



Independent Investigative Mechanism for Myanmar

Bulletin

Issue 2, October 2020

Institutional update

In the first full year of existence, the Mechanism has made significant progress on several fronts.

It has built a team and infrastructure capable of implementing its challenging mandate – to collect, preserve and analyse evidence of the most serious international crimes committed in Myanmar since 2011 and to build case files that address individual criminal responsibility.

It has prioritised the recruitment of personnel with a diverse range of expertise and specializations, who will help it address the challenges it faces, including:

- ensuring the protection of witnesses and information providers;
- building a secure and state-of-the-art digital evidence management system;
- combatting cybersecurity and information security risks; and
- enabling the Mechanism to engage with its interlocutors and stakeholders, who speak a myriad of languages.

It has also added, to its team, experts in international law; criminal investigations and prosecution; military analysis; sexual and gender-based crimes and violence; and crimes against children.

In view of the challenging financial situation currently facing the United Nations, the Mechanism has adjusted its structure so that it is more effective and efficient, enabling it to propose a leaner budget for 2021. This budget submission is subject to approval by the General Assembly by the end of this year.

During the past six months, the COVID-19 pandemic has restricted the Mechanism's ability to travel to engage with relevant stakeholders and collect evidence. However, it is using innovative measures and advanced technology tools, including videoconferencing and open source investigations, to adjust its operations and make progress despite difficult circumstances. For example, following discussions for over a year, Facebook recently agreed to preserve material at the Mechanism's request and has begun providing materials that partially comply with its requests. These discussions are ongoing and the Mechanism is hopeful it will lead to much more relevant material becoming available. The Mechanism also continues to reach out to the Government of Myanmar as well as other Member States to seek access to relevant information.

In parallel, the Mechanism has been developing its information management systems so that it can safely and securely store the materials it receives and conduct analyses of those materials in order to identify individuals who may be responsible for serious international crimes committed in Myanmar.

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In [resolution 43/26](#) of 22 June 2020, the Human Rights Council called for close and timely cooperation between the Mechanism and any future investigations by national, regional or international courts, including the International Criminal Court and the International Court of Justice. In this regard, the Mechanism has been sharing appropriate information with The Gambia and Myanmar, Parties to the proceedings before the International Court of Justice, in response to their requests and with the consent of the original information providers. The Mechanism believes that it is important that judges to that case have access to all relevant information.

Outreach

Public outreach remains a priority for the Mechanism to promote greater understanding of its complex work, and to gain the confidence and cooperation of relevant stakeholders. The Mechanism also believes that by raising awareness of its accountability mandate, it can deter perpetrators from committing new crimes.

In July 2020, the Mechanism launched its website, iimm.un.org, in the English and Myanmar languages to further bolster its public outreach efforts. In October 2020, the Mechanism launched its own page on the Facebook platform, which can be found on facebook.com/MyanmarMechanism. These serve as the main platforms in the Mechanism’s effort to provide accurate and timely information about its mandate and work to various audiences in Myanmar and internationally.

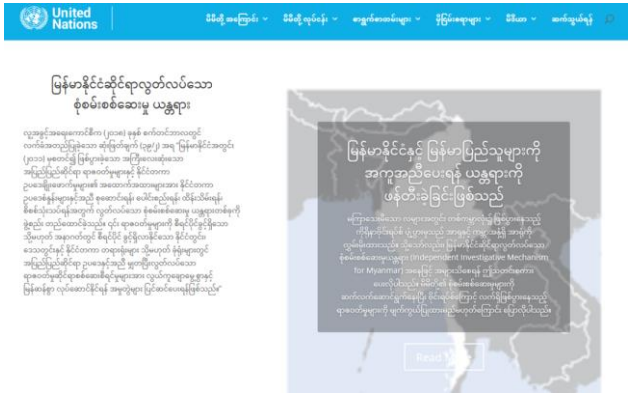
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The Mechanism has also made efforts to engage with national, regional and international media. Notably, the Head of the Mechanism, Mr. Nicholas Koumjian, was interviewed on Myanmar-language media where he addressed questions on the work of the Mechanism, the impact of the COVID-19 pandemic, and the importance of Myanmar’s cooperation,¹ as well as questions related to the lack of access to crime scenes in Myanmar, the report and methodology of the Independent Commission of Enquiry on Myanmar, and the importance of accountability for crimes committed against ethnic groups in Myanmar despite the complex and slow process.²

