

**Human Rights Council****Forty-fifth session**

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Agenda item 4

**Human rights situations that require the Council's attention****Report of the Independent Investigative Mechanism for Myanmar***Summary*

Following the submission of the first report of the Independent Investigative Mechanism for Myanmar to the Human Rights Council on 7 August 2019, the Secretary-General deemed the Mechanism operational as at 30 August 2019. In its first year of operations, the Mechanism has been focused on ramping up its operations and activities on various fronts, including its operational and administrative processes, its engagement with relevant entities and stakeholders, and the implementation of its substantive mandate. Significant progress has been made in all of these areas, which will be elaborated upon in the present report.

Adjustments to the Mechanism's plans became necessary, however, following the emergence of the global coronavirus disease (COVID-19) pandemic. The pandemic forced disruptions in the Mechanism's onboarding of staff and its operational plans for 2020. It has also created some uncertainty regarding its operations for the remainder of 2020 and 2021, particularly with respect to its ability to conduct missions for engagement and evidence-collection purposes. Nonetheless, since the onset of the pandemic, the Mechanism has largely been able to continue its work by adjusting and adapting its operations and processes in accordance with the changes in circumstances. The Mechanism will continue to do so and will implement its mandate to the best of its ability despite ongoing restrictions and limitations.

Moving forward, the Mechanism will seek to further expand its collection, preservation and analysis activities, which will be supported by missions if circumstances related to the COVID-19 pandemic allow. It will also seek to expand the procurement of the necessary technical equipment, software and specialized capabilities. In addition, the Mechanism will remain proactive in sharing evidentiary materials with courts and tribunals when all appropriate conditions, including the safety, security and privacy of information providers, are satisfied. Finally, the Mechanism will continue to implement its engagement and public outreach strategy in order to provide up-to-date and accurate information regarding the Mechanism to its various stakeholders.

In order to deliver on its mandate, the Mechanism will continue to assess the relevant circumstances, including with regard to the COVID-19 pandemic; review its methodology and practices; and strengthen its operations through creative and flexible solutions. Ultimately, the Mechanism aims to resolve the various challenges that are likely to arise and collect all relevant evidence in an efficient and effective manner, in order to enable perpetrators of serious international crimes in Myanmar to be brought to justice.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. Progress made by the Mechanism in 2019 and 2020 .....	4
A. Operational and administrative processes .....	4
B. Engagement with relevant stakeholders and public outreach .....	5
C. Implementation of its mandate .....	6
III. Strategy and plans moving forward.....	9
A. Further expansion of its collection, consolidation, preservation and analysis activities.....	9
B. Missions for engagement and collection of information, documentation and evidence .....	10
C. Sharing of information, documentation and evidence .....	10
D. Procurement of necessary technical equipment, software and capabilities to assist in the substantive work .....	11
E. Engagement with relevant stakeholders and public outreach .....	11
IV. Conclusion .....	12

