



## Independent Investigative Mechanism for Myanmar

# Bulletin

Issue 1, May 2020

### Message from the Head of the Mechanism

The Independent Investigative Mechanism for Myanmar (hereafter, “the Mechanism”) is up and running and working to fulfil its mandate to collect, consolidate, preserve and analyse evidence of serious international crimes and violations of international law committed in Myanmar since 2011. Since I took up my mandate on 1 July 2019, the Mechanism has recruited over half of its approved positions, with more staff arriving every month. We have received the materials collected by the International Fact-Finding Mission on Myanmar (FFM) and initiated discussions with governments, non-governmental organisations, academics, other United Nations entities, businesses and technical experts who we believe may have evidence and information that can shed light on the crimes within our mandate. The Mechanism has also been building the necessary cooperative frameworks with key actors, including information providers, establishing internal protocols necessary for conducting fair and independent investigations in a complex environment and devising investigative strategies. The Mechanism aims to use the latest expertise and technologies that will assist in carrying out complex investigations.

As the Mechanism continues to gather evidence, it is simultaneously analysing the information now in its possession, including materials received from the FFM. The analysis will help the Mechanism formulate its strategies for fulfilling its mandate “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 these crimes.”

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*Nicholas Koumjian, the Head of the Myanmar Mechanism, has worked at various international criminal tribunals for the past 20 years, and has rule of law and human rights program experience in Latin America and Eastern Europe. Prior to practicing in international courts, Mr. Koumjian worked for almost 20 years as a prosecutor in Los Angeles. (©UN)*

The Mechanism continues to seek all relevant information that can fill in gaps in the evidence now in its possession or that can validate or challenge that evidence. The Mechanism will continue to seek access to crime sites and witnesses inside Myanmar and regularly reach out to the Government of Myanmar to seek its cooperation.

At the time this Bulletin is being issued, the world is in the midst of the global COVID-19 pandemic. The need to stop the spread of COVID-19 and to protect vulnerable communities has resulted in significant restrictions on movement and travel being imposed across the world. This has had an impact on the Mechanism, as we are limited to working from our homes and our travels have been curtailed. Nonetheless, the Mechanism staff continue to work hard remotely and are taking all steps available to advance our mandate. We would like to reassure all relevant stakeholders that the Mechanism continues to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011. The Mechanism also continues to engage with all relevant stakeholders through a variety of means. The Mechanism stands ready to return to our offices once it is safe to do so. In the meantime, we hope that everyone stays safe and healthy.

Equally important, the Mechanism is working to establish a regular interactive dialogue with victims, civil society and the public in Myanmar, in the region and beyond. While much of what the Mechanism is doing cannot be discussed publicly due to the need to respect the confidentiality of independent criminal investigations, the Mechanism will seek to provide information on the purpose and direction of its work. This first triannual Bulletin is one of the ways we are trying to honour this commitment.

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*Outreach and engagement with victims, civil society organisations and other key constituencies are some of the most important elements of our work.*

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Outreach, particularly engagement with victims, is one of the most important elements of our work. In November 2019, the Mechanism conducted its first mission to the Rohingya refugee camps in Cox's Bazaar, Bangladesh. I wanted to see the conditions, meet with victims and their representatives and hear their views. I wanted to explain our mandate to them, explain what they could expect from us. We also met with civil society representatives from other parts of Myanmar and will continue to do so. We want to understand and respond to their concerns, and we will always put the highest priority on the safety of all those with whom the Mechanism interacts.

One of the key messages we sought to convey in our discussions in Cox's Bazaar was that the Mechanism's mandate is not limited to alleged crimes against any single ethnic group. Rather, it covers serious international crimes and violations of international law committed anywhere in the territory of Myanmar since 2011, regardless of the ethnicity, race, religion or nationality of either the victims or perpetrators.

Recent judicial activities related to Myanmar at the International Criminal Court (ICC), the International Court of Justice (ICJ) and in Argentina have highlighted the importance of accountability for crimes committed in Myanmar and the complementarity of the Mechanism with those proceedings. As set out by Human Rights Council resolution 39/2 of 27 September 2018, the Mechanism's mandate is to share evidence and case files with national, regional or international courts that will hold individuals criminally accountable in proceedings that meet international standards. The resolution also recognizes the importance of preserving evidence of serious international crimes, based on past experience that it can often take many years for criminal proceedings to begin. This is an important aspect of the Mechanism's mandate: our evidence and case files will be available for use for many years to come, increasing the chance for perpetrators to be held accountable and justice to be delivered to victims. We are committed to doing our utmost to ensure that when the opportunity arises anywhere in the world to bring perpetrators to justice, our evidence is ready.