Mr. Koumjian also published an opinion piece in a regional news website, highlighting that the Mechanism was created to help Myanmar and its people.³ He wrote that “continued impunity for such crimes is only likely to lead to further violence and suffering, and the continued displacement of people in Myanmar and more refugees seeking shelter in neighbouring countries with accompanying risks to peace and security in the region”. He further stated that “the prospects for a peaceful and prosperous future for the people of Myanmar, where all its peoples share the benefit of development and its bountiful resources, depend on the clear demonstration that such crimes will not be tolerated.”



In an interview with a global online outlet specializing in reporting on transitional justice and human rights, Ms. Kaoru Okuizumi, the Deputy Head of the Mechanism, discussed how the Mechanism gathers information in spite of the current travel restrictions and how it would like to have a presence in the Asian region.⁴ Ms. Okuizumi spoke about the complexity of the international criminal justice process, and the importance of ensuring that the people that the Mechanism interviews receive the appropriate support for their psycho-social, medical and security needs.

The Mechanism has also participated in a number of virtual events organised by States and civil society in recent months, including:

- Justice and Accountability for the Rohingya, organised by Legal Action Worldwide, Shanti Mohila, and the Burmese Rohingya Organisation UK (25 August 2020);
- Global Rally to Commemorate Myanmar Genocide of 2017, organised by Free Rohingya Coalition (25 August 2020);
- Rohingya Crisis in its Fourth Year: Challenges in Securing a Sustainable Solution, organised by the Permanent Missions of Bangladesh, Canada, Saudi Arabia and Turkey to the United Nations (16 September 2020); and
- Challenges and opportunities for a new generation of accountability mechanisms, organised by IBA War Crimes Committee (17 September 2020).

Moving forward, the Mechanism will continue to implement its engagement and public outreach strategy and to adjust it accordingly, in order to ensure that it is capable of providing up-to-date and accurate information to its various stakeholders. Apart from its initiatives on public outreach and civil society engagement, the Mechanism will update relevant regional organizations regarding its progress and seek their continued support for its work. The Mechanism will also provide briefings, as requested, to interested Member States and to regional and international organizations.



Statements made by several States and civil society organisations during the interactive dialogue at the 45th regular session of the UN Human Rights Council, 14 September 2020:

- European Union: “Despite the challenging times during the COVID-19 pandemic, the annual report documents how the mechanism has been able to continue the work of implementing its mandate. The report outlines the important steps taken by the mechanism to operationalize the mandate, collect evidence and ensure public outreach, particularly in the region.”
- Turkey: “We commend the IIMM’s emphasis on engagement with relevant stakeholders and on public outreach, as maintaining a continuous flow of information and exchange of recommendations is essential to maintain and facilitate the work of the Mechanism.”
- Asian Forum for Human Rights and Development (FORUM-ASIA): “In particular, we commend the efforts to strengthen public outreach and engagement with all relevant stakeholders.”
- CIVICUS: “We particularly welcome efforts articulated towards outreach and engagement with local and regional civil society.”

¹ <https://iimm.un.org/rfa-burmese-interview-with-nicholas-koumjian-part-1/>

² <https://iimm.un.org/rfa-burmese-interview-with-nicholas-koumjian-part-2/>

³ <https://www.bangkokpost.com/opinion/opinion/1925552/were-watching-you-myanmar>

⁴ <https://www.justiceinfo.net/en/other/45516-myanmar-mechanism-knocking-at-naypyidaw-door.html>

Human Rights Council

In its second [annual report](#) to the United Nations Human Rights Council, the Mechanism outlined the significant progress it has made in its first full year of existence and repeated its call on Member States to continue supporting the Mechanism's mission.⁵ The report was also transmitted to the General Assembly.⁶

In the interactive dialogue with the Mechanism which was held by the Human Rights Council, a number of Member States and civil society organisations expressed their support for the Mechanism and asked what more they could do to assist it in fulfilling its mandate.⁷ They also stressed the importance of holding perpetrators of serious international crimes and human rights violations to account, and called on the Government of Myanmar to cooperate with the Mechanism.