## I. Introduction

1. In its resolution 39/2, the Human Rights Council decided to establish an independent mechanism with the mandate 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. The terms of reference of the Independent Investigative Mechanism for Myanmar were attached as an annex to letters dated 16 January 2019 from the Secretary-General addressed to the President of the General Assembly (A/73/716) and to the President of the Human Rights Council.
2. In a letter dated 27 August 2019 to the President of the Human Rights Council, the Secretary-General deemed the Mechanism operational as at 30 August 2019.
3. In its resolution 42/3, the Council welcomed the Mechanism's entry into operation and called for close cooperation between the Mechanism and any ongoing or future investigations pertaining to serious international crimes and violations of international law in Myanmar by national, regional or international courts or tribunals.
4. In the same resolution, the Council also called upon the United Nations to ensure that the Mechanism was afforded the necessary support and resources it needed in terms of staffing, location and operational freedom so it could deliver as effectively as possible on its mandate, and urged Member States in the region to cooperate with the Mechanism, to grant it access and to provide it with every assistance in the execution of its mandate.
5. On 15 November 2019, the Deputy Head of the Mechanism, Kaoru Okuizumi (Japan), officially commenced her functions.
6. Welcoming the operationalization of the Mechanism and the appointment of its Head, the General Assembly, in resolution 74/246, urged the Mechanism to swiftly advance its work and to ensure the effective use of evidence of the most serious international crimes and violations of international law collected by the independent international fact-finding mission on Myanmar. In the same resolution, the Assembly also expressed grave concern about the increasing restrictions on humanitarian access, in particular in Rakhine State, and urged the Government of Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access to all United Nations mandate holders and human rights mechanisms, including the Mechanism.
7. In its resolution 74/246, the General Assembly also called upon the United Nations to ensure that the Mechanism was afforded the flexibility that it needed in terms of staffing, location and operational freedom so it could deliver as effectively as possible on its mandate.
8. In its resolution 43/26, the Council called for the Mechanism to continue to discharge its mandate, making use of the information collected by the independent international fact-finding mission and other credible sources, and 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.
9. In the first quarter of 2020, the emergence of the coronavirus disease (COVID-19) pandemic threatened the health, safety, travel and general movement of persons around the world. Although the pandemic has affected its work, the Mechanism has been able to continue with the implementation of its mandate with some adjustments. This will be further elaborated upon below.
10. While it remains unclear how the Mechanism's work may be affected during the remainder of 2020 and 2021 by the pandemic, in particular with regard to travel restrictions, the Mechanism will continue to build on the momentum it has garnered since it became operational. It will strive to adapt to any new developments and continue to implement its mandate, while ensuring its ongoing commitment to maintaining the necessary protections for its confidential and sensitive work at all times.

## **II. Progress made by the Mechanism in 2019 and 2020**

11. Since the Head of the Mechanism, Nicolas Koumjian, officially commenced his functions on 1 July 2019 and the Secretary-General deemed the Mechanism to be operational as at 30 August 2019, the Mechanism has been focused on ramping up its operations and activities on various fronts in order to be fully functional as soon as possible. These efforts include operational and administrative processes, engagement with relevant entities and stakeholders, and the implementation of the Mechanism's substantive mandate, all of which are ongoing simultaneously.

12. While significant progress has been made, the global COVID-19 pandemic has undeniably disrupted the Mechanism's original plans for 2020. In this regard, while there have been some disruptions, the Mechanism has largely continued its operations and has been able to accelerate progress in some areas as a result of needs related to remote working arrangements. Nonetheless, the Mechanism has had to adapt its activities and the manner in which it conducts its daily work in order to comply with various external and internal restrictions that have been imposed as a result of the pandemic. In this regard, the Mechanism also sought to ensure that there would be no compromises regarding the safety and security of: its information and operations, including that of its witnesses and relevant stakeholders; the information, documentation and evidence in the Mechanism's possession; and the Mechanism's personnel.

### **A. Operational and administrative processes**

13. As stated in the Mechanism's previous report to the Council (A/HRC/42/66), one of the first objectives of the Head of the Mechanism was to put in place a broad strategy and concept of operations that would make the most efficient use of the available resources to make concrete progress on the mandate. The Head identified the priorities, strategies, and short- and long-term goals for the Mechanism, which have now been incorporated into the workplan for each of its various components.

14. The proposed programme plan and budget for 2021 reflects a number of changes to the Mechanism's previous budgets, which were developed before any of the leadership or staff of the Mechanism had been recruited. It therefore represents the first opportunity for the Mechanism to propose an allocation of resources that corresponds to its strategy for mandate implementation. In this regard, the Mechanism carefully assessed and adjusted its programme in order to propose a more streamlined and leaner budget for 2021, while still ensuring that it would have the necessary resources to fully implement its mandate.

15. One of the areas in which the Mechanism foresees higher substantive returns despite significant savings in 2021 is in relation to the expenditure incurred for office premises. Following the Secretary-General's determination in June 2019 that the seat of the Mechanism would be located in Geneva, the Mechanism commenced a study to identify the most suitable option for office space. This study took into account many factors including the estimated costs and other financial implications; security issues unique to the Mechanism; occupancy timelines; hosting capacity; and the Mechanism's requirements and resource needs. Ultimately, the Mechanism determined that the most cost-effective and technically acceptable option would be to build a prefabricated office facility inside the premises of the United Nations Office at Geneva.

