

Guidelines for the Submission of Requests for Assistance to the Independent Investigative Mechanism for Myanmar

Issued on 10 July 2023

I. Introduction and Purpose

1. The Mechanism is mandated to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over those crimes, in accordance with international law.¹

2. There are two types of requests for assistance to the Mechanism. First, in accordance with paragraph 18 of its Terms of Reference (“TOR”),² the Mechanism may share relevant information, documentation and evidence with competent investigative, prosecutorial or judicial authorities in order to facilitate and expedite fair and independent criminal proceedings.

3. Second, and in accordance with paragraph 19 of the TOR³, the Mechanism may also share information, documentation and evidence for other purposes on a discretionary case by case basis.

4. The purpose of these guidelines is to provide information to requesting investigative, prosecutorial or judicial authorities pursuant to paragraph 18 of the TOR and bodies, organizations or authorities pursuant to paragraph 19 of the TOR, regarding the process for submitting requests for assistance to the Mechanism, the content and format of the requests and the Mechanism’s process for considering and responding to such requests.

II. Requests by investigating, prosecutorial or judicial authorities to facilitate criminal proceedings

A. Submission of requests by investigating, prosecutorial or judicial authorities

¹ Human Rights Council resolution 39/2, A/HRC/RES/39/2, 27 September 2018, para. 22 (<https://undocs.org/en/A/HRC/RES/39/2>).

² See Terms of Reference, A/73/716 (<https://iimm.un.org/wp-content/uploads/2022/02/N1901663.pdf>)

³ See Terms of Reference, A/73/716, para. 19 “Any other use of the information, documentation and evidence collected, preserved and stored by the Independent Investigative Mechanism pursuant to its mandate to facilitate fair and independent criminal proceedings in the future, in accordance with international law standards, may be determined by the Mechanism on a discretionary case-by-case basis, consistent with its established rules and procedures.”

5. The Mechanism invites investigative, prosecutorial or judicial authorities (“requesting authority”) who are contemplating submitting a request for assistance to the Mechanism, to discuss the intended request with the Mechanism prior to submission. To this end the Mechanism can be contacted on *myanmar-mechanism@un.org* with subject matter “Intended Request for Assistance”.

6. The requesting authority should address requests for assistance in writing to the Head of the Mechanism. Requests may be transmitted by encrypted email to *myanmar-mechanism@un.org* with subject matter “Request for Assistance”.

7. Requests should include the following information and as further detailed in the annexed template:

- a. the name and nature of the requesting authority;
- b. the crimes under consideration, with references to the relevant national legal provisions;
- c. the investigations and/or proceedings in which the assistance shared will be used;
- d. information on the application of the death penalty for the offences under consideration, with references to relevant national legal provisions;
- e. background, facts and any other information relevant to the request including suspect(s), victim group, locations and/or timeframe;
- f. a brief explanation of the assistance requested;
- g. the specification of any time-limit or urgency; and
- h. a clear indication of any confidentiality considerations.

8. Although the Mechanism will consider a request for assistance in any written form, it encourages requesting authorities to use the attached template (Annex A).

9. Separate requests should be submitted where the assistance or information is sought for more than one investigation or proceeding.

B. Consideration of requests from investigating, prosecutorial or judicial authorities

10. The Mechanism will review all requests for assistance in accordance with its mandate and its TOR, as well as any other relevant United Nations policies, rules and regulations.

11. When evaluating requests made pursuant to paragraph 18 of the TOR, the Mechanism will also take into consideration, in particular:

- a) whether the scope of an incoming request falls within the Mechanism's territorial, temporal and subject matter mandate (i.e., serious international crimes and violations of international law committed in Myanmar since 2011);
- b) whether the assistance is likely to be used in proceedings that are in accordance with international law, including international human rights law and standards, in particular:
 - i. right to a fair and public trial before a competent, independent and impartial tribunal established by law, including defendant's right to be informed of the charges, to have adequate time and facilities to prepare the defence, to be tried without undue delay, to freely choose a lawyer, to examine witnesses and present evidence, to be provided an interpreter when required;
 - ii. the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, including ill-treatment of persons subjected to arrest, detention or imprisonment; and
 - iii. the protection of children, women and people with diverse sexual orientations and gender identities.
- c) whether the assistance is likely to be used in proceedings in which capital punishment could be imposed or carried out;
- d) whether necessary measures are available under the applicable law and will be taken by the appropriate authorities to ensure the protection of victims and witnesses as well as to ensure appropriate levels of confidentiality in respect of sensitive information; and
- e) whether provision of assistance or information would comply with United Nations rules, regulations and policies.

