



## Independent Investigative Mechanism for Myanmar

# Bulletin

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## Message from the Head of the Mechanism

In September, I presented the Mechanism's annual report to the Human Rights Council. The report was transmitted to the General Assembly later that month. My statement to the Council described the progress that the Mechanism has made over the past year in fulfilling our ongoing mandate to collect and analyse evidence regarding the most serious international crimes and violations of international law committed in Myanmar since 2011.

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Tragically, serious crimes and violations of international law continue to be committed in Myanmar. The nation's long history of impunity continues to impact the lives of its people. Men, women and children from diverse regions and ethnic groups are suffering. Four years since the military's 2017 clearance operations in Rakhine state, hundreds of thousands of Rohingya continue to live in temporary shelters in Bangladesh, their lives on hold and many hoping to return to homes which have been burned and bulldozed. Since the military seizure of power in February this year, thousands more people have fled their homes in various regions, devastating the economy of Myanmar and straining the resources of neighbouring states. More than ever, there is a need to end impunity and break this cycle of violence.

The Mechanism continues to closely monitor events in Myanmar since the coup. We have received reports and collected information on the use of unjustified force against peaceful protestors, arbitrary arrests, torture, enforced disappearances and killings.

Our initial analysis of the available information indicates that crimes committed in the aftermath of the coup are both widespread and systematic in nature. Under international law, crimes such as killings and arbitrary detentions committed as part of a widespread or systematic attack on a civilian population are crimes against humanity and thus fall within our mandate. We are working to verify and analyse the available evidence concerning these events, and to identify individuals who bear criminal responsibility for these crimes.

Going forward, we expect that the progressive relaxation of travel restrictions will enable the resumption of essential activities that were suspended during the pandemic. This includes the in-person collection and verification of information and evidence, as well as high-level missions to facilitate the negotiation of cooperation arrangements and advance the Mechanism's outreach efforts. The resumption of in-person dialogue with key Member States will be a critical priority for the Mechanism during the upcoming period.

I wish to express my sincere gratitude to all those who have helped with the Mechanism's 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

As the Head of the Mechanism stated to the Human Rights Council, the Mechanism has collected and processed for potential sharing over 1.4 million information items from a broad range of sources and in a variety of formats, including documents, photographs, videos, geospatial imagery, witness statements and open source materials.

The Mechanism has continued to conduct its investigative activities by focusing on accessible information and evidence while also building the foundation for longer-term collection and verification efforts. Investigations are prioritised on the basis of several substantive and operational criteria. These include the scale, nature, manner of commission and impact of the crimes, including sexual and gender-based crimes and crimes against children; the degree of responsibility of alleged perpetrators; the prospect of an investigation meeting international criminal standards; and the likelihood of a court or tribunal taking jurisdiction over the crime(s) in question.

The COVID-19 pandemic continued to have an impact on the implementation of the Mechanism's investigation strategy, most notably by preventing the Mechanism from travelling to locations where potential information providers and witnesses are located. Where possible, the Mechanism continues to place emphasis on the identification of potential information sources that could be contacted through secure electronic means, scaling up the collection and consolidation of information and evidence through open source investigations and identifying potential witnesses for future in-person interviews. Based on its analytical work, the Mechanism has increased the volume of materials that can be shared for use in national, regional and international courts or tribunals which are willing and able to hold accountable persons responsible for crimes in the Mechanism's mandate.

Lastly, with regard to cooperation with Member States, 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. As recognised by the Human Rights Council and the General Assembly, the cooperation of Member States, in particular those in the Asia-Pacific region, remains particularly important for the Mechanism's investigative activities. Such cooperation is needed to allow the Mechanism to enter the territory of Member States where witnesses are located to conduct interviews in a manner that ensures the security and privacy of witnesses and their families. The cooperation of Member States is also needed in order to facilitate the protection of witnesses and prevent any reprisals for cooperating with the Mechanism.

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## Outreach

Outreach remains a priority for the Mechanism, including through engagements with civil society and the media.

The Mechanism engages with civil society, including by participating in meetings and public events. In August, the Mechanism participated in an event organized by the [Free Rohingya Coalition](#) to commemorate the fourth anniversary of the 2017 exodus of Rohingya refugees from Rakhine State. “If we want to, in any way, alleviate the suffering and provide some restoration to victims of what they lost, it requires a very long and persistent effort,” said Mr. Koumjian. “It requires a concentrated commitment by each of us to continue to fight for justice, for some recognition of what happened, and for restoration of rights that were lost.”



*Speakers at the Free Rohingya Coalition event*

In September, the Mechanism was also featured in a documentary on the military crackdown in Myanmar by [NHK Japan](#). In his interview, Mr. Koumjian explained the challenges related to the Mechanism’s work. “It’s very challenging on these most serious crimes to link what happened in different locations at different times to those individuals who are most responsible for that,” he said.