16. In designing the new office facility, the Mechanism took into consideration the recommendations of the Department of Safety and Security and decided that the office space would have its own dedicated video surveillance and access control systems. In addition, the design reflected the Mechanism's requirements for the storage of physical evidence, the need to ensure the security and integrity of the information in its possession and the office's proximity to the United Nations Office at Geneva as a service provider for the set-up and use of information technology and other infrastructure.

17. Construction for the Mechanism's new premises began on 1 February 2020. On 20 March 2020, the Government of Switzerland ordered the closure of all construction sites in the Canton of Geneva owing to the COVID-19 pandemic, including all construction sites within the premises of the United Nations Office at Geneva. The construction of the

Mechanism's office facility resumed on 18 May 2020. Barring any further delays, it is expected that the facility will be ready for occupancy in late 2020.

18. Another priority of the Mechanism in 2019 and 2020 has been to recruit a team of highly experienced and innovative professionals with a variety of skills and expertise in several diverse and important areas. Such personnel will allow the Mechanism to make use of all available technologies and tools to address the challenges it faces, including the lack of access to the territory of Myanmar, the protection of witnesses and information providers, cybersecurity and information security risks, and the wide range of languages spoken by the relevant interlocutors and stakeholders. To that end, the Mechanism developed a recruitment schedule that sought to match the timing of recruitment of personnel with the skills or expertise needed according to its substantive workplan.

19. As a result of its proactive approach towards recruitment, the Mechanism was on target to meet its recruitment objectives for 2020. As of March 2020, the Mechanism had recruited personnel with expertise in the following areas, among others: international criminal law; international human rights law; international humanitarian law; criminal investigation and prosecution; information system management; storage and preservation of information, documentation and evidence; military matters; sexual and gender-based crimes and violence; crimes against children; and information technology and security.

20. As of June 2020, the Mechanism had filled over half of the total positions approved by the General Assembly for 2020 and had commenced the recruitment processes for a further quarter of them.

21. The Mechanism has also developed an internal training programme, with the aim of continually deepening the expertise of its personnel in highly specialized and rapidly evolving technical areas. Given the present need for remote working, the Mechanism has arranged online training sessions to keep its personnel updated on relevant developments in those technical areas during the COVID-19 pandemic.

## **B. Engagement with relevant stakeholders and public outreach**

22. As stated in the Mechanism's previous report to the Council, public outreach activities are essential to raise awareness and understanding of the complex work of the Mechanism. Regular communication can help to secure the confidence and cooperation of relevant stakeholders, and greater awareness of the Mechanism's work could deter some perpetrators from committing new crimes. Outreach activities are also important to prevent misunderstandings and misinformation about the Mechanism and to manage expectations about what the Mechanism can and cannot do. Among others, relevant stakeholders include any Member State, regional and intergovernmental organization, United Nations entity, civil society actor, corporate and private sector entity and individual that possesses or is likely to possess information, documentation and evidence that is relevant to the Mechanism's mandate or that can otherwise facilitate its work.

23. To that end, the Mechanism developed a strategy for its engagement and public outreach in order to raise awareness about the Mechanism, its mandate and its work among all relevant stakeholders. The strategy includes a multi-pronged approach to communications with the various categories of stakeholders and the dissemination of information regarding the Mechanism's work. The Mechanism also conducted a survey of over 30 civil society actors in the Asia-Pacific region in order to assess the level of understanding among civil society actors vis-à-vis the mandate and work of the Mechanism.

24. As part of the Mechanism's engagement and public outreach efforts, the Mechanism has consistently engaged with and provided regular briefings to representatives of relevant stakeholders in Geneva and New York at the ambassadorial and working levels. The Mechanism has also provided briefings to representatives of Member States in their capital cities and to regional and intergovernmental organizations, and it has engaged in dialogue with United Nations entities and civil society actors and non-governmental organizations based in the Asia-Pacific region and elsewhere.