12. During this process, the Mechanism may seek additional information from the requesting authority to facilitate the Mechanism's consideration of the request.

13. The Mechanism will convey its decision to the requesting authority in writing. The decision will outline whether the request is granted, the scope of the assistance to be provided, and any conditions or assurances that will be sought before such assistance is provided. The Mechanism will endeavour to respond to all requests as soon as practicable and within a reasonable time.

III. Requests by bodies, organizations or authorities for uses other than criminal proceedings

14. As mentioned in paragraph 3 above, the Mechanism may also provide assistance and/or share relevant information, documentation and evidence for uses other than criminal proceedings on a discretionary case by case basis. To this extent, the Mechanism invites bodies, organizations or authorities who are contemplating

submitting a request for assistance to the Mechanism, to discuss the intended request with the Mechanism prior to submission. The Mechanism can be contacted on myanmar-mechanism@un.org with subject matter “Intended Request for Assistance”.

15. Although the Mechanism will consider a request for assistance in any written form, it encourages requesting authorities to use the attached template (Annex B).

16. The requesting body, organization or authorities may submit a request for assistance in writing to the Head of the Mechanism. Requests may be transmitted by encrypted email to myanmar-mechanism@un.org with subject matter “Request for Assistance”.

17. When evaluating whether to exercise its discretion to provide assistance, pursuant to paragraph 19 of the TOR, the Mechanism will examine, in particular:

- a) the nature of the authority, organization, body or person receiving information;
- b) whether sharing of information would materially contribute to accountability for the most serious international crimes committed in Myanmar since 2011, the interests of justice and the deterrence of further crimes; and
- c) whether the entity receiving the information will take appropriate measures to ensure the protection of confidential information and the security of all relevant persons.

18. During this process, the Mechanism may seek additional information from the requesting body, organization or authorities to facilitate the Mechanism’s consideration of the request.

19. The Mechanism will convey its decision to the requesting body, organization or authorities in writing. The decision will outline whether the request is granted, the scope of the assistance to be provided, and any conditions or assurances that will be sought before such assistance is provided. The Mechanism will endeavour to respond to all requests as soon as practicable and within a reasonable time.

Annex A - Template for Requests pursuant to paragraph 18 of the TOR

REQUEST FOR ASSISTANCE TO THE INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR PURSUANT TO PARAGRAPH 18 OF THE TERMS OF REFERENCE

Completed forms can be sent to myanmar-mechanism@un.org with subject matter
“Request for Assistance”

For any question regarding the RFA process, including regarding secure transmission, please contact
IIMM on myanmar-mechanism@un.org with subject matter “intended request for
assistance/information”

Reference:

[Case/investigation/request no.]

1. **Requesting Court / Judge / Prosecuting Authority / Law Enforcement Agency / Other**
[Entity, name of lead contact person associated with the request, position, and contact information, as well as contact details, if different from requestor, of the person(s) to contact for additional information or to make practical arrangements for the provision of assistance.]

2. **Criminal investigation / prosecution / proceedings conducted in relation to the following person(s) / subject(s)**
[If known, person/subject’s identifying particulars, including person’s name(s), alias(es), gender, nationality, date of birth, place of birth and parents’ names. Please specify the status of the concerned person/subject, such as suspect, accused, victim, witness or other. If available, please provide the Myanmar language spelling of person/subject’s name(s) or alias(es).]

3. **Offences under consideration and applicable legal frameworks**
 - 3.1 **What are the offences under consideration?**
[With references to relevant national legal provisions]

 - 3.2 **Could the death penalty apply for the offences under consideration?**
[With references to relevant national legal provisions]

3.3 What are the measures available to ensure the protection of victims and witnesses as well as to ensure appropriate levels of confidentiality in respect of sensitive information and will they be taken by the applicable authorities?

