

**Human Rights Council****Fifty-first session**

12 September–7 October 2022

Agenda item 4

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

The present document is the fourth report submitted by the Independent Investigative Mechanism for Myanmar to the Human Rights Council pursuant to resolution 39/2 of 27 September 2018, and it covers the Mechanism's activities from 16 June 2021 to 30 June 2022.

In August 2022, the Mechanism will complete its third year of operations. August will also mark the five-year commemoration of the 2017 clearance operations in Rakhine State, which led to the displacement of nearly 1 million Rohingya people. Tragically for the Rohingya and all the peoples of Myanmar, progress on ending impunity and ensuring accountability for crimes committed remains limited. Established for the purpose of facilitating justice and accountability efforts, the Mechanism continues to collect and analyse a substantial amount of information on the most serious international crimes committed in Myanmar since 2011, including sexual and gender-based crimes and crimes against and affecting children. The information collected and analysed thus far includes evidence that reinforces the Mechanism's assessment in its previous annual report that crimes against humanity continue to be systematically committed in Myanmar. Furthermore, the information includes evidence of intensified and sustained violence and the existence of various armed conflicts within Myanmar.

Despite increasing challenges, the Mechanism seized opportunities to further deepen its collection and analytical activities, increase testimonial evidence, enhance specialized capacities, deploy cutting-edge technology and strengthen engagement with a range of stakeholders. Having made over 120 formal requests for information and assistance and engaged with nearly 200 sources and information providers, the Mechanism's repository now consists of nearly 3,000,000 information items, including interview statements, documentation, videos, photographs, geospatial imagery and social media material. The evidence collected will facilitate the Mechanism's efforts to build files that prove the commission of serious international crimes related to priority incidents and in relation to the individuals most responsible for the crimes. The Mechanism aims to facilitate justice for the people of Myanmar, including in proceedings before the International Court of Justice, ongoing investigations before the International Criminal Court, the ongoing investigation by judicial authorities of Argentina and future relevant jurisdictions.



The Mechanism remains steadfast in its commitment to engage with all parts of the international community, in particular Member States in the Asia-Pacific region, in order to demonstrate its value as an effective contributor to justice and accountability for the most serious international crimes committed in Myanmar.

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## I. Introduction

1. In its resolution 39/2 of 27 September 2018, the Human Rights Council established the Independent Investigative Mechanism for Myanmar with a 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. In its resolution 73/264 of 22 December 2018, the General Assembly welcomed the establishment of the Mechanism. In its resolution 43/26 of 22 June 2020, the Council specifically called for the Mechanism to engage in close and timely cooperation on future investigations by, among others, the International Criminal Court and the International Court of Justice.

2. The Mechanism is now fully operational. Since its last annual report, the Mechanism has continued to collect substantial evidence of serious international crimes committed throughout Myanmar since 2011, including crimes committed against the Rohingya and crimes committed since the military takeover in February 2021. The Mechanism deploys cutting-edge technologies and innovative tools and methodologies to advance its investigations in order to overcome the difficult and complex landscape in which it operates.

3. The Mechanism continues to make requests for cooperation to authorities in Myanmar to share relevant information and to grant the Mechanism access to crime scenes and potential witnesses inside the country. To date, none of these requests have elicited any response. The Mechanism also continues its efforts to deepen cooperation and engagement with relevant States, particularly within the Asia-Pacific region, where much of the evidence and many of the witnesses are located.

4. August 2022 will mark the five-year commemoration of the clearance operations against the Rohingya people in 2017. Most of the Rohingya who were deported or forcibly displaced at that time are still in camps for refugees or internally displaced persons. While the Rohingya consistently express their desire for a safe and dignified return, it is apparent that their voluntary return depends in substantial part on ensuring accountability for the atrocities committed against them, including through prosecutions of the individuals most responsible for those crimes. Yet progress on ending impunity and ensuring accountability for serious international crimes committed in Myanmar remains limited. The continued plight of the Rohingya and the sustained violence in Myanmar illustrate the important role of the Mechanism to facilitate justice and accountability for serious international crimes committed in Myanmar and to contribute to the deterrence of further atrocities.

## II. Preliminary findings related to post-coup events

5. During the reporting period, the Mechanism refined and recalibrated its investigative priorities in response to ongoing events in light of substantial new information and evidence that it has collected and analysed. The Mechanism has taken account of reports and information it has collected of very grave and widespread crimes committed since the military takeover in February 2021. In response, the Mechanism has expanded efforts to collect and preserve evidence related to these fast-developing events while also deepening its investigations and analysis of earlier crimes, particularly those committed in the context of the “clearance operations” of 2016 and 2017 in Rakhine State. All of the Mechanism’s investigations are informed by thematic and cross-cutting issues, such as investigation and analysis of organizational structures to identify those responsible for specific crimes, sexual and gender-based crimes, and crimes against and affecting children.