25. In November and December 2019, the Head of the Mechanism led a delegation to the Asia-Pacific region in order to meet with relevant national authorities and representatives of United Nations entities, with a view to introducing the Mechanism's

mandate, identifying areas of potential cooperation and seeking operational support for its activities.

26. In October 2019, the Mechanism issued a factsheet containing basic information about the establishment of the Mechanism and its mandate. The factsheet also highlighted how the Mechanism differs from the independent international fact-finding mission on Myanmar, established by the Council in its resolution 34/22, and the International Criminal Court. The factsheet is available in print in the English, Myanmar and Jinghpaw languages, as well as in audio in the Rohingya language on the Mechanism's website. The purpose of the factsheet is to provide responses to frequently asked questions from interested stakeholders and to address common issues of confusion that stakeholders have about the Mechanism.

27. In May 2020, the Mechanism issued its inaugural bulletin in the English and Myanmar languages, providing, inter alia, an explanation of the Mechanism's mandate, an update on the progress of the work of the Mechanism and highlights of particular initiatives. In July 2020, the Mechanism launched its official website in both the English and Myanmar languages to further bolster its public outreach efforts.

28. The Mechanism had initially planned to conduct more high-level engagement and outreach visits in 2020 to States where there may be relevant stakeholders and/or information present, or where the Mechanism foresees that it will conduct its activities. However, owing to the restrictions on movement and travel, the unavailability of flights, and the risks to the health and safety of interlocutors and Mechanism personnel posed by the COVID-19 pandemic, the Mechanism has been unable to have meetings in person since mid-March 2020 and its staff members have been unable to travel.

29. Instead, the Mechanism has had to adapt and rely on technology, as well as on creative and innovative methods, in order to continue its engagement with relevant stakeholders around the world. In this regard, the Mechanism has made every effort to ensure that any such engagement would be conducted in a manner that was safe and secure for both stakeholders and Mechanism personnel, and that any sensitive information that was exchanged as part of such engagement would remain confidential.

### **C. Implementation of its mandate**

30. Since its previous report to the Human Rights Council, the Mechanism has taken significant steps forward in implementing its mandate 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, as well as the development of the necessary infrastructure to support such activities.

31. With regard to the Government of Myanmar, the Mechanism continues to seek opportunities to engage with the country's Permanent Missions to the United Nations in Geneva and New York. The Mechanism has also transmitted written communications to the Government to seek information regarding matters within the Mechanism's mandate. Furthermore, when visiting the Asia-Pacific region in December 2019, the Head of the Mechanism requested to visit Myanmar in order to meet with government representatives but did not receive any response in that regard. The Mechanism continues to reach out and seek a cooperative relationship with Myanmar.

#### **Development of infrastructure to support its mandated activities**

32. The Mechanism has been working on the development and adoption of internal policies, protocols, procedures and methods of work, based on the highest possible standards, consistent with: the Charter of the United Nations; United Nations rules, regulations, policies and best practices; relevant international law and standards, including human rights law, notably the right to a fair trial and other due process provisions; and relevant jurisprudence. As required by its terms of reference, the Mechanism is also drawing upon the good practices of other comparable international accountability mechanisms. The purpose is to ensure the broadest possible usability and admissibility of evidence and material in national, regional or international courts or tribunals.

33. The COVID-19 pandemic has not disrupted the drafting and development of these internal documents, and the Mechanism remains on track to complete and adopt them in line with its workplan.

34. The Mechanism has also been taking measures to expand its physical and digital storage capacity and to implement the most up-to-date information technology system with the necessary protections for information security and cybersecurity.

35. The Mechanism is in the process of developing its evidence management framework, in line with United Nations standards, which will govern the Mechanism's handling of the information, documentation and evidence it receives and collects. As part of the development of this framework, the Mechanism has established an initial electronic infrastructure to safely store material that it currently receives and collects. The Mechanism has procured a suite of electronic discovery tools, which will equip the Mechanism with the necessary capabilities to set up an information governance system that will facilitate the identification, collection, preservation, processing, review, analysis and production of electronically stored information.