## Institutional Update

Following the establishment of the Myanmar Mechanism by Human Rights Council [resolution 39/2](#), the Head of the Mechanism, Nicholas Koumjian (United States), officially commenced his functions on 1 July 2019, followed by the Deputy Head of the Mechanism, Kaoru Okuizumi (Japan), who officially commenced her functions on 15 November 2019.

On 9 September 2019, the Head of the Mechanism presented the Mechanism's first [annual report](#) to the Human Rights Council at its 42<sup>nd</sup> Session. The report sets out the strategy and key challenges of the Mechanism's first stage of operations. The Mechanism will continue to submit annual reports to the Human Rights Council, as required under its mandate.

The Mechanism has recruited staff with expertise in international criminal law, human rights law, humanitarian law, criminal investigation and prosecution. Several of the lawyers have years of experience working with various international criminal tribunals, including the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Tribunal for Lebanon, the Specialist Chambers for Kosovo, the Serious Crimes Unit in East Timor, the War Crimes Section of the State Court of Bosnia and Herzegovina, the Special Court for Sierra Leone, the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia. The Mechanism has recruited experts on sexual and gender-based crimes and crimes against children, military analysts, information technology specialists and isecurity specialists. Staff are based in Geneva, and the Mechanism plans to be present in the Asia region regularly to more easily access witnesses and information.

The Mechanism has begun developing protocols and procedures covering all aspects of its mandate. In accordance with its mandate and its [terms of reference](#), these protocols and procedures will be based on the highest possible standards and be consistent with the Charter of the United Nations, United Nations rules, regulations, policies and good practices, and relevant international law and standards. The Mechanism is also reaching out to potential information providers for valuable information and is receiving information on an ongoing basis.



*Kaoru Okuizumi has worked at several international and hybrid criminal tribunals, including those for Lebanon, Sierra Leone and the former Yugoslavia. She has also worked on criminal justice issues in UN missions and field offices in BiH, Croatia, the DRC, Kosovo and Nepal, as well as at UN Headquarters.*

We are placing the utmost importance on building and using state-of-the-art information technology systems to preserve and analyse evidence, with due regard for the integrity and security of confidential information. The Mechanism also established the initial electronic infrastructure to safely store material received from the [EFM](#) in September 2019. The Mechanism subsequently

began reviewing and analysing the substantial volume of material it received from the FFM in order to identify materials that could be shared with national, regional or international courts or tribunals with jurisdiction to establish individual criminal responsibility for serious international crimes and violations of international law committed in Myanmar since 2011.

The Mechanism commenced negotiations with various parties on frameworks for cooperation to enable the sharing of information to the Mechanism. As part of these efforts, the Head of the Mechanism led a delegation to the Asia region in November and December 2019 in order to meet with relevant national authorities and United Nations entities and introduce the Mechanism's mandate, identify areas of potential cooperation and seek operational support for its activities.

In response to a request from a prosecutorial authority, the Mechanism also shared information and documentation received from the FFM. This was done in accordance with the Mechanism's mandate, its terms of reference and the consent of the parties which provided the information to the FFM.

Finally, the Mechanism developed its budget for 2021 as part of the United Nations assessed budget, to be approved by the General Assembly. This is the first opportunity for the leadership of the Mechanism to propose how resources can be allocated to best match the vision and strategy for the implementation of its mandate.

## Outreach

One of the earliest decisions upon the Myanmar Mechanism becoming operational in August 2019 was to undertake efforts to develop an interim outreach and communications strategy. An expert was recruited to help develop such a plan and bridge the capacity gap, pending recruitment of professional communications staff who will be responsible for public information and outreach. The interim outreach strategy envisages a robust engagement with victims and civil society from the outset.

During its first official mission to the region, the Myanmar Mechanism travelled to Cox's Bazaar and met with civil society and victim representatives. The aim of the meeting was to relay the basic information about the mechanism's mandate and listen to the representatives of Rohingya refugees about their views and expectations of the Mechanism.

In parallel, the Mechanism established contact and met with a number of representatives of civil society



organisations working with other ethnic groups. These meetings provided a rich insight into the need for a string communications effort to ensure that the Mechanism's unique role and mandate are well understood in key constituencies in Myanmar and elsewhere. Based on these initial efforts, the Mechanism has begun to develop a comprehensive outreach plan for engagement with various Myanmar communities, including through a dedicated engagement forum, as well as on creating a multi-lingual website, social media assets and other information tools and products which will serve to disseminate relevant information about the Myanmar Mechanism.

