

## CHAPTER 3: ADVOCACY – USING THE EVIDENCE

### I. Presenting the Evidence

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

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

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

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

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

### II. Role of the United Nations

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

#### Advocacy Tip: Benefits of Contacting the United Nations



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

There are two main ways that NGOs and human rights groups can submit information to the UN:<sup>§§</sup>

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

Unlike the UN monitoring bodies, the UN Human Rights Council’s Special Procedures process does not have ratification prerequisites for groups and individuals to submit individual complaints or communications. Claims of human rights violations can be addressed to the Special Rapporteur on the Situation of Human Rights in Myanmar in addition to the various thematic rapporteurs, special representatives, and working groups.<sup>39</sup> For more information on the UN human rights system, please see the manual in this series entitled, “Documenting Human Rights Violations in Burma.”

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

## **A. UN Special Rapporteur on the Situation of Human Rights in Myanmar<sup>\*\*\*</sup>**

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

The Special Rapporteur is responsible for monitoring and reporting on the human rights situation in Burma and following any progress made towards transfer of power to a civilian government, the drafting of a legitimate constitution, the end of restrictions on personal freedoms, and the restoration of human rights in Burma.<sup>40</sup> Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council and General Assembly.<sup>41</sup>

### ***2. Who may give information to the Special Rapporteur?***

The Special Rapporteur receives information on all aspects of human rights related to Burma from NGOs, governments, other UN agencies and monitoring bodies, and individuals. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to Burma’s government with requests for further information.<sup>42</sup>

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

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

#### **Sending Information to Special Rapporteurs**



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

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

<sup>\*\*\*</sup> As of May 2008, Thomás Ojea Quintana is the UN Special Rapporteur on the Situation of Human Rights in Myanmar.

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

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

#### **Address Details**

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

## **B. UN Special Rapporteur on Contemporary Forms of Slavery<sup>†††</sup>**

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

The Special Rapporteur is responsible for investigating and responding to reports of contemporary forms of slavery, including forced labor. Based on information received from various sources, including governments, the Special Rapporteur makes general recommendations and submits annual reports to the Human Rights Council.<sup>43</sup>

### ***2. Who may give information to the Special Rapporteur?***

The Special Rapporteur receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications. Provided there are no credibility or reliability issues, the Special Rapporteur will generally send allegations of violations to the relevant government with requests for further information.<sup>44</sup>

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

The Special Rapporteur will consider evidence of a range of violations related to slavery, including:<sup>45</sup>

- Forced labor
- Trafficking in persons
- Child labor
- Sale of women and children
- Forced marriage
- Female genital mutilation
- Practices of apartheid
- Other slave-like practices

### ***4. What if there is an urgent need to speak with the Special Rapporteur?***

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<sup>†††</sup> As of May 2008, Gulnara Shahinian is the UN Special Rapporteur on Contemporary Forms of Slavery.

If an imminent threat exists to the personal integrity or the life of a person, it is possible to ask the Special Rapporteur to lodge an urgent appeal to the relevant government. The Special Rapporteur will ask the government to protect the person(s) at risk.<sup>46</sup>

### **C. UN Working Group on Contemporary Forms of Slavery**

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

The Working Group is composed of five members of the UN Security Council. The Group meets one time a year.<sup>47</sup>

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

The Working Group is responsible for monitoring the application of the slavery conventions and reviewing the situation in different parts of the world. The Working Group also thematically studies slavery issues on an annual basis. The Working Group issues proposals of national and international action plans to address the issues studied. The Working Group submits annual reports to the Human Rights Council.<sup>48</sup>

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

The Working Group receives information from human rights organizations and governments. The Working Group also receives information and accepts oral testimony from human rights organizations during its annual session. To submit information to the Working Group, organizations must write to the Secretariat of the Working Group several months prior to the Committee's meeting.<sup>49</sup>

### **D. International Labour Organization (ILO) Liaison Officer for Myanmar<sup>\*\*\*</sup>**

#### **1. What is the Liaison Officer's role?**

The Liaison Officer is responsible for ensuring the prompt and effective elimination of forced labor in Burma. This includes investigating and responding to reports of forced labor. The Liaison Officer reports to the ILO Executive Director for Fundamental Principles and the Rights at Work.<sup>50</sup>

#### **2. Who may give information to the Liaison Officer?**

The Liaison Officer receives information from NGOs, governments, other UN agencies and monitoring bodies, and individual communications.<sup>51</sup> Provided there are no credibility or reliability issues, the Liaison Officer will generally send allegations of violations to the Burma government with requests for further information and responsive action.<sup>52</sup>

### **E. ILO Committee of Experts on the Application of Conventions and Recommendations**

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

The Committee of Experts is composed of 20 independent experts. The Committee meets each year.