36. As part of its information security and cybersecurity efforts, the Mechanism has also acquired equipment and hardware that are secured by encryption and strict administrative controls. In addition, the Mechanism has established a cybersecurity programme that covers not only the Mechanism's information storage systems, but also the security of the equipment used by personnel. This programme includes the capability to respond quickly to any cybersecurity incidents as well as awareness-building and training programmes to ensure that Mechanism personnel are regularly updated on cybersecurity issues and protective measures. The progress of the cybersecurity programme is regularly monitored by an internal Risk Management Board.

37. While the COVID-19 pandemic has disrupted some of the Mechanism's ongoing processes, this was not the case for the information security and cybersecurity aspects of the Mechanism's work, which intensified in order to respond to the additional need for such services owing to the pandemic. In early March 2020, when it became apparent that regular access to its premises might not be possible for an extended period of time, the Mechanism quickly prepared the necessary infrastructure, assessed the security of its equipment, and developed policies and modalities so that its personnel could work remotely in a secure manner. When its premises closed in mid-March 2020 and a full-time remote working arrangement was put in place for all personnel, the Mechanism was able to continue its operations in a secure manner, with little or no interruption.

#### **Collection, consolidation, preservation and analysis of information, documentation and evidence, and the building of case files**

38. As regards the collection of information, documentation and evidence, in September 2019, the Mechanism received copies of all material in the possession of the independent international fact-finding mission on Myanmar for which consent to share with the Mechanism had been obtained from the providers of the information.

39. In addition, the Mechanism has been identifying other entities and individuals that may be in possession of relevant information or be in a position to provide support for the Mechanism's activities. Among them are any national authority, United Nations entity, international organization, non-governmental organization, civil society actor and entity that is engaged in investigative, fact-finding and reporting activities. It is crucial that the Mechanism engages with and receives the cooperation of such entities for the provision of relevant information and support.

40. In general, once such entities or individuals are identified, the Mechanism proceeds to make formal requests for specific categories or types of information relevant to its mandate. The Mechanism also engages in dialogue regarding the conditions under which the information could be provided and potentially shared in the future with national, regional or international judicial authorities. If requested by the providing entity or if the Mechanism foresees that it will make multiple requests for information to a particular entity, the Mechanism may also negotiate frameworks for cooperation to set out the applicable modalities.

41. Since its previous report to the Council, the Mechanism has issued 18 formal requests for information to a variety of entities and individuals and has received information and materials from several entities or individuals. As stated above, the independent international fact-finding mission on Myanmar transferred information, which it had collected from witnesses and other information providers, to the Mechanism upon the mission's completion of its mandate. In this regard, the Mechanism contacted a number of witnesses and other information providers to obtain informed consent for the Mechanism to potentially share their information with relevant entities in the future. Additionally, the Mechanism is currently in the process of negotiating two frameworks for cooperation, which would cover the provision of information to the Mechanism and the conduct of interviews.

42. It is important to note that the Mechanism seeks both inculpatory and exculpatory evidence. Exculpatory evidence could include: information that would indicate that events did not amount to a serious international crime or a violation of international law; or evidence that impacts on the credibility of witnesses. It could also include evidence of any efforts by those in leadership roles to prevent crimes or to punish those responsible for crimes through genuine investigations and, where appropriate, prosecutions of those responsible for crimes. The Mechanism welcomes information from Myanmar on all such domestic investigations and prosecutions relevant to its mandate and will continue to reach out and seek access.

43. In addition, as part of its collection and consolidation work, the Mechanism continues to identify and gather relevant material from open sources, including from the Internet, news media, public reporting and social media. The Mechanism has also been building up its expertise in open source investigations through partnerships with relevant professional and academic institutions, as well as through the specialized training of its personnel.

44. Given that its mandate is ongoing and covers any serious international crimes or violations of international law committed in Myanmar since 2011, the Mechanism also conducts contemporaneous monitoring of developments in Myanmar that may be relevant to its mandate. This process enables the Mechanism to become quickly aware of specific, potentially relevant incidents and events as they occur in Myanmar, and to prioritize incidents that warrant continued monitoring or investigation. The monitoring process also facilitates the formulation of the above-mentioned requests for information by enabling the prompt identification of potentially relevant information that may be in the possession of certain Member States, individuals or entities.