6. During the reporting period, the scope of potential international crimes taking place in Myanmar has broadened dramatically. This has posed a substantial challenge given the relatively limited resources of the Mechanism. Specific events since the military takeover in February 2021, defined geographically and temporally, are now a major focus of the Mechanism’s investigations. These events have been prioritized for investigation on the basis of a preliminary assessment of the gravity of the crimes concerned, including their scale, nature, manner of commission and impact on victims; the degree of responsibility of alleged

perpetrators; the strength of the available evidence; the importance the Mechanism's thematic priorities concerning sexual and gender-based crimes and crimes against children; and the likelihood of a court or tribunal taking jurisdiction over the crime(s) in question. The scope and prioritization of these investigations has necessarily evolved in response to unfolding events and will continue to do so.

7. As stated in the Mechanism's previous annual report, based on reports and evidence collected to date, there are ample indications that since the military takeover in February 2021, crimes have been committed in Myanmar on a scale and in a manner that constitutes a widespread and systematic attack against a civilian population.<sup>1</sup> The available evidence suggests that the crimes against humanity of murder; torture; deportation and forcible transfer; rape and other forms of sexual violence; persecution; and imprisonment have been committed. The geographic scope of the potential crimes has expanded since the Mechanism's previous annual report. In addition to Yangon, Nay Pyi Taw, Bago, Mandalay, Magway and Sagaing, there are credible reports of crimes having been, and continuing to be, committed in Chin, Kayah, and Kayah States and elsewhere.

8. The nature of the potential criminality is also expanding. The Myanmar military announced on 3 June 2022 that it intends to execute four individuals sentenced to death by military courts. None of the trial proceedings were public and the judgments are not publicly accessible. A fundamental attribute of a fair trial under international law is that it be held in public to the greatest extent possible, with exceptions tailored as narrowly as possible to the justification, such as national security considerations. Yet the imposition of sentences on the basis of secret proceedings is indicative of the commission of the crime of imprisonment and, in the case of the imposition of the death penalty, could constitute the crime of murder, openly carried out by an organ of government.

9. The information collected by the Mechanism this past year indicates that several armed conflicts are ongoing and intensifying on the territory of Myanmar. This triggers the application of international humanitarian law and obligates all parties to the conflicts to ensure that their forces comply with the applicable laws of war. A non-international armed conflict exists under customary international law whenever there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.<sup>2</sup> The Mechanism notes that the intensity and sustained nature of the violence and the degree of the organization of the armed groups fighting against the Myanmar security forces appear to satisfy the threshold for the existence of an armed conflict.

10. The Mechanism is also collecting evidence of specific war crimes committed in connection with those armed conflicts. Information has been collected and case files are being developed in respect of specific incidents of war crimes, including but not limited to intentional attacks directed against the civilian population as such, or against civilians not taking part in hostilities; violence to life against persons taking no active part in hostilities; rape; cruel treatment and torture; the carrying out of executions without previous judgment pronounced by a regularly constituted court; and ordering the displacement of the civilian population. The Mechanism has collected substantial evidence in respect of the widespread burning of villages and towns, and of targeted or indiscriminate killing of civilians, and is developing case files on these incidents.

11. In addition to, and as part of, its geographically and temporally defined investigations, the Mechanism continues to collect and analyse evidence concerning detention-related crimes. This includes indiscriminate arrests; prolonged detention without appropriate due process; mistreatment and torture in detention, including sexual violence; and the

<sup>1</sup> A/HRC/48/18, para. 35.

<sup>2</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Tadic*, decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, para. 70; International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Boskoski*, judgment, 19 May 2010, para. 21.

continuation of detention and imposition of sentences on the basis of proceedings that do not comport with fundamental rights under international law.

12. As part of its work developing case files to establish the commission of specific crimes, the Mechanism continues its efforts to identify individuals criminally responsible for those crimes. The Mechanism applies the well-established principles of criminal liability in international criminal law in identifying such persons. In fulfilment of its mandate and terms of reference, the Mechanism is prepared to consider any requests by relevant authorities to share information regarding specific individuals who may be involved in crimes within Myanmar, or any incidents that may be of investigative interest to such authorities.

### **Sexual and gender-based crimes and crimes against and affecting children**

13. As described above, the scope of the Mechanism's investigations includes sexual and gender-based crimes, and crimes against and affecting children. These crimes, which can be a challenge to investigate even under ideal conditions, are further hindered by the lack of direct access to the territory of Myanmar and other locations where victims and witnesses of such crimes are present.

14. Despite these obstacles, since the military takeover on 1 February 2021, the Mechanism has collected information relating to the commission of sexual and gender-based crimes against women, girls, men, boys and members of the lesbian, gay, bisexual, transgender and intersex community, including crimes perpetrated by members of the security forces. This information indicates that ongoing conflicts in Myanmar severely impacted upon women, children and members of the lesbian, gay, bisexual, transgender and intersex community in Myanmar and exacerbated their already vulnerable situation. The Mechanism has also collected information indicating that children in Myanmar have been killed; tortured; seriously injured; arbitrarily detained, including as proxies for their parents; subjected to sexual and gender-based violence; and conscripted and trained by security forces and armed groups. Such crimes are among the gravest international crimes but are also historically underreported or underinvestigated, warranting targeted outreach, collection and dedicated expertise to be properly investigated and, ultimately, prosecuted.

15. Obtaining the testimonies of the victims of such crimes requires a sensitive approach, and such interviews are best conducted in person. To fulfil its mandate to collect evidence of these crimes, the Mechanism must be afforded the opportunity to enter the territory where victims of serious international crimes, including sexual and gender-based crimes, or child victims are present.

