



Independent Investigative Mechanism for Myanmar

Bulletin

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Message from the Head of the Mechanism

Since the elected government of Myanmar was deposed by military authorities over a year ago, we have received reports that suggest that more than a thousand individuals have been killed and many thousands detained in circumstances related to the coup. Information collected by the Mechanism strongly suggests that crimes against humanity and war crimes may have been committed, including the crimes of arbitrary detention, torture, rape and other forms of sexual violence, murder, attacks intentionally directed against the civilian population or against individual civilians not taking direct part in hostilities, and deportation or forcible transfer of the population.

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The Mechanism is working independently and impartially to investigate the facts underlying the reports it receives, and according to the high standards of a professional and objective criminal investigation. Where there is clear and convincing evidence of the commission of crimes, the Mechanism will prepare files to facilitate criminal trials of the persons responsible. The Mechanism has been able to gather a great deal of relevant material and we are adding information and evidence to our files almost daily. While closely following events since the coup and collecting relevant information, the Mechanism continues its work on other events within its mandate that have taken place in the territory of Myanmar since 2011, including those related to crimes against the Rohingya people.

The Mechanism is very grateful to the many thousands of persons and organizations that have shared evidence relevant to our investigations of serious international crimes in Myanmar. We are committed to doing all we can to assure the safety and security of those with whom we interact and will make every effort to build strong cases so that their brave contributions to justice in Myanmar are not made in vain.

The Mechanism is using all possible strategies and innovations to gather and verify evidence that can facilitate prosecutions in national, regional and international courts. We have been sharing evidence with the Parties in *The Gambia v. Myanmar* at the International Court of Justice, which recently concluded a round of public hearings on the case. We are also cooperating with the International Criminal Court, and look forward to sharing files with other courts that have or may in the future have jurisdiction over these crimes.

However, in order to gather more relevant information and evidence, the cooperation of States where the evidence and witnesses are located, especially in the Asia region, is essential. The Mechanism is grateful to the many States which are already cooperating and looks forward to deepening and expanding such cooperation in order to hold the perpetrators of the most serious international crimes in Myanmar to account.

I wish to express my sincere gratitude to all those who have helped the Mechanism in its efforts to collect and verify evidence, including victim and survivor groups, civil society organizations, businesses and many brave individuals. We will continue to do all we can to collect evidence of the most serious international crimes so that one day, there will be justice for victims from Myanmar and all will know that impunity for such crimes will no longer be tolerated.

- Nicholas Koumjian

Institutional update

The Mechanism has collected over 1.5 million items of information and evidence from a broad range of sources and in a variety of formats, including witness testimonies, documents, photographs, videos, geospatial imagery and open source materials. Based on ongoing analysis of this information, the Mechanism has prepared 38 evidence packs and analytical documents that are available for sharing with national, regional and international courts or tribunals.

The Mechanism continues to conduct its investigative activities in strict adherence to the scope of its mandate. The dynamic situation following the military seizure of power on 1 February 2021 in Myanmar required the Mechanism to greatly expand its operational activities in order to address the increasing allegations of serious international crimes and to collect copious submissions of information and evidence from a myriad of sources.

The Mechanism has been working diligently to substantiate whether crimes against humanity and war crimes have been committed since the military coup, and if so, who is criminally responsible. In this regard, the Mechanism is expanding its capacity to collect and analyse open source and financial information as part of its broader investigations. In addition, the Mechanism is scaling up its efforts to interview and take statements from victims, witnesses and other individuals who have first-hand information and documentation regarding the commission of serious international crimes falling within its mandate.

The Mechanism continues to engage with States and intergovernmental organizations that may have relevant information or may be in a position to support the Mechanism. It has strengthened these partnerships by joining the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ("[Genocide Network](#)") as an associate member in November 2021. This will provide the Mechanism with opportunities for closer cooperation with national investigative and prosecutorial authorities in Europe.

Strengthening cooperation with a diverse set of stakeholders was also a key purpose of the Mechanism's visit to New York and Washington DC in October and November 2021. The Mechanism had the opportunity to brief a number of Member States, including members of the Security Council and the Organization of Islamic Cooperation (OIC). The OIC issued a [press statement](#) expressing full support to the mandate of the Mechanism and encouraging all stakeholders, including Member States, to extend full cooperation to it.

In December 2021, the General Assembly adopted [resolution 76/180](#), urging "Myanmar, Member States, judicial authorities and private entities to cooperate fully with the Mechanism, including by granting it access and by providing it with every assistance in the execution of its mandate." The General Assembly reiterated its urgent call upon Myanmar to cooperate and engage meaningfully with the Mechanism, including by facilitating visits and granting unrestricted access throughout the country and requested that the Secretary-General assist the work of the Mechanism.

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Visit the Mechanism's website for more information on [UN Resolutions](#) that are relevant to the Mechanism's mandate

Also in December 2021, the General Assembly approved the Mechanism's annual budget for 2022. The Mechanism is funded from the UN regular budget, which ensures that the Mechanism has the necessary resources, personnel and expertise to meet the many operational challenges it faces in discharging its complex mandate. At present, the Mechanism has filled 45 out of the 55 staff positions under its regular budget.