#### **2. What is the Committee's role?**

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<sup>\*\*\*</sup> As of October 2008, Steve Marshall is the ILO Liaison Officer for Myanmar.

The Committee monitors the implementation of the ILO’s Conventions to ensure states are in compliance with international standards. The Committee receives and reviews comments from workers’ and employers’ organizations as well as state’s reports. The Committee submits annual reports to the ILO’s Conference Committee on the Application of Standards, which is composed of government delegates and constituents from workers’ organizations and employers’ organizations.<sup>53</sup>

### 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 ILO Conventions. Only states that have signed onto the Conventions are obligated to submit reports to the Committee.<sup>54</sup> The Committee is also receptive to information from workers’ and employers’ organizations. To submit information to the Committee, organizations may send communications to the International Labour Standards and Human Rights Department of the ILO.<sup>55</sup>

## F. Relevant Bodies at the United Nations

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

 <b>Contact Information</b>		
Organization	Contact Details	Useful Websites
UN Secretary General, Ban Ki-Moon	Secretary General: Ban Ki-Moon Headquarters: 1st Ave. and 46th street New York, NY 10017 USA Tel: +1 212 963 1234 Fax: +1 212 963 4879	To learn more about the Secretary-General, visit: <a href="http://www.un.org/sg/biography.shtml">http://www.un.org/sg/biography.shtml</a>  For contact details of the permanent missions to the United Nations in New York see: <a href="http://www.un.org/Overview/miissions.htm">http://www.un.org/Overview/miissions.htm</a>
Human Rights Council <sup>§§§</sup>	To submit complaints to the Council under the 1503 Procedure:  Treaties and Human Rights Council Branch c/o OHCHR-UNOG Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 Switzerland Fax: +41 22 917 90 11 E-mail: <a href="mailto:CP@ohchr.org">CP@ohchr.org</a>  To submit communications to the Council under the Special Procedures:	To learn more about the Human Rights Council, visit: <a href="http://www.ohchr.org/english/bodies/hrcouncil/">http://www.ohchr.org/english/bodies/hrcouncil/</a>  To learn more about the complaint mechanism available under the Council’s 1503 Procedure, visit: <a href="http://www2.ohchr.org/english/bodies/chr/complaints.htm">http://www2.ohchr.org/english/bodies/chr/complaints.htm</a> To learn more the Special Procedures of the Council, visit: <a href="http://www2.ohchr.org/english/">http://www2.ohchr.org/english/</a>

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

	c/o OHCHR-UNOG Palais des Nations 8-14, Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06 E-mail: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	<a href="http://bodies/chr/special/index.htm">bodies/chr/special/index.htm</a>
UN Office of the High Commissioner for Human Rights, Navanethem Pillay	UN Office of the High Commissioner for Human Rights Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Tel: +41 22 917 90 00	To learn more about the UN Office of the High Commissioner for Human Rights, visit: <a href="http://www.ohchr.org/EN/Pages/WelcomePage.aspx">http://www.ohchr.org/EN/Pages/WelcomePage.aspx</a>
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 E-mail: <a href="mailto:ohchr.bangkok@un.org">ohchr.bangkok@un.org</a> <a href="mailto:alizadeh@un.org">alizadeh@un.org</a>	To learn more about the UN Office of the High Commissioner for Human Rights Southeast Asia Regional Office, visit <a href="http://www.un.or.th/ohchr/index.html">http://www.un.or.th/ohchr/index.html</a> .
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 c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06  For urgent appeals, email: <a href="mailto:urgent-action@ohchr.org">urgent-action@ohchr.org</a>	For documents on the Special Rapporteur, visit: <a href="http://www.unhchr.ch/html/menu2/7/a/mmya.htm">http://www.unhchr.ch/html/menu2/7/a/mmya.htm</a>
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: <a href="http://www.un.org/News/oss/srsg/table.htm">http://www.un.org/News/oss/srsg/table.htm</a>
UN Special Rapporteur on Contemporary Forms of Slavery, Gulnara Shahinian	UN Special Rapporteur on Contemporary Forms of Slavery c/o OHCHR-UNOG Palais des Nations 8-14 Avenue de la Paix CH-1211 Geneva 10 Switzerland Fax: +41 22 917 90 06  E-mail: <a href="mailto:srslavery@ohchr.org">srslavery@ohchr.org</a>	To learn more about the Special Rapporteur, visit: <a href="http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm">http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm</a>
UN Working Group on Contemporary Forms of Slavery	Secretariat on the Working Group on Contemporary Forms of Slavery c/o OHCHR-UNOG Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006	To learn more about the Working Group, visit: <a href="http://www2.ohchr.org/english/issues/slavery/group.htm">http://www2.ohchr.org/english/issues/slavery/group.htm</a>
ILO Liaison Officer for Myanmar, Steve Marshall	ILO Liaison Officer for Myanmar No. 1212-20, Traders Hotel, 12th Flr. No. 223, Sule Pagoda Road	To learn more about the ILO Liaison Officer for Myanmar, visit:

	Kyauktada Township, Yangon Myanmar Tel: +95 1 242 393, 242 811 Fax: +95 1 242 594 Email: <a href="mailto:marshall@ilo.org">marshall@ilo.org</a>	<a href="http://www.ilo.org/public/english/region/asro/yangon/">http://www.ilo.org/public/english/region/asro/yangon/</a>
ILO Committee of Experts on the Application of Conventions and Recommendations	Committee of Experts on the Application of Conventions and Recommendations c/o Human Rights and International Labour Department International Labour Organization Palais des Nations CH-1211 Geneva 10 Switzerland Fax: +41 22 917 9006	To learn more about the ILO Committee of Experts on the Application of Conventions and Recommendations, visit: <a href="http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&amp;hdroff=1">http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&amp;hdroff=1</a>

### 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 labor, 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

<sup>1</sup> The main international agreements explicitly prohibiting the use of forced labor include:

- *Universal Declaration of Human Rights*, Article 4
- *UN International Covenant on Civil and Political Rights*, Article 8
- *Slavery Convention*, Article 1(1)
- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Article 7
- *ILO Convention No. 29*
- *ILO Convention No. 105 concerning the Abolition of Forced Labour*
- *ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Article 3(a)
- *ILO Employment Policy Convention No. 122*
- *ILO Indigenous and Tribal Peoples Convention No. 169*

Regional agreements also expressly prohibit forced labor, such as in the Americas, *North American Agreement on Labor Cooperation*, and *American Convention on Human Rights* (Art. 6); in Europe, *European Convention on the Protection of Human Rights and Fundamental Freedoms* (Art. 4) and *European Social Charter* (Art. 1); in Africa, *African Charter on Human Rights and Peoples' Rights* (Art. 5). Similar agreements have not yet been signed by ASEAN nations.

Non-binding international instruments aimed at prohibiting forced labor include *Declaration Relative to the Universal Abolition of the Slave Trade*, *ILO Declaration on Fundamental Principles and Rights at Work*, and *Forced labor (Indirect Compulsion) Recommendation No. 35*.

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 labor is prohibited under CIL. So, even if Burma has not signed some of the above treaties, it will still be subject to associated CIL norms (unless it can demonstrate a pattern of persistent objections to be bound by the law). Most people consider the prohibition against forced labor not only part of general CIL but also a *jus cogens* norm, which means it is a fundamental norm of international law which states may never violate, even if they persistently object. In other words, states may not “contract out” of such norms.

<sup>2</sup> Michaëlle De Cock, “Directions for National and International Data Collection on Forced Labor,” *International Labor Office*, February 2007; International Labour Organization, “A global alliance against forced labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,” 2005.

<sup>3</sup> *Ibid.*

<sup>4</sup> *UN International Covenant on Civil and Political Rights*, Article 8(3). *ILO Forced Labour Convention*, No. 29, Article 2(2). International Labor Organization, “Eradication of Forced Labour,” 2007, International Confederation of Free Trade Unions, “Forced Labour in the 21<sup>st</sup> Century,” undated.