## **III. Progress on the activities of the Mechanism**

16. In line with its strategy as set out in its previous annual report to the Human Rights Council, the Mechanism continued to expand the collection and analysis of information and evidence; increase the availability of evidence and analytical documents for sharing with courts and tribunals; advance the development of cooperation frameworks with new information and assistance providers; and heighten the visibility of the Mechanism and strengthen the understanding of its mandate by relevant stakeholders, in particular witness and victim groups. Despite the ongoing effects of the coronavirus disease (COVID-19) pandemic in 2021 and early 2022, the Mechanism made important progress in multiple areas.

### **A. Collecting and processing information and evidence**

17. In accordance with principles of impartiality and confidentiality, the Mechanism continued to collect information and evidence relating to all situations, incidents, persons and entities within its mandate. The Mechanism's collection activities have also been informed by lessons learned and best practices identified through an internal evaluation of the Mechanism's collection strategy. In line with these findings, the Mechanism has adopted a multi-tiered approach to evidence collection, focusing on information and evidence pertaining to priority situations and incidents, contextual and overview information relevant

to Myanmar, and information pertaining to specific individuals, groups and structures suspected of perpetrating crimes.

18. The Mechanism applies a targeted approach to requesting and receiving information and evidence. It seeks information and evidence from a wide range of providers, including civil society and documentation organizations, national authorities, United Nations entities, international organizations, non-governmental organizations, business entities, and individual sources and witnesses. During the reporting period, the Mechanism made over one hundred formal requests for information to a variety of such entities and individuals. These requests resulted in the collection of a vast and diverse range of information and evidence pertaining to its ongoing investigations. Complementing this targeted approach, the Mechanism continues to collect publicly available open source information to enrich its vast evidence repository. To date, the Mechanism has collected and processed for potential sharing nearly 3 million information items, including documents, photographs, videos, geospatial imagery, witness statements and open source materials. The repository of information collected to date includes over 700,000 documents in the Myanmar language (Burmese), estimated to total over 12 million pages.

19. The collection also includes large data sets from a variety of sources, including social media and other types of businesses, as well as a range of dedicated documentation actors that identify or compile data pertaining to significant events in Myanmar. The Mechanism is integrating these large data sets into its state-of-the-art, electronically stored information management system for further processing and analysis. They are also being analysed to identify or generate additional investigative opportunities and to support its preliminary assessments on the commission of serious international crimes and other violations of international law and on the responsibility of individuals for the commission of these offences.

#### **Continued monitoring of relevant developments in Myanmar**

20. As its mandate is ongoing, the Mechanism continues to conduct contemporaneous monitoring of relevant developments in Myanmar that may constitute serious international crimes or violations of international law. Since the military seized power on 1 February 2021, the Mechanism experienced an exponential increase in communications from individuals and organizations seeking to share information about alleged serious international crimes and human rights violations in Myanmar. Communications of this nature have continued throughout 2022. The quantity and, more importantly, the probative value of the information received, namely the extent to which the information helps prove that serious international crimes were committed or helps identify persons responsible for such crimes, increased significantly. The Mechanism is very grateful to the many individuals who provided such information, in many cases at significant risk to their safety and security. The information submitted to the Mechanism through these communications continues to be fully integrated into the Mechanism's processing and analytical platforms. From these submissions, the Mechanism has collected a significant amount of information items, including videos, photographs and documents potentially indicative of crimes against humanity and war crimes committed across Myanmar by various individuals since February 2021.

21. The Mechanism further continues to actively monitor the situation in Rakhine State. This includes the conditions of the Rohingya population that remains in Rakhine State. Specifically, the Mechanism is closely following reports of rising cases of movement restrictions combined with a significant increase in arrests and detentions of Rohingya in the past year. The Mechanism is further monitoring the impact that clashes and tensions between the Myanmar military and the Arakan Army have had on the civilian population of Rakhine State.

#### **Enhanced specialized capabilities**

22. The unprecedented volume of information pertaining to events in Myanmar identified and collected by the Mechanism required it to secure additional resources and specialized capacities through the support of extrabudgetary resources. These include capacities to collect and analyse information and evidence gathered from open sources, such as social media, videos, photographs and geospatial imagery publicly available on the Internet, as well as to collect and review information of a thematic or specialized nature, such as financial

information. Open source information, when such information is collected in line with international best practices and verified and analysed by experts, is increasingly recognized as a probative form of evidence in criminal proceedings. Moreover, such information helps to partially compensate for the Mechanism's inability to access the territory where crimes have been and continue to be committed.

23. In the past year, the Mechanism has also commissioned a number of historical and cultural experts to prepare focused thematic reports on various ethnic groups in Myanmar. These reports, which serve to add further depth to the Mechanism's own historical understanding and cultural awareness relevant to Myanmar and to inform the Mechanism's investigative activities, may be shared with requesting jurisdictions.

#### **Increased engagement with witnesses**

24. Despite the challenges posed by the COVID-19 pandemic, the Mechanism intensified efforts to collect testimonial evidence and substantially increased its engagement with witnesses during the past year. The Mechanism conducted numerous screenings and interviews with a range of witnesses, including individuals who possess contextual and overview information and "insider" witnesses who possess detailed, first-hand knowledge of the structure and operations of various organizations of interest. Using secure communication methods, the Mechanism collected and preserved a vast trove of documents as well as audio and visual files from such witnesses.