[With references to relevant national legal provisions]

3.4 If applicable, what are the measures available to ensure the protection of children, women, and people with diverse sexual orientations and gender identities?

[With references to relevant national legal provisions]

4. Statement of the facts

[Relevant background facts and particulars that will assist the Mechanism in effectively responding to the request.]

5. Detailed Request

[Type of assistance, information or evidence requested, specific inquiries, and, as applicable, specific information or materials sought. Please include, as applicable, specific names, aliases, ranks, time periods, locations, incidents, evidence categories, and any other relevant details that may assist the Mechanism in effectively responding to the request, including the specific purpose for which the assistance, information or evidence sought will be used. If available, please provide the Myanmar language spelling of names and locations.]

6. Timeframe/Urgency

[While the Mechanism will seek to respond to each request in a timely manner, please indicate whether any particular time limit applies and the reason therefore.]

7. Confidentiality considerations

[All requests received by the Mechanism will be treated as confidential unless otherwise indicated or agreed. Please advise if any special confidentiality concerns apply to the investigation/prosecution/proceedings concerned, including matters of witness protection.]

8. Annexes

[Please attach any further information that may assist the Mechanism to effectively respond to the request, such as background or supporting materials relevant to the investigation/prosecution/proceedings concerned. – Annexes will be treated as confidential and will only be examined and utilized in the context of responding to the request.]

9. Additional considerations

[Please specify any additional issues deemed relevant, such as whether similar requests have been made to and addressed by other evidence holders or whether communication or transmission of information and/or evidence should follow any particular channel.]

Annex B – Template for Requests pursuant to paragraph 19 of TOR

REQUEST FOR ASSISTANCE TO THE INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR PURSUANT TO PARAGRAPH 19 OF THE TERMS OF REFERENCE

Completed forms can be sent to myanmar-mechanism@un.org with subject matter
“Request for Assistance”

For any question regarding the RFA process, including regarding secure transmission, please contact
IIMM on myanmar-mechanism@un.org with subject matter “intended request for
assistance/information”

Reference:

[Case/investigation/request no.]

1. Requesting Body/Organization/Authority/Other

[Entity, nature of the entity, name of lead contact person associated with the request, position, and contact information, as well as contact details, if different from requestor, of the person(s) to contact for additional information or to make practical arrangements for the provision of assistance.]

2. Reason(s) for submitting the request / explanation of matter for which assistance is requested

[If applicable and known, please provide person/subject’s identifying particulars, including person’s name(s), alias(es), gender, nationality, date of birth, place of birth and parents’ names. Please specify the status of the concerned person/subject. If available, please provide the Myanmar language spelling of person/subject’s name(s) or alias(es).]

3. Does the granting of the request materially contribute to the interests of justice and the deterrence of further crimes?

[Please explain]

4. Are there any protection or security concerns related to this request, and if so, what protective or mitigating measures are available?

[With references to relevant national legal provisions]

5. Detailed Request

[Type of assistance, information or evidence requested, specific inquiries, and, as applicable, specific information or materials sought. Please include, as applicable, specific names, aliases, ranks, time periods, locations, incidents, evidence categories, and any other relevant details that may assist the Mechanism in effectively responding to the request, including the specific purpose for which the assistance and/or information sought will be used. If available, please provide the Myanmar language spelling of names and locations.]

6. Timeframe/Urgency

[While the Mechanism will seek to respond to each request in a timely manner, please indicate whether any particular time limit applies and the reason therefore.]

7. Confidentiality considerations

[All requests received by the Mechanism will be treated as confidential unless otherwise indicated or agreed. Please advise if any special confidentiality concerns apply to the investigation/prosecution/proceedings concerned, including matters of witness protection.]

8. Annexes

[Please attach any further information that may assist the Mechanism to effectively respond to the request, such as background or supporting materials relevant to the investigation/prosecution/proceedings concerned. – Annexes will be treated as confidential and will only be examined and utilized in the context of responding to the request.]

9. Additional considerations

[Please specify any additional issues deemed relevant, such as whether similar requests have been made to and addressed by other evidence holders or whether communication or transmission of information and/or evidence should follow any particular channel.]