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

<sup>6</sup> Human Rights Watch, “New Burma Policy Needed After Decade of No Results,” 6 Aug. 1998, <http://www.hrw.org/english/docs/1998/08/06/burma1288.htm> (last visited 25 August 2008).

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<sup>7</sup> Karen Human Rights Group, “Shouldering the Burden of Militarisation: SPDC, DKBA, and KPF Order Documents and Forced Labour Since September 2006,” August 2007, <http://www.khrg.org/khrg2007/khrg0702.pdf>, (last visited 2 September 2008).

<sup>8</sup> Union Aid Abroad, “Burma-Forced Labour,” [http://www.apheda.org.au/campaigns/burma\\_campaign/resources/1067568160\\_29942.html](http://www.apheda.org.au/campaigns/burma_campaign/resources/1067568160_29942.html), (last visited 25 August 2008).

<sup>9</sup> Human Rights Documentation Unit, “Burma Human Rights Yearbook 2006,” National Coalition Government of the Union of Burma,” <http://www.ncgub.net/BHRY/2006/labour.html>, (last visited 25 August 2008).

<sup>10</sup> Ethnic Community Development Forum, *Biofuel by Decree: Unmasking Burma’s Bio-energy Fiasco*, [http://www.terraper.org/file\\_upload/BiofuelbyDecree.pdf](http://www.terraper.org/file_upload/BiofuelbyDecree.pdf), (last visited 25 August 2008).

<sup>11</sup> Karen Human Rights Group, “Surviving in Shadow: Widespread Militarization and the Systematic Use of Forced Labour in the Campaign for Control of Thaton District,” January 2006, <http://www.khrg.org/khrg2006/khrg0601d.htm>, (last accessed 25 August 2008).

<sup>12</sup> Human Rights Documentation Unit, “Burma Human Rights Yearbook 2006,” National Coalition Government of the Union of Burma, <http://www.ncgub.net/BHRY/2006/labour.html>, (last visited 25 August 2008).

<sup>13</sup> Human Rights Watch, “Burma: Landmines Kill, Maim and Starve Civilians Forced to Serve as Human Minesweepers,” 20 December 2006, <http://www.hrw.org/english/docs/2006/12/20/burma14904.htm>, (last visited 25 August 2008).

<sup>14</sup> Burma Humanitarian Mission, “Health Crisis,” [http://www.burmamission.org/health\\_crisis.php](http://www.burmamission.org/health_crisis.php), (last visited 25 August 2008).

<sup>15</sup> International Centre for Human Rights and Democratic Development, “Su Su Nway’s Case,” *Libertas*, Vol. 16, No. 2, pg. 4, November 2004, <http://www.dd-rd.ca/site/publications/index.php?id=2004&page=3&subsection=newsletter> (last visited 25 August 2008).

<sup>16</sup> Human Rights Documentation Unit, “Burma Human Rights Yearbook 2006,” National Coalition Government of the Union of Burma, <http://www.ncgub.net/BHRY/2006/labour.html>, (last visited 25 August 2008).

<sup>17</sup> Federation of Trade Unions Burma, “Forced Labor in Burma (Myanmar) Country Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,” Report to the International Labor Conference, Geneva, June 2007.

<sup>18</sup> Recently, the international community has reiterated the importance of preventing genocide. For example, as well as the International Criminal Court’s focus on the crime, the Secretary General of the United Nations recently established the position of Special Adviser on the Prevention of Genocide, currently held by Francis Deng. See Office of the Special Adviser on the Prevention of Genocide, [http://www.un.org/Depts/dpa/prev\\_genocide/index.htm](http://www.un.org/Depts/dpa/prev_genocide/index.htm) (under construction when last visited 27 July 2008). Further, the Secretary General’s High-level Panel on Threats, Challenges and Change has suggested that the Security Council should authorize military intervention where a country is unwilling or powerless to prevent genocide. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have both prosecuted genocide and crimes against humanity as part of their jurisdiction. See generally for the ICTY, [www.un.org/icty/](http://www.un.org/icty/) (last visited 27 July 2008) and for the ICTR, [www.un.org/icttr/](http://www.un.org/icttr/) (last visited 27 July 2008).