[Watch the presentation of the Myanmar Mechanism's report and the interactive dialogue on UN Web TV](#)

Myanmar also featured in other parts of the agenda of the Human Rights Council. In the enhanced interactive dialogue on the implementation of recommendations from the Fact-Finding Mission on the situation of human rights in Myanmar, the High Commissioner for Human Rights said that she continues to encourage “the Government of Myanmar to cooperate fully with international judicial and investigative bodies to ensure that justice is delivered and support the transitional justice processes, which are vital to sustainable peace.”⁸

The Special Rapporteur on the situation of human rights in Myanmar delivered his oral update to the Council, where he called on the Government of Myanmar to “welcome and cooperate with the ICC”.⁹ He added that “It should also offer its full cooperation to the Independent Investigative Mechanism for Myanmar, which continues to collect information for future prosecutions of international crimes committed in Myanmar, including in Kachin and Shan states.”

Situation of human rights of the Rohingya Muslims and other minorities in Myanmar Report of the Secretary-General (A/75/295), 14 August 2020

“As progress is made in the work of the Independent Investigative Mechanism for Myanmar, the cooperation of Member States in the region, including, first and foremost, that of Myanmar, will be crucial to obtain access to witnesses, victims and other sources of information. That will enable the Mechanism to effectively implement its mandate, thereby contributing to accountability for serious international crimes committed in Myanmar since 2011 and to the deterrence of future crimes.”

“Accountability for crimes committed, including against the Rohingya population in Myanmar, is paramount; without accountability, peace and national reconciliation efforts will be undermined. The absence of legislation at the national level criminalizing the most serious crimes, including crimes against humanity, hampers national accountability. I call upon States, including Myanmar, to cooperate fully with existing accountability mechanisms, including the Independent Investigative Mechanism for Myanmar, to adopt national legislation to criminalize war crimes in accordance with international law and to ensure that national accountability efforts are independent, transparent and credible.”

⁵ <https://iimm.un.org/statement-to-the-human-rights-council-by-mr-nicholas-koumjian-head-of-the-independent-investigative-mechanism-for-myanmar-on-the-45th-regular-session-of-the-human-rights-council/>

⁶ <https://undocs.org/A/75/197>

⁷ <https://iimm.un.org/member-states-and-civil-society-show-support-for-myanmar-mechanism-in-interactive-dialogue/>

⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26227&LangID=E>

⁹ <http://webtv.un.org/meetings-events/watch/id-sr-on-human-rights-in-myanmar-20th-meeting-44th-regular-session-human-rights-council-/6171463312001/?term=>

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

ICJ – The Gambia v. Myanmar

On 11 November 2019, The Gambia – with the backing of the 57 members of the Organisation of Islamic Cooperation – filed a case before the International Court of Justice (ICJ) alleging that the crimes against the Rohingya in Rakhine State violate the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”). The Gambia brought the case under Article 9 of the Convention, which allows disputes between parties “relating to the responsibility of a State for genocide” to be submitted to the ICJ. Myanmar has been a party to the Genocide Convention since 1956. The case of *The Gambia v. Myanmar* before the ICJ is “state-to-state” litigation between UN Member States governed by the UN Charter, the ICJ Statute and the Genocide Convention. The Mechanism has commenced the process of sharing relevant materials with The Gambia and Myanmar, at their request. On 2 September 2020, Canada and the Netherlands announced their intention to intervene in this case. The Maldives had also previously announced its intention to intervene in February 2020.



*Opening of ICJ hearings in the Gambia v. Myanmar case
(UN Photo/ICJ-CIJ/ 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 for 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. On 22 June 2020, the Human Rights Council adopted resolution 43/26, which called for close and timely cooperation between the Mechanism and any future investigations by national, regional or international courts, including the International Criminal Court.

Application of universal jurisdiction in Argentinian court

In May 2020, the Federal Appeals Court in Buenos Aires, Argentina overturned an earlier decision and decided to accept a civil society petition to open an investigation against Myanmar’s military and civilian leadership for genocide and crimes against humanity against the Rohingya under the principle of universal jurisdiction. However, in June 2020, the Court ruled that it will request from the ICC the scope of its investigation before making a final decision on opening an investigation in Argentina.

