



# Independent Investigative Mechanism for Myanmar

## Bulletin

Issue 4, July 2021

### Message from the Head of the Mechanism

Since we issued our previous Bulletin in March 2021, the ongoing, open-ended nature of our mandate has never been more relevant. Following events that unfolded in Myanmar after the military seized power in February 2021, we said that we would closely follow the situation in the country and that if there are indications that serious international crimes or violations of international law are being committed, we would fulfill our mandate to collect evidence and build criminal case files to hold perpetrators to account.

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Unfortunately, since that statement, much violence has taken place throughout Myanmar. The violence motivated individuals and organisations to send to the Mechanism over 210,000 communications, most containing information about the use of force against protestors or arbitrary arrests. The Mechanism has been preserving and organising this information, monitoring public reports, contacting individuals and entities, and consulting with specialised experts to assist in the analysis of the information that we have collected about the post-coup violence. While the preliminary information that we have collected to date requires further verification and analysis, we are of the preliminary view that the events since 1 February fall within the Mechanism's mandate to collect evidence of serious international crimes and violations of international law.

The preliminary information indicates that Myanmar security forces have carried out a widespread and systematic attack on the civilian population since seizing power on 1 February 2021. The Mechanism is actively working to verify and substantiate the information so far received. Once substantiated and complemented by further evidence of the actions and intent of culpable individuals, the evidence can be used to build files to hold responsible persons to account for crimes against humanity. In accordance with our mandate, the Mechanism will continue to collect evidence which can be used in courts or tribunals to prove the criminal responsibility of individual perpetrators, to the high standards of proof necessary for conviction in criminal cases.

The events of the past few months remind us of the risks of the continuing cycle of impunity in Myanmar. Those responsible for crimes against the people of Myanmar must be held to account, regardless of whether the victims are Bamar, Rohingya or from any other ethnicity. The Mechanism is committed to playing our role to facilitate justice and accountability for these crimes, and hope that our work can help to prevent further atrocities. We will continue to reach out to Member States, including Myanmar and its neighbours, to cooperate with us so that we may access witnesses, victims and other sources of information, without fear of reprisal, intimidation or attack.

## Institutional update

Events related to the military's seizure of power in Myanmar have had a significant impact on the work of the Mechanism and the unprecedented influx of information it has received. Since 1 February 2021, the Mechanism has received over 210,000 information items, including videos, photographs and documents.



*Scene from recent protests in Myanmar (drawing by Chin Lay)*

The Mechanism has now collected a total of over 1.3 million items in its electronically stored information management system. These information items relate to acts committed against the Rohingya as well as other acts committed throughout Myanmar, before and after the coup.

The Mechanism recognises these submissions and the courage that the people of Myanmar have displayed in providing the vast volume of information that it has received. In this context, the Mechanism has continuously reminded those who wish to send information that their safety and security is of utmost importance, and that they should only share information with the Mechanism when and if it is safe to do so.

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The Mechanism has adapted its work in order to ensure that it has the capacity to investigate the current events in Myanmar, without hindering progress on its ongoing efforts to collect, preserve and analyse evidence related to the clearance operations targeting the Rohingya of Rakhine state and allegations of serious international crimes committed in the many ethnic conflicts in Myanmar.

In nearly two years of operations, the Mechanism has continued to build the foundations for longer-term collection and verification efforts. The Mechanism is also working on enhancing its capacity, including for open source investigations, financial investigations, sexual and gender-based crimes and crimes against children through the mobilisation of extrabudgetary funding. In this regard, the Mechanism is very happy to report and greatly appreciates the announcement by the Government of the United Kingdom in April 2021 that it will make a voluntary contribution to help enhance the Mechanism's capacity to conduct open source investigations.

Despite the continuation of the COVID-19 pandemic, the Mechanism is conducting its investigative activities through remote and other means. This includes engaging with information sources through secure electronic channels, conducting open source investigations, and sending written requests for information. However, it will be essential for Mechanism personnel to travel when possible to engage with interlocutors and conduct in-person interviews of witnesses. This would guarantee the confidentiality of the process, provide an opportunity to address any concerns that witnesses may have about their safety and security, and obtain signed witness statements, which are the best method to ensure the broadest possible usability and admissibility of evidence and material in national, regional or international courts or tribunals.