In an interview with [VOA Burmese](#) that same month, Mr. Koumjian explained the Mechanism’s mandate and its role in contributing to accountability for the most serious international crimes committed in Myanmar.

In October, Mr. Nicholas Koumjian, the Head of the Mechanism, participated in a multimedia interview with [UN News](#) in which he explained the importance of preserving evidence of crimes before it is potentially lost.

### **Situation of human rights of the Rohingya Muslims and other minorities in Myanmar Report of the Secretary-General (A/76/312), 31 August 2021**

In his August 2021 [report to the General Assembly](#) on the situation of human rights of Rohingya Muslims and other minorities in Myanmar, the UN Secretary-General stated that: “During the reporting period, progress in ending impunity and seeking redress for victims of serious international crimes and violations of international law, including human rights violations, remained limited. Cooperation with international entities in that regard, notably the Independent Investigative Mechanism for Myanmar and the Special Rapporteur on the situation of human rights in Myanmar, was minimal. Neither mandate-holder has had access to the country.”

The Secretary-General added that: “Accountability for serious crimes committed in Myanmar, including against the Rohingya and other minorities, remains essential. Relevant mechanisms such as the Independent Investigative Mechanism for Myanmar can help to facilitate justice and accountability for past crimes and contribute to the deterrence of further atrocities.” He urged full cooperation with those mechanisms, including by giving access to Myanmar.

## Human Rights Council

In its [third annual report](#) to the UN Human Rights Council, the Mechanism provided an overview of its efforts to lay a strong foundation for its work since it became operational in August 2019 as well as its plans for expanding its substantive work, intensifying its engagements and bolstering its operations to enable the perpetrators of the most serious international crimes in Myanmar to be brought to justice. The report also explained how the Mechanism has ensured that its resources and capacities continue to be used strategically to advance investigations on all priority situations and incidents, including in relation to the situation of the Rohingya population and other situations throughout Myanmar. The report was also [transmitted](#) to the General Assembly.



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

Mr. Nicholas Koumjian, the Head of the Mechanism, [presented](#) the report during the 48<sup>th</sup> regular session of the Council. In his statement, Mr. Koumjian stressed that the Mechanism seeks to always ensure the safety and privacy of victims, witnesses and information providers by emphasising the confidential nature of its work, ensuring the security of information, and obtaining their informed consent on how the information they provide may be used.

Mr. Koumjian also explained that building case files on serious international crimes is a complex, time-consuming process, which requires proof to the highest standards necessary for criminal convictions. Additionally, he noted that the Mechanism is not a court, and that accountability for the crimes it investigates depends upon finding competent authorities willing and able to hold the perpetrators accountable in fair proceedings.

During the interactive dialogue that followed, several Member States and civil society organizations reiterated their support for the Mechanism, and called on Myanmar to cooperate with the Mechanism. They acknowledged the Mechanism's preliminary analysis of events since the military coup on 1 February, which indicates that crimes against humanity have likely been committed. They also welcomed the Mechanism's prioritisation of sexual and gender-based crimes, and crimes against children. They also asked how Member States could further support the work of the Mechanism.

In response, Mr. Koumjian explained that the highest priority for Member States would be to assist in the protection of those who cooperate with the Mechanism, including potential witnesses and information providers. He noted that legislation may need to be amended in some countries to specifically allow cooperation with the Mechanism, but appealed for flexibility where possible. This is very important for the Mechanism to be able to collect information in territories where information providers and witnesses are located.

Mr. Koumjian also highlighted the importance of the cooperation of Member States from the region, including ASEAN. The Mechanism is complementary to and aligned with the goals of the ASEAN's "Five Point Consensus", particularly the first point on the reduction of violence in Myanmar.

Mr. Koumjian added that the Mechanism looks forward to cooperating with efforts to bring perpetrators to justice under various types of universal jurisdiction.

Myanmar was also featured in other parts of the agenda of the Human Rights Council during the 48<sup>th</sup> session. The Special Rapporteur on the situation of human rights in Myanmar [presented](#) his oral progress report to the Council. He acknowledged the Mechanism's preliminary analysis that "Myanmar security forces have committed serious international crimes since seizing power on 1 February 2021". He said that Member States "have a critically important role to play as a catalyst for action" as it did when it created the Mechanism.

Also during the 48<sup>th</sup> session, the High Commissioner for Human Rights presented her written update on Myanmar. She [said](#) that: "It is crucial that the perpetrators of the most serious international crimes, including potentially genocide, are duly held to account. In this regard, the expanded work of the Independent Investigative Mechanism for Myanmar, with its ongoing mandate over current events, has become even more important."