The Mechanism also receives voluntary contributions from donors and other entities for discrete projects and highly specialized expertise. The Mechanism is grateful to Justice Rapid Response for the support it has provided since 2019, and to Switzerland, the United Kingdom and other contributors for the voluntary contributions they made to the Mechanism in 2021 to enhance its investigative capacities.

Outreach

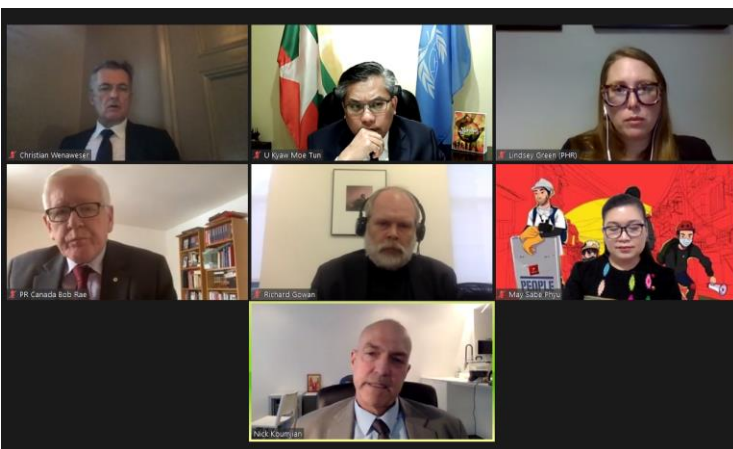
Establishing ongoing dialogue with victims and other stakeholders remains a priority of the Mechanism. The Mechanism makes every effort to reach out to the many diverse communities that have a stake in its work, to raise awareness and better explain its complex mandate, methods of work and what can and cannot be expected from its efforts. Regular communication through secure and diverse channels is critical if the Mechanism is to and gain and maintain the confidence and cooperation of stakeholders.



Screenshot of the [press briefing](#) at UN Headquarters

In October and November 2021, the Mechanism met with various civil society organizations working on Myanmar in New York and Washington DC to facilitate dialogue and understanding of the work of the Mechanism. The Head of the Mechanism also took part in a [press briefing](#) at UN Headquarters in New York, where he discussed the challenges and opportunities since the coup on 1 February 2021, including the communications that the Mechanism has received from people inside and outside Myanmar urging the Mechanism to ensure accountability for crimes committed in Myanmar.

In response to a question on whether most of the Mechanism's files are on the military junta or from different areas, Mr. Koumjian said: "I want everyone who committed such offences to worry that there is a file on them." Links to the Mechanism's media coverage, including interviews, are available on the Mechanism's [website](#).



In February 2022, on the anniversary of the military's seizure of power, the Mechanism issued a [statement](#) reiterating that it is closely watching events and working to fulfil its mandate. The Mechanism's work to collect evidence of the very worst international crimes complements other efforts to end the violence. This statement was also published as an opinion piece in the [Bangkok Post](#). The Mechanism participated in a [virtual event](#) commemorating the anniversary which was sponsored by the Permanent Missions of Canada, Costa Rica, The Gambia, Liechtenstein and Turkey, and the Delegation of the European Union.

Screenshot from "The Coup in Myanmar: A Year On" virtual event

Updates on ongoing legal proceedings related to serious international crimes in Myanmar

ICJ – The Gambia v. Myanmar

In February 2022, the International Court of Justice (ICJ) held public hearings devoted to the preliminary objections raised by Myanmar in the case of *The Gambia v. Myanmar*. The Gambia – with the backing of the 57 members of the Organisation of Islamic Cooperation – filed the case on 11 November 2019, alleging that the crimes against the Rohingya in Rakhine State violate the Convention on the Prevention and Punishment of the Crime of Genocide. Myanmar and The Gambia presented their first round of oral arguments on [21 February](#) and [23 February](#) respectively, while a second round of arguments were held on [25](#) and [28 February](#). The ICJ will next issue a decision on the preliminary objections, which will determine whether the case can proceed to the merits.



The ICJ on the opening day of the hearings (UN Photo/Frank van Beek)

ICC – Situation of Bangladesh / Myanmar

On 14 November 2019, Pre-Trial Chamber III of the International Criminal Court (ICC) authorised the ICC Prosecutor to proceed with an investigation of alleged crimes within the ICC's jurisdiction in the situation in Bangladesh/Myanmar. This [authorisation](#) followed the Prosecutor's request to open an investigation into crimes related to the forced deportation of Rohingya from Rakhine State in Myanmar, which is not party to the Rome Statute of the ICC, across the border into Bangladesh, which has ratified the Rome Statute. According to the Prosecutor, an estimated 600,000 to one million Rohingya were forcibly displaced from Myanmar to neighbouring Bangladesh as a result of the alleged coercive acts.