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## Outreach

The Mechanism continues to regard outreach as a crucial element of its work. The Mechanism's website and social media page have become powerful tools for the dissemination of accurate and timely information about the Mechanism, and articles and posts on both platforms have been amplified by key stakeholders in Myanmar and other parts of the world.

The importance of the Mechanism's outreach work was reaffirmed in the latest Human Rights Council [resolution](#) adopted in March 2021, which encouraged the Mechanism to continue its efforts to advance its public outreach, in order to explain its mandate and work process to victims and other stakeholders. The resolution reiterated the urgent need to ensure that all those responsible for serious international crimes and human rights violations throughout Myanmar are held to account through credible, competent and independent national or international criminal justice mechanisms. In a [press release](#) issued following the adoption of the resolution, Mr. Nicholas Koumjian, the Head of the Mechanism stated: "We are committed to playing our role to ensure accountability for these crimes and continue to call on the Government of Myanmar to cooperate with our effort to establish the truth."

The Mechanism has also used its public platforms to reach out to individuals who may have information relevant to the Mechanism. On 17 March 2021, the Mechanism released a [statement](#) calling for those with information on orders and policies that are illegal under international law to contact the Mechanism. Such information would help the Mechanism prove the responsibility of those in high leadership positions who are usually the most responsible for the most serious international crimes. The statement also reiterated that the safety of those with whom it interacts is of utmost importance of the Mechanism, and asked individuals to refrain from contacting the Mechanism if they believe it is unsafe to do so.

The Mechanism also posted some [questions and answers](#) on its website about the Mechanism's activities regarding recent events in Myanmar, and the relationship between its work and the efforts of other UN entities working on Myanmar.

### *Media Engagement*

Mr. Koumjian recently gave interviews with several Myanmar language media, notably [RFA Burmese](#), [VOA Burmese](#), and the [Democratic Voice of Burma \(DVB\)](#). In his interview with the DVB, Mr. Koumjian clarified how victims and the public can help the Mechanism with its work. "It's helpful for us when people who actually have personal information about crimes contact us. That could be that they witnessed crimes happening, and what they witnessed would be relevant to us," he said.

The Mechanism was also featured in a [BBC News story](#) on whether phone footage could put Myanmar's leaders in jail. In this interview, Mr. Koumjian discussed the phenomenon of so many people recording and preserving what they believe is evidence on their mobile phones, and explained how such efforts relate to the Mechanism's mandate.



Screenshot from BBC News interview

The Mechanism was also featured in an [Al-Jazeera story](#) on the state of fear in Myanmar since the military coup. During the interview, Mr. Koumjian said: "I believe that there is sufficient evidence for us to open this investigation about whether crimes against humanity have been committed by the security forces since the coup. We're very concerned with reports of torture. Torture, of course, is a crime against humanity, and when people are targeted at night and randomly, it could be an indication that the objective is to create terror on the part of the civilian population. This terror could be a crime against humanity."

## Expert Events

The Mechanism participated in a [panel discussion](#) to launch the report entitled “Advancing Justice for Children: innovations to strengthen accountability for violations and crimes affecting children in conflict”. This was organised by Save the Children and the Oxford Institute for Ethics, Law & Armed Conflict.



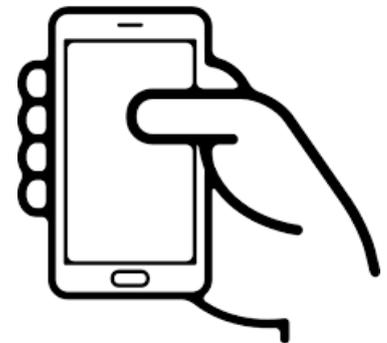
Screenshot from panel discussion on advancing justice for children

Ms. Shyamala Alagendra, Gender and Child Rights Advisor, provided her recommendations to strengthen expertise on children’s rights in a mechanism like the IIMM. “It is clear by every benchmark that crimes against children are increasing, that children are directly targeted, and are disproportionately affected in conflict,” she said. “It is paramount that the expertise, the policies and procedures needed for investigating and prosecuting crimes against children are engineered into the workings of every accountability mechanism right at the beginning and throughout the process.”

The Mechanism also participated in the annual RightsCon summit on human rights in the digital age, specifically in a panel discussion entitled “Citizen-led investigations, community-based governance, and effective dialogue with international mechanisms: challenges of evidence collection when state-based investigations are inadequate.” The discussion focused on various citizen-led evidence collection efforts, accountability mechanisms, and how technology can help various actors in this field.