25. The Mechanism also conducted investigative missions to carry out in-person interviews in the territories of Member States. Face-to-face interactions help build trust between the interviewer and the witness, facilitating the best possible setting for a witness to speak openly and allowing the Mechanism to confirm that the witness is not under any duress or influence, and thus ensuring the integrity and confidentiality of the interviewing process. In-person interviews that result in a signed witness statement are by far the best method of obtaining the most complete, reliable and probative information and ensure its broadest possible admissibility in national, regional and international courts or tribunals. In this regard, the Mechanism acknowledges with appreciation the support provided to its investigative activities by the relevant national authorities and other stakeholders.

26. The Mechanism has continued to make every effort to ensure that engagements with witnesses and other information providers are conducted in a safe and secure manner for both stakeholders and Mechanism personnel, and that any sensitive information that is collected remains confidential. In identifying potential witnesses, the Mechanism continues to carefully assess each individual, taking into account various factors, such as the potential relevance of the individual's testimony, the individual's safety and security, and the risk of retraumatizing the individual.

#### **Leveraging information technology and cybersecurity**

27. The Mechanism has continued to expand its information technology toolset to facilitate the collection, processing and analysis of its growing repository of information and evidence. Ongoing expansion of digital storage capacity is necessary to accommodate the large volumes of information collected. The Mechanism also continued to refine its electronically stored information management system in line with United Nations standards and industry best practices. The system provides an end-to-end, fully integrated process for evidence intake, processing and review; management of all information providers and witnesses; case management planning; and tracking of all information shared by the Mechanism with third parties. However, new challenges arise constantly as the digital information landscape continues to evolve and the Mechanism's collection grows. To this end, the Mechanism is not only responsive to new challenges but forward-looking in its approach, with the goal of integrating evolving cutting-edge solutions to manage and analyse digital material now and into the future.

28. The Mechanism is also exploring the feasibility of utilising machine translation software to translate key materials both into English for the Mechanism's internal analysis and into the languages of relevant jurisdictions interested in using the materials. Given the high cost and limited capacity for human translation of the material, the Mechanism is



currently testing translation software with the capability of machine learning. Furthermore, as machine translation software for the Myanmar language (Burmese) does not exist, the Mechanism is seeking to develop such capability to facilitate the translation of millions of information items collected in the Myanmar language (Burmese).

29. The protection of its information storage system, equipment and tools is a priority of the Mechanism. This in turn contributes to the protection of its personnel and, crucially, the individuals and organizations with whom it engages. The Mechanism continued to refine its methodologies and processes for information security and cybersecurity, safeguarding the integrity of the evidence and the required chain of custody. At the same time, the Mechanism remains keenly aware of cybersecurity challenges, both in terms of digital surveillance and potential risks to its own information and communication systems. The Mechanism has maintained a high level of vigilance in this regard, implementing additional protections and precautions as necessary. Its cybersecurity framework has evolved through continuous training and internal initiatives that ensure that both electronic systems and personnel are capable of resisting and responding to cyberattacks. Cybersecurity measures are devised and implemented at the foundational level of all new information and technology systems before they become operational.

## **B. Analysis and sharing of information**

30. The Mechanism continues to ensure that its analytical work is keeping pace with its vast and growing collection of information and evidence. To date, the Mechanism has prepared over 67 packages with supporting information and analysis available for sharing with relevant authorities, utilizing technology to enhance its analytical methods and products. Specifically, the Mechanism is developing its technology capabilities in several essential areas, including in computer-aided translations and in computer vision and context management solutions, as well as in accessing and extracting of patterns and connections in large amounts of data, to analyse, categorize and manage digital media files and geospatial imagery. These tools will be integrated into a powerful database equipped with the capacity to handle the large quantities of data collected and will be utilized to provide actionable information to advance the analytical and sharing activities of the Mechanism.

### **Analysing information and evidence**

31. The Mechanism has identified new areas and methodologies for detailed and meaningful analysis of the vast information it has collected. Such analyses serve a dual function: to inform and drive forward the Mechanism's ongoing investigations and to produce analytical reports that can be shared with requesting jurisdictions. Areas for analysis are identified both within the Mechanism's identified situations and incidents spanning the full temporal scope of its mandate from 2011 to the present day, as well as in relation to cross-cutting, contextual or thematic areas.

32. This includes analysis of social media and communications information; military structures and chains of command; financial structures and connections between persons and groups of interest; and digital analysis techniques, including geolocation of sites of interest. Increased expertise in the collection and analysis of open source and financial information in the past year has played an important role in boosting analytical results. The Mechanism has also increased its capacity for Rohingya language translation and evidence review, which has been vital in analysing large swathes of audiovisual material that was produced during and in the wake of the 2017 clearance operations in Rakhine State. The availability of contemporaneous photographs and video footage taken during the clearance operations, combined with geospatial imagery, provides an opportunity for geolocation and cross-corroboration of evidence.