45. In addition to the ongoing processes discussed above, the Mechanism continues to review and analyse the material in its possession in order to identify evidence for inclusion in case files that could be shared with national, regional or international courts or tribunals with the requisite jurisdiction. One of the main priorities of the Mechanism thus far has been to analyse and assess the material it received from the independent international fact-finding mission on Myanmar.

46. As regards the impact of the COVID-19 pandemic on the Mechanism's substantive mandate, the Mechanism was able to quickly adjust and adapt the majority of its collection, consolidation, preservation, analysis and monitoring activities in order for them to be securely conducted by Mechanism personnel working remotely. Nonetheless, the movement and travel restrictions, which were imposed worldwide as a result of the pandemic, have caused significant uncertainty regarding the Mechanism's ability to travel in the near future to locations where potential information sources and witnesses may be located and to meet directly with them. While the use of videoconferencing has been useful, the Mechanism remains restricted by its need to ensure the safety and security of its interlocutors, as well as the fact that not all interlocutors may have Internet access or sufficient data coverage in order to communicate with the Mechanism through such means.

47. In light of the above, the Mechanism has focused its efforts during the COVID-19 pandemic on the identification of potential information sources that can be contacted securely via electronic means, and on the collection and consolidation of information, documentation and evidence through open source investigations and written requests for information. At the same time, the Mechanism continues to prepare and plan for investigative missions in the future. Before deploying on such missions, the Mechanism will consider any restrictions related to the pandemic, any risk of Mechanism personnel on



mission transmitting the virus, the safety and health of its potential interlocutors, and the host State's requirements and views.

#### **Sharing of information, documentation and evidence**

48. As regards the sharing aspect of its mandate, the Mechanism provided materials received from the independent international fact-finding mission on Myanmar, in response to a request from a prosecutorial authority. This was done in line with the Mechanism's mandate and with the consent of the parties that had originally provided the information to the mission.

49. The Mechanism also received requests from two Member States for information and documentation to be used in ongoing proceedings before the International Court of Justice. In accordance with the Mechanism's mandate and its terms of reference, the Mechanism has commenced the process of sharing materials relevant to these proceedings, with the consent of the parties that provided the information and documentation.

### **III. Strategy and plans moving forward**

50. The Mechanism's workplan strategizes, prioritizes and puts in sequence concrete steps to advance the mandate, with both short-term goals for 2020 and 2021 and long-term goals for the period beyond. This will be further elaborated below.

51. In this regard, the Mechanism notes that its ability to carry out a key component of its work – that is, to conduct missions for engagement and evidence-collection purposes – is uncertain owing to the global COVID-19 pandemic. Despite the current restrictions and limitations, the Mechanism continues to implement its mandate to the best of its ability, and it will seek to adjust and adapt its operations and processes in accordance with any changes in circumstances.

#### **A. Further expansion of its collection, consolidation, preservation and analysis activities**

52. In order to expand the Mechanism's database of material related to crimes falling within its mandate, the Mechanism will increase its efforts and activities in the collection of information, documentation and evidence. Additionally, it will also expand the scope of its engagement with potential information sources and providers through the use of innovative and flexible solutions. Open source investigations and monitoring of events in Myanmar, including efforts by the authorities to prevent or punish crimes, will also continue.

53. Through its collection and analysis work, the Mechanism will also continue to identify and prioritize areas of investigation, incidents or cases, which will in turn guide the Mechanism's future collection efforts. In this regard, the Mechanism will take into consideration a number of relevant factors, such as the scale and gravity of crimes; the commission of sexual and gender-based crimes; the impact of crimes on particularly vulnerable groups, including children; the Mechanism's likely access to the victims and witnesses of the crimes, which is needed to build viable case files; and whether the Mechanism's case selection reflects the geographic and ethnic diversity of Myanmar. The strategy will also seek to devote the Mechanism's limited resources to activities where there is accessible evidence, which can lead to building viable case files proving individual criminal responsibility.