## Sending information to the Mechanism

The Mechanism can be contacted using the Signal app at +41 76 691 12 08 or by using a Protonmail account to email us at [contact@myanmar-mechanism.org](mailto:contact@myanmar-mechanism.org). If you intend to provide information to the Mechanism, you are encouraged to do so safely and with an abundance of caution. Your safety is of utmost importance to the Mechanism. Therefore, if at any time you believe it may be unsafe to share information via secure means of communication, please refrain until it is safe to do so.



If you are considering sending information to the Mechanism, please be aware that we will keep your name and other details confidential, and that we will not share your information with any third party without your consent.

## Frequently Asked Questions

### WHAT ARE CRIMES AGAINST HUMANITY?

Crimes against humanity, along with war crimes and genocide, are considered serious international crimes. A crime against humanity is defined as an act committed as part of a widespread or systematic attack on a civilian population in a single location or across a territory. Any act of violence or serious mistreatment of a civilian population can be considered an attack for this purpose.

The attack must be either widespread or systematic. An attack is widespread depending on the scale of the attack and the number of victims, as well as the cumulative effect of the criminal acts or the impact of a single act of extraordinary magnitude. The geographical scale, temporal scope, and number of targeted persons are all relevant in determining if an attack was widespread.

An attack is systematic if it involves organised acts of violence, which did not occur randomly such as when security forces act in a coordinated manner across the country.

### **WHAT IS THE CRIME AGAINST HUMANITY OF IMPRISONMENT?**

The crime of imprisonment involves the arbitrary deprivation of a person's liberty or the detention of a person without due process of law.

Whether the deprivation of liberty is arbitrary will depend on a number of factors such as whether: 1) the detention was based on a valid detention order; 2) the detainee was informed of the reasons for her/his arrest; 3) the detainee was promptly and properly informed of any charges against her/him and/or formally charged; 4) the detainee was informed of her/his procedural rights, including access to a lawyer; and 5) the detainee was brought before a court that is independent, impartial and objective.

Mere "suspicion" is therefore not a lawful basis to justify the deprivation of liberty. Similarly, an individual cannot be detained because she/he is a political activist, a family member or associate of a political activist or affiliated with a certain religion, nationality or ethnicity.

### **WHAT IS THE CRIME AGAINST HUMANITY OF ENFORCED DISAPPEARANCE?**

The crime of enforced disappearance involves the deprivation of a person's liberty through arrest, detention or abduction, followed by the refusal to give information as to the whereabouts or fate of the person, or to acknowledge that the deprivation of liberty has occurred. Enforced disappearances are carried out by, or with the authorisation, support or acquiescence of, a state or an organisation with state-like powers.

An initially lawful arrest or detention can turn into an enforced disappearance if information about the whereabouts of the detained person is withheld. Giving false information about the whereabouts or fate of a person may also constitute a refusal to provide information. Under such circumstances, a detainee has no access to legal remedies or procedural guarantees and her/his loved ones do not know where the victim is or what has happened to her/him.

### **WHAT IS THE CRIME AGAINST HUMANITY OF TORTURE?**

The crime of torture involves the infliction, by act or omission, of severe pain or suffering upon a person. This can be mental or physical, and does not have to result in permanent harm, but must cause more than temporary unhappiness, humiliation or embarrassment.

Whether an act constitutes torture will depend on a number of factors such as: 1) the duration of the suffering; 2) the physical or mental condition of the victim; 3) the effects on the victim; 4) the nature and context of the pain caused; and 5) the manner or method used. Examples of acts that have been found to amount to torture include physical beatings, electric shocks, burnings, deprivation of sleep or food for a long period of time, threats to kill a person's relatives, and forced witnessing of harm committed against others. Rape and sexual violence are considered, by their nature, to constitute severe pain and suffering.

The definition of the crime of torture can vary depending on the jurisdiction. For example, the Rome Statute of the International Criminal Court requires that the intentional infliction of severe pain or suffering is committed upon a person in the custody or under the control of the alleged torturer. At other international courts, the severe pain or suffering must be carried out in order to attain a certain result or purpose, such as obtaining information or a confession from the victim or for any reason based on discrimination. Some domestic jurisdictions limit the crime of torture to situations where the severe pain or suffering is intentionally inflicted by a public official or a person acting in an official capacity.