33. The Mechanism's commitment to applying cutting-edge technologies to its investigations extends to its analytical products. The Mechanism has invested in world-leading software capable of performing advanced analytics on organized data sets and is customizing an in-house platform for evidence review, gap analysis and legal classification. The Mechanism also continued its work on an integrated mapping tool that will aggregate

information and evidence, including geospatial imagery, photographs, videos and witness-sourced information, onto a secured, cloud-based platform that can both geographically and temporally demonstrate evidence relating to the commission of crimes. Simultaneously, the Mechanism has embarked on a computer vision project to develop software capable of enhancing human analysis by deriving meaningful information from a vast pool of evidence, particularly in relation to the automatic detection and categorization of photographs and videos.

34. In conceptualizing these analytical products, the Mechanism aims to be responsive to the needs of requesting jurisdictions, taking into account feedback about the specific types of analytical products that will be most useful to the jurisdictions or institutions with which the Mechanism shares information.

### **Sharing information and evidence with relevant entities and jurisdictions**

35. The Mechanism continued to increase the volume of information and evidence that can be shared for use in national, regional and international courts or tribunals willing or able to hold persons to account for crimes in the Mechanism's mandate. During the past year, the Mechanism has shared geospatial imagery and documentary and witness-related evidence with requesting jurisdictions. Simultaneously, this has also laid the groundwork for increased sharing in the years to come. To facilitate the sharing process, the Mechanism has held a number of meetings and working sessions with sharing partners to better understand the specific scope of their investigations or proceedings and the applicable rules of procedure in their respective jurisdictions relevant to the admissibility and the weight accorded to different types of evidence; and to discuss how the Mechanism can best provide relevant and probative information to support relevant judicial processes.

36. The Mechanism has also explored other ways to coordinate with sharing partners that are also carrying out independent investigations, to ensure, in particular, that vulnerable or high-risk victims and witnesses are not approached by multiple jurisdictions for witness interviews. This is particularly salient in relation to the concurrent investigations and judicial proceedings concerning alleged crimes against the Rohingya population. The Mechanism has also fine-tuned its methodologies for obtaining informed consent from witnesses for the onward sharing of witness screenings, statements and associated evidence. This includes providing clear information concerning the potential use and disclosure of their information in requesting jurisdictions. In parallel, the Mechanism has finalized its internal procedures for the secure sharing of material with requesting jurisdictions.

37. Given the various simultaneous investigations or judicial proceedings currently under way pertaining to the situation of the Rohingya, the Mechanism has continued to ensure close and timely cooperation with the International Criminal Court and the proceedings before the International Court of Justice. The Mechanism has also engaged with judicial authorities in Argentina with a view to supporting the latter's investigation into crimes against the Rohingya based on universal jurisdiction. The Mechanism continues to share information with the Office of the Prosecutor of the International Criminal Court that is relevant to the latter's investigation into alleged crimes against the Rohingya and continues to identify further opportunities for sharing in this regard, ranging from witness-related materials to audiovisual and documentary items as well as analytical products and expert reports. In *The Gambia v. Myanmar*, the International Court of Justice is currently considering the application filed by the Gambia, which claims that Myanmar is in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. The Mechanism continues to share relevant materials with the parties in the case, after ensuring that it has the consent of the information provider(s) and determining that the information will not affect the security or privacy rights of those whom the materials concern.

## **C. Cooperation arrangements and modalities**

38. During the reporting period, the Mechanism intensified its efforts to engage with a variety of relevant entities and actors to establish arrangements and cooperation frameworks or modalities to facilitate the implementation of its mandate. The Mechanism has actively

engaged and developed arrangements with a large network of actors, including nearly 200 civil society organizations, businesses, national authorities, international organizations and United Nations entities to facilitate the collection, preservation and storage of information. The majority of these arrangements have been concluded with civil society and documentation actors, which remain a crucial source of information and evidence regarding crimes committed in Myanmar.

39. Resuming in-person high-level dialogue and consultations with Member States and other actors was a critical priority of the Mechanism during the reporting period. While virtual contacts have continued, in-person engagements, especially with Member States, have been essential to enable the dedicated and multilayered negotiations required to advance cooperation so that the Mechanism is able to carry out evidence collection and witness interviews in their territories.

40. The Mechanism continues to seek the cooperation of the authorities of Myanmar to obtain access to witnesses, victims and other sources of information, and access to locations where alleged crimes have occurred. The Mechanism has made 10 requests to the Myanmar authorities, both for access to the territory and to information in the possession of the Government or the security forces. For example, the Mechanism requested information on the targets and casualties pertaining to the alleged attacks carried out by the Arakan Rohingya Salvation Army on 25 August 2017, which were reported by Myanmar authorities to be the immediate precursor of the 2017 clearance operations. The Mechanism has requested access to prisons and detention sites, as well as areas housing internally displaced persons in Rakhine State. The Mechanism also requested that the authorities of Myanmar provide the full report of the Independent Commission of Enquiry into events in Rakhine State, as only summary information has been publicly released to date. The Mechanism has also requested information concerning the identities of persons detained since the military takeover of 1 February 2021, the charges against them and the results of any judicial proceedings. The Myanmar authorities have not responded to these requests and none of the information has been received.