54. Based on its investigative priorities, the Mechanism will also continue to identify witnesses who may have relevant information vis-à-vis those priorities. In this regard, the Mechanism will seek to prioritize the conduct of interviews with witnesses who may have relevant first-hand information regarding the commission of serious international crimes and violations of international law in Myanmar since 2011, but who have yet to provide witness testimony to other entities involved in various accountability processes. In screening and selecting the witnesses for interview, the Mechanism will also carefully assess each witness, taking into account various factors such as the potential relevance of that testimony, the safety and security of the witness, and the risk of re-traumatizing the witness.

55. In support of the above-mentioned activities, the Mechanism will continue its efforts to negotiate and conclude cooperation frameworks or modalities with potential information providers, which will set out streamlined and efficient channels and procedures for the provision of material to the Mechanism.

56. In addition to its collection activities, the Mechanism will similarly expand its analysis of the material it already possesses and of new information, documentation and evidence that it receives. The Mechanism will use its new electronic discovery system to determine the relevance of the evidence in its possession, which will ultimately enable the Mechanism to develop case files more efficiently and effectively.

## **B. Missions for engagement and collection of information, documentation and evidence**

57. Given that the seat of the Mechanism is located in Geneva, and that most of the evidence, witnesses and information sources are in or near the locations where the crimes were committed – in particular in Myanmar or in the Asia-Pacific region – the Mechanism will need to work with host States and devise strategies in order to gain access to persons who can provide evidence safely and effectively.

58. As a first step, therefore, the Mechanism intends to continue conducting high-level missions to relevant Member States in whose territories it expects to conduct its activities. The main purpose of such missions will be to engage in a dialogue with Governments of Member States regarding the mandate of the Mechanism and its needs as regards any activities conducted within their territories, as well as to encourage them to support and facilitate the conduct of such activities. These engagements will be carried out in a manner that takes into account the sensitive and confidential nature of the Mechanism's work.

59. The Mechanism will also continue its efforts to engage with the Government of Myanmar, in seeking its cooperation with respect to the implementation of the Mechanism's mandate, in particular, granting the Mechanism access to the territory of Myanmar.

60. Building upon these high-level engagement missions and with the agreement of the host State Governments, the Mechanism also intends to conduct substantive missions to relevant Member States in order to collect information, documentation and evidence, including through interviews with witnesses who are located in those territories.

61. Before conducting any such missions, the Mechanism will develop clear objectives for the mission, which will guide the priorities of the mission, as well as the specific activities to be undertaken on the ground. Mission plans will also be accompanied by a security assessment, which will take into account the safety and security of witnesses, interlocutors and Mechanism personnel. Similarly, these missions will be conducted in a discreet manner, so as to ensure the confidentiality of the Mechanism's activities and collected information.

## **C. Sharing of information, documentation and evidence**

62. Moving forward, the Mechanism will continue to engage with the prosecution authority and the two Member States, from which it had previously received requests for the sharing of information, documentation and evidence. In this regard, the Mechanism will continuously assess how it may be of further assistance to these entities in line with its mandate and terms of reference.

63. As stated in the Mechanism's previous report, it is important to reiterate that the Mechanism is not a court. It is thus dependent upon competent authorities of national, regional and international courts or tribunals to commence criminal proceedings in relation to the most serious international crimes and violations of international law committed in Myanmar since 2011, and for those authorities to make a request to the Mechanism for the sharing of information, documentation and evidence. In order to maximize the use of the evidence it collects and to contribute to criminal accountability processes, the Mechanism will proactively keep itself abreast of any ongoing activities, investigations or legal

proceedings that may be relevant to its mandate. It will also provide briefings to any interested and relevant entities as regards the Mechanism's evidence system.

#### **D. Procurement of necessary technical equipment, software and capabilities to assist in the substantive work**

64. In order to expand on its activities above, the Mechanism will ensure that it has the necessary technical equipment, software and capabilities to carry out its work in a safe and secure manner. This pertains not only to the safety and security of its interlocutors and Mechanism personnel, but also the integrity of its evidence and the protection of the evidence from any cyberattacks.