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

On 22 June 2020, in [resolution 43/26](#), the Human Rights Council called for “close and timely cooperation between the Mechanism and any future investigations by national, regional or international courts or tribunals, including by the International Criminal Court or the International Court of Justice.”



*Photo from International Court of Justice website*

### 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 Mechanism is sharing relevant materials with The Gambia and Myanmar, at their request. In September 2020, Canada and the Netherlands announced their intention to intervene in this case. The Maldives also announced its intention to intervene in February 2020. On 20 January 2021, the Government of Myanmar filed “preliminary objections to the jurisdiction of the Court and the admissibility of

the Application”. On 28 January 2021, the Court issued an [order](#) directing The Gambia to submit a written response to these objections by 20 May 2021. The Gambia submitted its response within the time limit. The Court is expected to hold hearings before taking a decision on Myanmar’s preliminary objections.



*Photo from International Criminal Court website*

### 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.

### Mission to The Hague

In September 2021, the Mechanism visited The Hague, Netherlands to meet with representatives of the International Criminal Court (ICC), the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Genocide Network, among others. The purpose of the visit was to meet with relevant entities and actors to build and sustain constructive channels of communication and dialogue, and to obtain cooperation and support to facilitate the implementation of the Mechanism’s activities.

## Frequently Asked Questions

### WHO AUTHORISED THE ICC PROSECUTOR TO INVESTIGATE THE BANGLADESH/MYANMAR SITUATION?

The ICC is one of the various avenues for justice for the Rohingya people. In general terms, any State Party to the Rome Statute (the agreement establishing the ICC), can request the Prosecutor to carry out an investigation. A State not party to the Rome Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the ICC for further investigation. Finally, the Prosecutor can also open an investigation on her or his own initiative when ICC crimes may have been committed by nationals of a State Party or of a State which has accepted the jurisdiction of the ICC, or when the crimes were committed in the territory of such a State. In this case, the Prosecutor must, however, obtain permission from the Pre-Trial Chamber.

In the particular situation of Bangladesh/Myanmar, the opening of an investigation was prompted by the initiative of the Prosecutor, who was authorised by Pre-Trial Chamber III on 14 November 2019. In their decision, the Judges concluded that the ICC may exercise jurisdiction over crimes when part of the criminal conduct took place on the territory of a State Party. While Myanmar is not a State Party, Bangladesh ratified the Rome statute in 2010. Accordingly, if part of the alleged criminal conduct takes place on the territory of Bangladesh, this is sufficient to give the ICC territorial jurisdiction. The Judges accepted that there exists a reasonable basis to believe crimes against humanity of deportation, across the Myanmar-Bangladesh border, and of persecution, on grounds of ethnicity and/or religion against the Rohingya population, may have been committed and authorised the Prosecutor to investigate these crimes. The Judges authorised the Prosecutor to also investigate any other crimes, if they are within the ICC's jurisdiction and are sufficiently linked to the situation described in the Prosecutor's request.

### WHAT IS A WAR CRIME?

War crimes, along with [crimes against humanity](#) and [genocide](#), are considered serious international crimes. A war crime is defined as an act carried out during armed conflict that violates the international rules of war, also known as international humanitarian law. International humanitarian law regulates how wars are conducted. It is based on fundamental principles, including the prohibition of military actions that may cause excessive injury, death or damage in relation to the anticipated military advantage; the distinction between combatants and civilians; and the avoidance or minimisation of harm to the civilian population. An act that violates these principles is a war crime.

War crimes can be committed against civilians, civilian property, combatants, and combatants no longer directly involved in fighting during an international or non-international armed conflict. An international armed conflict happens when a state uses force against another state. A non-international armed conflict is a domestic conflict involving one or more armed groups fighting each other or the forces of the state.

### WHAT ARE THE CRIMES OF DEPORTATION AND FORCIBLE TRANSFER?

Forcing persons to leave the area where they reside can be a crime against humanity, a war crime or both. If they occur in the context of a widespread or systematic attack against the civilian population, deportation and forcible transfer are crimes against humanity. Deportation and forcible transfer occur when individuals are forced by expulsion or coercion from the place they were lawfully present, and there was no basis under international law for their displacement. When persons are displaced across an international border, it is called deportation. When such displacement occurs within a national boundary, it is called forcible transfer. Forced displacement does not require physical force and can be caused by the threat of force or coercion, duress or psychological oppression. A person is lawfully present in an area if they have a right under domestic or international law to be there, including refugees and stateless persons. International law allows the involuntary removal of persons only where it is strictly for the security of the persons or for imperative military reasons, but only for as long as the removal is necessary.

Unlawful deportation or transfer can also be a war crime when occurring in the context of an international armed conflict or a non-international armed conflict.