41. The Mechanism will continue to reach out and seek information from the current Myanmar authorities, in line with relevant Human Rights Council and General Assembly resolutions that call upon Myanmar to cooperate and meaningfully engage with the Mechanism, including by granting unrestricted access for its activities. The Mechanism will also continue to seek information from all relevant parties regarding potential international crimes committed in Myanmar. The Mechanism seeks both incriminating and exonerating information relevant to serious international crimes within its mandate.

42. The Mechanism continued its efforts to deepen cooperation and engagement with other Member States to enable collection activities and witness interviews in their territories, particularly within the Asia-Pacific region where much of the evidence and many of the witnesses are located. To date, the Mechanism has established several cooperation frameworks with Member States to enable investigative activities in their territories and the provision of specialized services and logistical support. The Human Rights Council and the General Assembly have continuously reaffirmed the centrality of such cooperation to the effective and efficient implementation of the Mechanism's mandate. It is only with such cooperation that the Mechanism will be able to gain access to valuable witnesses and to gather testimonial evidence that meets the exigent standard of proof in a criminal proceeding, and in a manner that ensures the witnesses' security and privacy. The cooperation of Member States is also needed in order to facilitate the protection and support of witnesses and prevent any reprisals for cooperation with the Mechanism.

43. Discussions with several States on how the Mechanism can access their territory in order to carry out its mandated activities have been slow. This has substantially impacted the Mechanism's ability to obtain signed statements from those who witnessed or experienced events relevant to proving serious international crimes. Detailed signed witness statements obtained by trained and experienced investigators in face-to-face interviews are critical products that the Mechanism aims to share with judicial authorities, so that they have the best evidence available in their search for the truth. As the International Criminal Court and Argentine investigations are ongoing and the proceedings at the International Court of Justice are well advanced, the Mechanism does not have unlimited time to collect and analyse

evidence for sharing with these institutions. Accordingly, the Mechanism will redouble efforts to obtain permission from all relevant States for the cooperation necessary to fulfill its mandate.

44. The Mechanism highly appreciates the cooperation and coordination of a diverse set of United Nations entities, both at their headquarters and their relevant field offices. The Mechanism has been consulting regularly with various United Nations entities regarding the situation in Myanmar and leveraging their knowledge and expertise that is relevant and useful to the Mechanism's operations. The Mechanism has also benefited from general support services provided by the Secretariat and other United Nations entities, both at Headquarters and in the field, including with regard to security requirements and logistical support. The Mechanism will also continue its efforts to seek the cooperation of other United Nations actors that have not yet executed the Mechanism's requests for assistance.

45. As its operations and policy frameworks mature, the Mechanism continues to consult with international courts and other international accountability mechanisms to learn from their experiences and good practices, in line with the respective mandates of each entity. The Mechanism coordinates closely with these entities in areas of mutual concern, including staff training, legal cooperation, and information technology systems and data management.

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

46. Outreach to victims, survivors, civil society groups and other stakeholders is a priority for the Mechanism in order to raise awareness of its complex mandate, explain its methods of work and clarify what can and cannot be expected from its efforts. The Mechanism makes every effort to reach out to the many diverse communities that have a stake in its work, and regular communications through both public and confidential channels have helped to establish and maintain trustworthy and cooperative relationships and to promote ongoing dialogues.

47. With the easing of COVID-19 travel restrictions, the Mechanism has been able to resume in-person outreach activities. Notably, a delegation led by the Head of the Mechanism travelled to Bangladesh in May 2022 for the first time since late 2019. In addition to meeting with government authorities to discuss the country's ongoing cooperation with the Mechanism, the Head of the Mechanism held several interactive dialogues with more than 150 Rohingya representatives in Cox's Bazar, including women's organizations, to raise awareness about the Mechanism's purpose and methods of work. The delegation also met with relevant civil society organizations, and the Head of the Mechanism conducted an interview with a Rohingya language radio service based in Cox's Bazar in order to reach the broadest possible audience of forcibly displaced Rohingya in the area. In these presentations, the Mechanism sought to convey what the Rohingya population could expect to see the Mechanism accomplish, and, importantly, what is outside the mandate of the Mechanism and could not realistically be expected. Furthermore, through dialogues with victim groups, the Mechanism sought to better understand their desires and concerns. Repeatedly, the message received was that the victims hoped for conditions to allow their safe return to their homes in Myanmar.

48. The Mechanism's website has proven to be a highly effective platform for disseminating timely information and providing answers to frequently asked questions. It reaches a range of audiences in English and the Myanmar language (Burmese). The website also includes information in audio form in the Rohingya language. The bulletin that the Mechanism produces approximately three times per year highlights institutional updates and outreach efforts. It is featured on the website and is broadly distributed so that civil society groups, Member States and other key stakeholders are kept aware of the Mechanism's activities. Social media platforms, which are widely consumed within Myanmar and in the diaspora, are an essential vehicle for sharing information. The Mechanism's Facebook page has a following of more than 70,000 people who amplify the Mechanism's messages on other platforms. As the Mechanism's mandate is complex, and its key audiences speak a variety of languages with varying levels of literacy, it is essential that information about the Mechanism be easy to understand and be able to be shared organically across communication channels.

In the upcoming reporting period, the Mechanism will simplify its messaging and present it in visual and audio formats to ensure that the content is accessible, memorable and shareable.