The Mechanism conducted a targeted survey of civil society actors from Myanmar during the first quarter of 2020. The dual purpose was to gather an indicative picture of how the Mechanism is understood amongst civil society as well as the broader public in Myanmar and its diaspora communities, and to provide an opportunity for respondents to raise questions and share feedback to inform the development of the Mechanism's protocols and strategies related to external outreach and engagement.

Thirty-one individual representing groups and communities reflecting gender and ethnic diversity in Myanmar, were selected and interviewed in the first round of the survey on the basis of their prior interactions with institutions established by the Human Rights Council.

Key findings arising from this survey indicated that various Myanmar communities have significant needs for information about the Mechanism, despite other international justice processes capturing public attention in Myanmar. Civil society interlocutors, even individuals most informed about the Mechanism, expressed the need for more information about its processes and procedures, as well as clarifications on the rationale for the geographic and temporal scope of the Mechanism's mandate. One of the main findings emerging from the survey was that the Mechanism would benefit from direct outreach to the public including through social media and in multiple local languages. Respondents expressed broad support for the Mechanism's mandate, and most individuals expressed the hope that the Mechanism will work closely with victims and victims' groups in the Asia region.

In December 2019, the Myanmar Mechanism co-organized a side event at the Assembly of State Parties of the International Criminal Court, together with the International Independent and Impartial Mechanism for Syria. The event focused on the approaches of the two Mechanisms on engagement with victims and civil society. A number of relevant issues were addressed in the discussion, including the perspectives of victims and their expectations of various justice initiatives, including the Myanmar Mechanism. The event was an opportunity to highlight the Mechanism's early commitment to establishing effective two-way communication with civil society and victims' groups.

For more information on the Myanmar Mechanism, including basic documents and a [fact sheet](#) in the Myanmar, Jinghpaw, Rohingya and English languages, please visit the following [link](#).

*"The Mechanism will give the highest priority to ensuring that the security and privacy of witnesses are respected. Victims of all ethnic backgrounds are the key constituency for the Myanmar Mechanism and this mission was only the first in many more to come in which we will directly engage with them. Our main goal was to clarify the Myanmar Mechanism's unique mandate and explain that while the Mechanism is not a court and cannot itself arrest, try or punish anyone, it will pursue its mandate to promote accountability by gathering, analysing and preserving the evidence of crimes and international law violations committed since 2011 in Myanmar."*

**Nicholas Koumjian, statement following the first official mission to Bangladesh**

### **WHAT ROLE DO SURVIVORS HAVE IN THE MECHANISM'S WORK?**

Survivors who have suffered and/or witnessed crimes under the Mechanism's mandate are a key source of evidence, crucial to building successful criminal cases that will enable national, regional or international courts to hold perpetrators accountable.

As in all investigations of serious international crimes, survivors' testimonies will serve to establish the commission of crimes, including those that were part of broader pattern or policy.

The Mechanism will gather information to identify and contact survivors who may agree to provide such testimonies.

For their part, survivors can reach out to the Mechanism directly if they believe they have important evidence to provide. Survivors' testimonies will be kept confidential and stored in a secured database. If survivors' consent, their testimonies may be shared in the future with national, regional or international courts which will pursue these cases in accordance with international standards.

### **HOW WILL THE MECHANISM USE THE INFORMATION IT COLLECTS?**

The Mechanism collects evidence from all sources. The information collected by the Mechanism will be kept confidential and stored in a secured database.

The Mechanism will review and analyse all the information it gathers, including the material received from the FFM, to determine if the evidence meets the standard required to hold individuals criminally responsible for serious international crimes and if so, will prepare criminal case files.

The Mechanism will share evidence and case files with national (those with universal jurisdiction for example), regional or international courts or tribunals that have, or in the future may have, jurisdiction over these crimes. Evidence and case files will only be shared with competent courts or tribunals which operate in accordance with international law standards. However, the Mechanism will only share information with those in whom it has confidence will ensure the safety, security and privacy of victims and witnesses.

### **WHAT IS THE SCOPE OF THE MECHANISM'S MANDATE?**

The Mechanism collects, consolidates, preserves and analyzes evidence of the most serious international crimes and violations of international human rights law. Its mandate is not limited to any one geographical area of Myanmar or a particular population group. In its resolution establishing the Mechanism, the Human Rights Council authorized the collection of evidence of crimes and violations occurring anywhere within the territory of Myanmar since 2011. This means that the Mechanism is mandated to investigate ongoing situations as well as future situations. Once the evidence is collected, preserved and analyzed, it can be used as a basis for accountability efforts at any time in the future.