Application of universal jurisdiction in Argentinian court

On 26 November 2021, the Federal Criminal Court of Argentina overturned the decision of a lower court denying a request to investigate allegations of genocide and crimes against humanity committed against the Rohingya. The request to investigate followed the filing by six Rohingya women who filed a complaint based on the principle of universal jurisdiction. The lower court denied that request because it considered the investigation to be duplicative of the ICC's work. However, the Federal Criminal Court, which heard remotely from the six women in refugee camps in Bangladesh, reversed the denial as the investigation would cover a broader range of crimes than the ICC.

Frequently Asked Questions

WHAT IS UNIVERSAL JURISDICTION AND HOW CAN CRIMES COMMITTED IN MYANMAR BE PROSECUTED IN COURTS OUTSIDE OF MYANMAR?

Universal jurisdiction refers to the idea that a State can prosecute individuals for serious international crimes, even if the alleged crime was not committed in that State's territory or by a national of that State. Such crimes can include crimes against humanity, war crimes, genocide and torture.

Universal jurisdiction is based on the principle that some crimes are so serious that they constitute a harm against the international community, and all States have an interest in seeing that the individuals who committed those crimes are held responsible. Universal jurisdiction is usually exercised by States as a last resort when the State in which the crimes were committed is unable or unwilling to investigate and prosecute the crimes.

Under the principle of universal jurisdiction, States, depending on their own laws, may be capable of prosecuting individuals alleged to have committed serious international crimes anywhere in the world, including Myanmar. Some States can only exercise jurisdiction when a perpetrator or the victims of such international crimes are their nationals or present on their territory. Other States, however, do not require any link to their own country, and can exercise jurisdiction solely on the basis that the facts amount to war crimes, crimes against humanity or genocide.

WHAT IS A NON-INTERNATIONAL ARMED CONFLICT?

International humanitarian law (IHL) is also known as the laws of war. Because IHL only applies in situations of an armed conflict, it is important to determine whether an armed conflict exists in the first place. It is also important to distinguish between an international and non-international armed conflict. An international armed conflict is a conflict between two or more States. A non-international armed conflict is a conflict between a State and a non-governmental armed group, or between non-governmental armed groups. IHL rules which are applicable to international armed conflicts may not always apply to non-international conflicts. In other words, what may constitute a war crime in an international armed conflict does not necessarily constitute a war crime in a non-international armed conflict.

For an armed conflict to be characterised as a non-international armed conflict, certain requirements must be met. First, the armed conflict must reach a certain level of intensity. The hostilities or fighting needs to be more than sporadic or isolated. Factors that can be taken into account include the seriousness of the attacks, any increase in armed attacks, as well as how attacks are spread over a territory and across a period of time. Second, the non-governmental armed group must have a sufficient degree of organisation. It must have the ability to plan and carry out military operations.

For crimes that are committed during an armed conflict to be considered war crimes, there must be a connection between the crime and the armed conflict. This is known as the “nexus” requirement. Determining whether there is a nexus can be complex, but at a minimum it is important to establish that the crime is closely related to the hostilities or committed in conjunction with the hostilities. One of the central goals of IHL is to protect civilians and civilian objects from attack. Any type of attack that is intentionally directed at a civilian population is considered a war crime.

WHAT ARE SEXUAL AND GENDER-BASED CRIMES?

Sexual and gender-based crimes (SGBC) is a broad term used to describe crimes that have a sexual or gender-based component to them. SGBC is sometimes also referred to as sexual and gender-based violence (SGBV). Sexual crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, forced sexual acts, threats and attempts of any form of rape or other sexual violence. They also include conduct that is carried out in a sexualized manner and is of comparable gravity, such as forced nudity, unwanted or coerced touching or contact, forcing a person to commit or to watch an act of sexual violence, and any form of violence to a victim’s genitals. Under international criminal law, the crime of rape is gender neutral. This means that men, women, girls, boys and transgender people can all be victims of rape.

Gender-based crimes are crimes directed against someone because of their sex at birth or because of their gender. Crimes directed at individuals on the basis of their gender and as part of a widespread or systematic attack against a civilian population may amount to the crime against humanity of persecution.

The Mechanism is committed to ensuring that SGBC is integrated into its investigations and the case files it is building. The Mechanism also integrates a gendered perspective throughout its work. This includes looking more broadly at the gendered impacts of conflict and the crimes committed and aiming to ensure that the voices of victims and witnesses of all genders are reflected in its work.

WHAT ARE CRIMES AGAINST CHILDREN?

A child means a person below the age of eighteen years. Children can be the victims of all types of serious international crimes, such as killings, torture, sexual and gender-based crimes, deportation and persecution. There are some serious international crimes which are regarded as being “child-specific”. These include the forcible transfer of children of the group to another group, trafficking of children, conscription, enlisting or using children under the age of fifteen years to participate in hostilities, and attacks on buildings dedicated to education and healthcare.

The Mechanism is collecting evidence of crimes against or affecting children, and will include such crimes in the case files that the Mechanism is building for prosecutions in national, regional and international courts. The Mechanism will engage with children as victims and as witnesses.

The “best interests of the child” will be the guiding principle in the Mechanism’s work concerning children. In its interactions with children, the Mechanism will give particular attention to their rights and dignity, recognizing that children can be both vulnerable and capable at the same time. The Mechanism will always prioritise the safety and wellbeing of children when interviewing and engaging with them.