49. The Mechanism has actively engaged with civil society groups through in-person and virtual meetings. This has facilitated ongoing dialogues and increased understanding about the Mechanism's mandate, which has helped to gain confidence in its work and to secure increased cooperation. The Mechanism has also participated in public events organized by Member States and civil society organizations on topics related to justice and accountability in Myanmar. The Mechanism has continued to use its public communication platforms to convey the importance of secure means of communications for the safety and security of both stakeholders and Mechanism personnel, and the confidentiality of the information exchanged or its engagements.

50. Media and public interest in the work of the Mechanism continues. Interviews, press releases, statements and media briefings have resulted in regular coverage by influential global, regional and national media outlets, including media in the languages used in Myanmar, which has reached broad audiences. In particular, a United Nations media briefing by the Head of the Mechanism in New York in November 2021 resulted in extensive coverage with positive sentiment by global news agencies and top-tier media outlets.

#### **IV. Operational and administrative support**

51. As it commences its fourth year of operations, the Mechanism has made important progress in establishing the full set of operational and administrative systems to enable the implementation of the Mechanism's core priorities. Such systems involve matters related to information management and technology; witness and victim protection and support; security; and staffing, including language assistance.

##### **Technology and infrastructure**

52. During the reporting period, the Mechanism continued to solidify its core and specialized technology and infrastructure for handling the information and evidence that it receives and collects. The Mechanism has continued to procure and operationalize additional necessary software and equipment to facilitate the processing, management and review and analysis of its repository. The Mechanism has partnered with United Nations computing and data centres to leverage and adopt existing tools and platforms to enable the Mechanism to collect, preserve and analyse a vast trove of information and data, while always ensuring accessibility, including in remote locations. The Mechanism has developed custom-made solutions to extract and preserve data from a variety of social media and messaging applications. Furthermore, the Mechanism has procured multiple secure cloud-based platforms to bolster its forensic capabilities. These solutions and platforms have enabled the Mechanism to collect and analyse additional data previously not possible. As the Mechanism resumes in-person investigative activities, information technology, management and security are essential ingredients to ensure that investigative teams can reliably communicate and access the Mechanism's electronically stored information management system and the information and data therein, in line with confidentiality and security requirements of its operations. In this regard, the Mechanism has procured travel kits and communication devices to support its field missions.

##### **Witness protection and support**

53. The Mechanism has further increased its witness support and protection capabilities to ensure that vulnerable witnesses receive protection and psychosocial services in a manner consistent with the Mechanism's mandate and a victim/survivor-centred approach. As the Mechanism has expanded the scope of its interactions with witnesses, particularly among victim communities, Mechanism investigators have been faced with the challenge of collecting detailed and probative evidence in line with the highest standards in criminal investigations, while simultaneously ensuring that traumatized witnesses receive the necessary psychosocial support before, during and after their engagement with the Mechanism. The addition of dedicated witness support capacities has bolstered the

Mechanism's ability to apply a survivor-centric approach in all of its engagements with witnesses. Drawing on the best practices of international criminal accountability mechanisms, the Mechanism is developing standard operating procedures as well as witness protection and support services tailored to the specific context of its activities. In preparation for investigative activities in different locations, the Mechanism is working with various partners on the ground to identify and develop referral pathways to ensure safe interventions and continuous support to the witnesses with whom it interacts.

54. The Mechanism has also developed a comprehensive approach to witness protection based on the potential assistance by Member States and other partners to support its effective implementation. Lastly, and to complement the Mechanism's existing but limited capacities, the Mechanism is mobilizing extrabudgetary resources in order to be able to refer witnesses who require medical and/or psychosocial assistance to those who can competently provide such services and to allow the Mechanism to meet the support needs of witnesses or information providers at significant risk.

### **Physical security**

55. The Mechanism incorporates physical security needs and considerations into all aspects of its operations. The Mechanism's security coordination officer supports Mechanism personnel on all collection, analysis and sharing activities. The Mechanism has established robust communication channels with United Nations system entities and other security interlocutors in the field to support the planning and conduct of future field missions. In consultation and coordination with United Nations security actors, the Mechanism undertakes security risk assessments to identify threats and risks associated with its activities or missions; ensures technical oversight and support related to travel; establishes and manages an internal security clearance system for travel, including mission tracking; and coordinates emergencies, including medical evacuations.

### **Staffing and specialized capacities**

56. At nearly full staffing levels, the Mechanism redoubled its efforts during the reporting period to expeditiously recruit personnel in line with its schedule and substantive strategy. The Mechanism continued to prioritize the recruitment of personnel with a diverse range of expertise and specializations in criminal investigations and prosecutions. In line with its terms of reference, due consideration is given to the representation of different legal traditions, geographic diversity, gender balance, regional expertise and relevant language skills. As noted above, the Mechanism has further enhanced its capacities, particularly in highly specialized areas of expertise such as collection and analysis of open source and financial information and the investigation of sexual and gender-based crimes and crimes against and affecting children.