Frequently Asked Questions

HOW IS THE MECHANISM CARRYING OUT ITS WORK DURING THE COVID-19 PANDEMIC?

The COVID-19 pandemic has restricted the Mechanism’s ability to travel to engage with relevant stakeholders and collect evidence, and has created uncertainty regarding future mission plans. In order to continue advancing its work, the Mechanism has focused its efforts on identifying potential information sources that can be contacted securely via electronic means; collecting and consolidating the information and evidence obtained from a variety of sources; and analysing the information and evidence to build case-files which could be used by national, regional or international courts or tribunals. The Mechanism has also concentrated efforts on building a state-of-the-art information management system; developing policies and establishing working methodologies; negotiating cooperation arrangements; collecting information and evidence through open source investigations and the use of advanced technological tools; and on planning and preparing for future investigative missions.

HOW CAN UN MEMBER STATES SUPPORT THE WORK OF THE MECHANISM?

The Mechanism depends upon the support and cooperation of UN Member States in order to accomplish its mandate. Such support can be provided in a number of ways:

Mandate – The Human Rights Council established the Mechanism in its resolution 39/2 (2018), which was subsequently welcomed by General Assembly resolution 73/264 (2018). To date, the Human Rights Council has adopted four resolutions and the General Assembly has adopted two resolutions regarding the Mechanism’s mandate.* Continued Member State support for such resolutions will be essential for the Mechanism to carry out its work in an effective and sustained manner.

Access – The Mechanism requires access to the territories of Member States in order to conduct investigative activities, such as collecting information and interviewing witnesses. The Mechanism requires the agreement of Member States for such access as well their assistance in ensuring the security, confidentiality and well-being of witnesses and other information providers.

Information – The Mechanism seeks information, documentation and evidence in the possession of Member States which may be relevant to serious international crimes and violations of international law committed in Myanmar since 2011. In some jurisdictions, specific legislation may be necessary to facilitate the provision of such assistance. For example, Austria recently amended its “Regulation on the Institutions of the United Nations to which Legal Assistance is to be Provided” to establish an explicit legal basis for cooperation between Austria and the Mechanism on the investigation and preservation of evidence.

Resources – In resolutions 42/3 (2019) and 43/26 (2020), the Human Rights Council called upon the Mechanism to be “afforded the necessary support and resources it needs in terms of staffing...so it can deliver as effectively as possible on its mandate”. The Mechanism is funded from the UN regular budget, through assessed contributions from Member States. As a result, the Mechanism relies upon Member States to approve its budget on an annual basis. The Mechanism is also seeking complementary voluntary contributions from Member States, as foreseen in its Terms of Reference.

* [A/HRC/RES/39/2](#) (2018), [A/RES/73/264](#) (2018), [A/HRC/40/RES/40/29](#) (2019), [A/HRC/RES/42/3](#) (2019), [A/RES/74/246](#) (2019), [A/HRC/RES/43/26](#) (2020).

WHAT IS THE DIFFERENCE BETWEEN HUMAN RIGHTS DOCUMENTATION AND A CRIMINAL INVESTIGATION?

The mandate of the Mechanism is to collect information and evidence and also build case files in order to facilitate criminal proceedings by national, regional or international courts against specific individuals. In contrast, human rights documentation or fact-finding typically have broader purposes, such as advocacy for the cessation of armed conflict and the promotion of transitional justice, including truth-seeking. As a result, human rights documentation efforts typically result in public reports and statements about violations, while criminal investigations are usually confidential and are not publicly accessible.

With regard to the standard of proof, human rights documentation is generally based on “reasonable grounds” to believe that violations were committed. However, the standard of proof in criminal cases is considerably higher, requiring the establishment of facts “beyond a reasonable doubt” or with “intimate conviction”. The methodologies used in human rights documentation and criminal investigations also differ significantly, with criminal investigations requiring the establishment of specific elements of crimes based on legal principles such as the “chain of custody” of evidence and the examination of inculpatory as well as exculpatory evidence.

Independent Investigative Mechanism for Myanmar

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