65. With regard to the processing of evidence, the Mechanism will procure the necessary software and equipment to process and record all the new material it receives or collects, as well as the relevant metadata. Specifically, the Mechanism will have a dedicated laboratory for the processing of forensic data in its newly constructed office premises, which will enable the performance of advanced analysis and processing of any material it receives. The Mechanism is also assessing its needs with regard to its analysis work so as to determine whether it will require any other enabling technology, for example, video and image analysis software.

66. As regards the preservation and storage of material, the Mechanism will have a secure physical storage facility as part of its newly constructed office premises, with various layers of security protections, for its physical and digital evidence. This facility will complement the electronic discovery system that the Mechanism is currently using.

67. In addition, in order to support the sharing aspect of its mandate, the Mechanism is in the process of procuring a secured data storage solution. Once in place, it will bolster the information security and cybersecurity of the incoming and outgoing flows of material. This will allow the Mechanism to ensure the confidentiality and security of the material it receives from information sources; the material it shares with any recipient entities; and any identifying information related to any transfer of such material.

68. To support its substantive work, the Mechanism has sought to streamline and adjust its organigram and positions so as to ensure that it will have the necessary expertise to implement its mandate in line with its vision and priorities. The Mechanism aims to become fully staffed as soon as possible, which will further bolster the Mechanism's collection, analysis and case-building capabilities. Being fully staffed will also increase its specific expertise, including with regard to victim and witness protection, forensics, and the security and safety of its personnel. In line with its terms of reference, due consideration will be given to the representation of different legal traditions, geographic diversity, gender balance, regional expertise and relevant language skills.

69. In line with its training policy, the Mechanism will also ensure that its personnel receive relevant training on a regular basis so that their skills are up-to-date and further enhanced to support the implementation of the Mechanism's mandate. Such training will cover new modes of evidence collection as well as new technology relevant to its substantive mandate.

#### **E. Engagement with relevant stakeholders and public outreach**

70. 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 regarding the Mechanism to its various stakeholders.

71. The Mechanism will continue to issue its bulletin periodically. The Mechanism will also regularly update its website in order to inform interested stakeholders of recent developments about the Mechanism. Taking into account the common platforms that are favoured by relevant stakeholders and by the people of Myanmar, the Mechanism will also assess the need for a social media presence.

72. In addition to high-level missions for engagement in the Asia-Pacific region, the Mechanism will engage regularly with representatives of Member States in Geneva and

New York, as well as in their capital cities. Furthermore, 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.

#### **IV. Conclusion**

73. In the year since its establishment, the Mechanism has made significant progress in setting up its core infrastructure and ramping up its substantive activities in support of the implementation of its mandate, despite the global COVID-19 pandemic. The Mechanism will build upon its foundation and the momentum it has achieved so far, in order to forge ahead with its planned activities. The main objective of the Mechanism in the next year will be to expand and deepen its substantive work on all fronts, in particular by identifying priority cases and conducting missions to interview and collect evidence from witnesses and other information sources.

74. As the Mechanism's substantive activities increase, the risks with respect to the integrity, safety and security of its operations and personnel, its interlocutors, and the evidence in its possession will naturally increase as well. It is crucial that the Mechanism has the necessary resources to continue recruiting personnel with the necessary expertise to minimize the risks associated with its mandated activities. The Mechanism will also require the cooperation and support of relevant Member States.

75. While the Mechanism will remain guided by its strategy and priorities for the near future, the world has been in a constant state of flux as a result of the COVID-19 pandemic. The impact and consequences of the pandemic will certainly continue to linger and negatively affect the territories, communities and entities that the Mechanism will work in or with. As a result, the Mechanism will continuously assess the relevant circumstances, review its methods, identify areas where it can improve and adopt creative and flexible solutions to remove any obstacles in its way and collect all relevant evidence in an efficient and effective manner.

76. The Mechanism is fully cognizant of how important the pursuit of accountability for the crimes committed in Myanmar is to the victims of those crimes. It is thus crucial that the Mechanism continue to fulfil its mandate and play its significant role in the criminal accountability process by facilitating and supporting criminal proceedings. However, the Mechanism cannot do this alone. It will require the continued support and assistance of all parts of the international community, in order to ensure it can fully achieve the purpose for which it was established.

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