<sup>19</sup> As the most serious of offenses in international law, it is generally accepted that the violation of genocide is universally applicable, meaning that it applies to states and individuals even if they have not signed onto a treaty or agreement to prevent genocide. This idea has been referenced by the International Court of Justice, the 1971 Barcelona Traction and in several statements by the U.N. Secretary General. Regardless, Burma is a party to the Convention on the Prevention and Punishment of the Crime of Genocide (with reservations).

Crimes against humanity have also been deemed to be part of customary international law and are therefore universally applicable. See, Bassiouni, C. and Hampson, F. et al., “Crimes against Humanity and Universal

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Jurisdiction,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 27 July 2008).

<sup>20</sup> Genocide is prohibited under several treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the Rome Statute for the International Criminal Court (ICC), as well as customary international law. It is prohibited during times of war and peace. Both state and non-state actors, such as armed opposition groups, may be guilty of genocide.

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

The International Criminal Court provides a useful summary of the elements of genocide. *See, Elements of Crimes*, Article 6, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>21</sup> *Rome Statute of the International Criminal Court*, Article 6(c) 17 July 1998.

<sup>22</sup> *Prosecutor v. Kayishmea and Ruzindana*, ICTR Trial Judgment, 21 May 1999, para. 115.

<sup>23</sup> *See, Prosecutor v Jelisic*, ICTR Trial Judgment, 14 December 1999, para 82; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998.

<sup>24</sup> Regarding the number of people who need to be harmed for genocide to apply, the International Criminal Court suggests that the number simply needs to be one or more, highlighting that there does not need to be evidence of the extermination of the whole or even most of the population. *See, Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>25</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR Trial Judgment, 2 September 1998; *Kosovo Backgrounder: Sexual Violence as International Crime*, Human Rights Watch, 10 May 1999, <http://www.hrw.org/backgrounder/eca/kos0510.htm> (last visited 27 July 2008); 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).

<sup>26</sup> Orentlicher, Diane F., “Genocide,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/genocide.html> (last visited 1 August 2008).

<sup>27</sup> *See, Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>28</sup> *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998, para 523; *Prosecutor v Kayishmea and Ruzindana*, ICTR Trial Judgment, 21 May 1999; *Krstic Judgment*, ICTY Trial Judgment, August 2001, para 580 (considering evidence of the destruction of mosques and houses belonging to members of the group to prove the necessary intent).

<sup>29</sup> The definition is taken from the *Rome Statute of the International Criminal Court*, Article 7. Crimes against humanity were identified formally as breaching international law in the Charter of the Nuremberg Tribunal in 1945. In 1946, the United Nations’ General Assembly recognized that international law prohibits crimes against humanity. The ICC also prosecutes crimes against humanity. Burma is not directly subject to the ICC’s jurisdiction but is subject to the prohibition against crimes against humanity under customary international law. *See, Rome Statute of the International Criminal Court* (1998), Article 7, [http://untreaty.un.org/cod/icc/statute/english/rome\\_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf) (last visited 2 August 2008); Amnesty International, *The International Criminal Court: Fact Sheet 4 – Prosecuting Crimes Against Humanity*, <http://web.amnesty.org/library/index/engior400052000> (last visited 27 July 2008); *see also*, Bassiouni, C. and Hampson, F. et al., “Crimes against Humanity and Universal Jurisdiction,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 27 July 2008).

<sup>30</sup> *Rome Statute of the International Criminal Court*, Article 7(c) 17 July 1998 (including “enslavement” as acts constituting a crime against humanity when the others elements of the crime are also met.).

<sup>31</sup> *Prosecutor v. Kunarac, et al.*, ICTY Trial Judgment, 22 February 2001, para. 542. *Prosecutor v. Krnojelac*, ICTY Trial Judgment, 15 March 2002, para. 358.

<sup>32</sup> See, Diego Garcia, *A Crime Against Humanity? Public Debate at the House of Commons*, 16 November 2004, citing *Prosecutor v. Tadic*, Trial Judgment, paras 644-648; *Prosecutor v Akayesu*, ICTR Trial Judgment, 2 September 1998, para 580.