57. As the Mechanism continues to expand its collection and analysis activities, the volume of information and evidence in its possession is heightening challenges arising from language-related needs, particularly for material originating in the various languages used in Myanmar. To respond to these challenges, the Mechanism is taking concrete steps to increase its language capacities and support, continuously evaluating its internal language needs to determine what language support and tools would be most appropriate and, where possible, to deploy innovative technological solutions, including machine-learning translation tools. The Mechanism is also seeking to further improve its in-house interpretation and translation capabilities, with a view to supporting investigative missions and other activities.

58. Underpinning the Mechanism's operational and administrative structures is a comprehensive set of foundational policies, protocols and procedures, covering a wide range of activities, including investigations; information management and technology; classification and handling of sensitive information; mission planning and support; witness protection and support; security; and administration. These policies and procedures form part of a well-integrated toolset ensuring accountability and consistent practices across the Mechanism's activities. Where applicable and relevant to the Mechanism's context, they also draw upon and incorporate the good practices of other comparable international accountability mechanisms.

## V. Challenges and areas for additional support

59. To carry out its mandate, the Mechanism needs the full cooperation and engagement of Member States, United Nations entities and other actors to advance its substantive work, interview witnesses in different locations, and increase the amount of forensically valuable testimony in its repository so that it can further contribute to ongoing proceedings before the International Criminal Court, the International Court of Justice and others relevant to its mandate.

60. Such support is especially required to overcome persistent challenges affecting the Mechanism's ability to gather information, interview witnesses and operate in the territories of Member States, particularly in the Asia-Pacific region, where the majority of information providers and witnesses are located. The authorities in Myanmar have consistently denied the Mechanism access to its territory, preventing on-the-ground investigations in the country where the crimes were allegedly committed. In this context, the cooperation and support of other Member States will be a decisive factor in the success of the Mechanism's efforts. Following the military takeover in February 2021, a complex interplay of local, regional and international dynamics has further contributed to increasing challenges in this regard.

61. In addition, even States that have expressed strong support for the work of the Mechanism do not always have in place the internal legal and regulatory procedures to facilitate the Mechanism's access to their territories. The Mechanism welcomes commitments made by several Member States to expedite the timely adoption and approval of their respective legal cooperation frameworks with the Mechanism that are currently under way. While the Mechanism greatly values the pragmatic and proactive cooperation of some Member States, the cooperation of all Member States is necessary for the Mechanism to effectively discharge the mandate set out by the Council and endorsed by the General Assembly. During the next reporting period, the Mechanism will continue to make concerted efforts to strengthen cooperation with Member States so that it may access information and witnesses and operate on more territories. The Mechanism will also continue its systematic efforts to engage with the authorities of Myanmar in seeking its cooperation with respect to the implementation of its mandate.

62. As the Mechanism has substantially increased its level of engagement with witnesses, the safety and security of potential witnesses has also become a core and pressing concern during the reporting period. The Mechanism is in contact with many potential witnesses who appear to have credible information that could advance investigations of crimes within the Mechanism's mandate. However, the most unique and critical evidence is held by a category of witnesses called "insiders". Some of these witnesses have information that is of very high value to efforts to ensure accountability for serious international crimes in Myanmar, and such witnesses are at very serious risk of harm. The Mechanism has developed a comprehensive approach to witness protection and is engaging with cooperating States and other international organizations in order to coordinate and identify assistance and access to safe and quality services. Cooperation and operational support from a broader group of States will be a decisive factor in the success of these efforts.

63. Likewise, for the Mechanism to fulfil its mandate, engagement with civil society representatives working on justice and accountability issues related to Myanmar, as well as individuals who can provide information to the Mechanism, is essential. More personal interactions to build trust and increase confidence in the Mechanism's ability to contribute to international criminal accountability processes are critical factors in these efforts. With the easing of COVID-19 restrictions, which curtailed in-person interactions, the Mechanism will initiate a structured and regular forum that will bring together relevant individuals and organizations to deepen collaboration and information-sharing.

## VI. Conclusion

64. **In three years, the Mechanism has made concrete progress to advance its investigative activities and set up foundational and core infrastructure to enable the longer-term implementation of its mandate. It has responded with equal vigour to**

opportunities and challenges, quickly adapting to new contextual developments, adjusting working methods and strategically allocating its lean resources.

65. Navigating increased challenges and building on the momentum it has achieved, the Mechanism will continue to use all possible strategies and innovations to gather and verify evidence to build strong case files that can facilitate justice for the people in Myanmar. To this end, the Mechanism will continue to increase the interviewing of witnesses and other individuals of interest in different locations; seek to deepen cooperation and engagement with States to enable the Mechanism to carry out collection activities, particularly in States within the Asia-Pacific region; implement a robust programme for the protection and support of witnesses; and continue to deploy advanced technology and software to support complex collection and analytical processes, including the review and processing of the vast quantity of documentation, digital and social media material. It remains crucial that the Mechanism, as called for by the Human Rights Council and the General Assembly, is given unrestricted access to the territory of Myanmar and that of other Member States where witnesses and evidence is located and afforded the flexibility that it needs in terms of staffing, location and operational freedom so it can deliver as effectively as possible on its mandate.

66. The full and meaningful cooperation of all parts of the international community, especially Member States in the Asia-Pacific region, will remain essential. Without such support, the Mechanism will be hindered from fully delivering on its mandate and playing its role in facilitating and supporting criminal proceedings that advance accountability and help bring some justice for the people of Myanmar.

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