<sup>33</sup> *Ibid.*

<sup>34</sup> See, Human Rights Watch, *Targeting the Anuak: Human Rights Violations and Crimes against Humanity in Ethiopia's Gambella Regio*, section on Crimes Against Humanity in International Law, citing *Prosecutor v. Akayesu*, ICTR Trial Judgment, 2 September 1998, para 580, [http://hrw.org/reports/2005/ethiopia0305/10.htm#\\_ftn201](http://hrw.org/reports/2005/ethiopia0305/10.htm#_ftn201) (last visited 28 July 2008).

<sup>35</sup> *Ibid.*

<sup>36</sup> See, Amnesty International, *The International Criminal Court: Fact Sheet 4 – Prosecuting Crimes Against Humanity*, <http://web.amnesty.org/library/index/engior400052000> (last visited 28 July 2008); Bassiouni, C. and Hampson, F. et al., “Crimes against Humanity and Universal Jurisdiction,” in *Crimes of War, The Book*, <http://www.crimesofwar.org/thebook/crimes-against-humanity.html> (last visited 28 July 2008).

<sup>37</sup> *Prosecutor v. Naletilic and Martinovic*, ICTY Trial Judgment, 31 March 2003, para 235, <http://www.un.org/icty/cases-e/index-e.htm> (last visited 28 July 2008).

<sup>38</sup> See *Elements of Crimes*, [http://www.icc-cpi.int/library/about/officialjournal/Elements\\_of\\_Crimes\\_120704EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Elements_of_Crimes_120704EN.pdf) (last visited 29 July 2008).

<sup>39</sup> A full list of human rights concerns of UN thematic rapporteurs, representatives of the UN Secretary-General, and working groups can be accessed online at: <http://www2.ohchr.org/english/bodies/chr/special/themes.htm> (last visited 5 October 2008).

<sup>40</sup> Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

<sup>41</sup> Office of the High Commissioner for Human Rights. “Special Procedures of the Human Rights Council,” <http://www2.ohchr.org/english/bodies/chr/special/> (last visited 1 August 2008).

<sup>42</sup> Office of the High Commissioner for Human Rights. “Situation of human rights in Myanmar,” Commission on Human Rights Resolution 1992/58, 3 March 1992, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1992.58.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1992.58.En?Opendocument) (last visited 1 August 2008).

<sup>43</sup> *Special Rapporteur on Contemporary Forms of Slavery - Introduction*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm> (last visited 29 October 2008).

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

<sup>45</sup> Office of the High Commissioner for Human Rights, *Fact Sheet No. 14: Contemporary Forms of Slavery*, June 1991, <http://www.unhchr.ch/html/menu6/2/fs14.htm> (last visited 29 October 2008). *Special Rapporteur on Contemporary Forms of Slavery - Introduction*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm> (last visited 29 October 2008).

<sup>46</sup> *Ibid.* The Special Rapporteur will aim to prevent the loss of life and therefore will usually make the appeal even if there are still domestic remedies available.

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<sup>47</sup> Office of the High Commissioner for Human Rights, *Fact Sheet No. 14: Contemporary Forms of Slavery*, June 1991, <http://www.unhcr.ch/html/menu6/2/fs14.htm> (last visited 29 October 2008).

<sup>48</sup> *Ibid. Working Group on Contemporary Forms of Slavery*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/slavery/group.htm> (last visited 29 October 2008).

<sup>49</sup> *Working Group on Contemporary Forms of Slavery*, Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/slavery/group.htm> (last visited 29 October 2008).

<sup>50</sup> *ILO Activities in Myanmar*, Office of the ILO Liaison Officer- Yangon, <http://www.ilo.org/public/english/region/asro/yangon/> (last visited 29 October 2008).

<sup>51</sup> The ILO office has established a mechanism that allows victims of forced labor living in Burma to submit complaints. Although this mechanism includes a provision to protect complainants from retaliatory action, those who continue to fear possible retaliation may submit reports of forced labor to any UN agency outside Burma, which will then transmit the information to the Liaison Officer.

<sup>52</sup> *ILO Activities in Myanmar*, Office of the ILO Liaison Officer- Yangon, <http://www.ilo.org/public/english/region/asro/yangon/> (last visited 29 October 2008).

<sup>53</sup> *Rules of the Game: A Brief Introduction to International Labour Standards*, ILO, 2005.

<sup>54</sup> Burma is a party to ILO Forced Labour Convention No. 29.

<sup>55</sup> *Rules of the Game: A Brief Introduction to International Labour Standards*, ILO, 2005.