

**Human Rights Council****Forty-eighth session**

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Agenda item 4

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

The present document is the third report submitted by the Independent Investigative Mechanism for Myanmar to the Human Rights Council pursuant to resolution 39/2 of 27 September 2018, in which the Council established the Mechanism. The report covers activities from 8 July 2020 (the date of the previous report to the Council) to 15 June 2021.

The Mechanism has laid a strong foundation for its work since it became operational on 30 August 2019. Surmounting operational challenges arising from the coronavirus disease (COVID-19) pandemic and restrictions owing to liquidity constraints, it has reached a critical level of functionality and built a team and infrastructure capable of effectively and efficiently implementing its complex and technical mandate. The Mechanism has established a secure and sophisticated electronically stored information management system to electronically collect, preserve, process and analyse evidence; significantly expanded its collection of information and evidence using specialized and the most up-to-date technological tools; engaged in outreach to key stakeholders; and recruited personnel with a diverse range of expertise and specializations. To address ongoing challenges and new circumstances, the Mechanism adopted alternative measures and innovations, making use of technology, creative strategies and flexible work arrangements.

Within the scope of its mandate, the Mechanism has been closely monitoring the situation in Myanmar following the military's seizure of power on 1 February 2021, particularly reports of widespread instances of arbitrary arrest, torture, enforced disappearance, extrajudicial killing and use of force against peaceful protestors. While adjustments to planned activities have been necessary in order to cope with the consequent influx of information and rapidly evolving events, the Mechanism has continued to make progress in collecting evidence relating to earlier events. It has ensured that its resources and capacities continue to be used strategically to advance investigations on all priority situations, including information regarding the situation of the Rohingya population and other situations throughout Myanmar. This is in line with the Mechanism's commitment to its core principles of independence and impartiality, pursuing all situations, incidents, persons and entities within its mandate.

Building on its achievements to date, the Mechanism will continue to expand its substantive work, intensify its engagements, and bolster its operations to make it possible to bring to justice the perpetrators of the most serious international crimes 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 a letter dated 27 August 2019 to the President of the Human Rights Council, the Secretary-General deemed the Mechanism to be operational as of 30 August 2019. The Council, in its resolution 42/3 of 26 September 2019, and the Assembly, in its resolution 74/246 of 27 December 2019, welcomed the Mechanism's entry into operation. 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 or the International Court of Justice.

2. In less than two years, the Mechanism has developed crucial substantive and operational capabilities to enable it to make important progress in implementing its mandate and advancing the priorities articulated in the strategy set out in its previous report to the Human Rights Council.<sup>1</sup> Yet ongoing challenges and new developments in Myanmar have significantly shaped these priorities, requiring rapid adjustments to operations and creative solutions. The coronavirus disease (COVID-19) pandemic has continued to restrict the Mechanism's activities, including its ability to travel to engage with relevant stakeholders to collect and verify evidence, enable cooperation, and advance its outreach efforts, especially to witness and victim groups. Reports of widespread instances of arbitrary arrest, torture, enforced disappearance, extrajudicial execution and use of force against peaceful protesters following the military's seizure of power on 1 February 2021 in Myanmar have given rise to an unprecedented influx of information related to alleged crimes within the Mechanism's mandate that warrant careful monitoring, collection, verification and analysis.

3. The Mechanism has been following with deep concern the recent events in Myanmar and has reiterated calls expressed by the Secretary-General and other United Nations representatives for an end to the violence. The recent events are a stark reminder of the dangers of impunity and the need to ensure accountability for all those who have committed serious international crimes, in order to break the cycle of violence and protect all the peoples of Myanmar. The Mechanism is committed to fulfilling its unique role and will continue to actively engage with all parts of the international community, in particular Member States in the region, in order to fully achieve the purpose for which it was created to facilitate justice and accountability for past serious crimes within its mandate and contribute to the deterrence of further atrocities.

## II. Progress on the strategic priorities of the Mechanism

4. In 2020, the Mechanism adopted a comprehensive strategy to ensure that it was well positioned to achieve full functionality and deliver on its mandate. As detailed in its previous report to the Council, the strategy focused the Mechanism's available resources and capabilities on the following institutional priorities: expanding the collection and analysis of information and evidence; increasing the availability of evidence and analytical documents for sharing with courts and tribunals; advancing the development of cooperation frameworks with new information and assistance providers; and increasing the visibility of the Mechanism and strengthen the understanding of its mandate by relevant stakeholders, in particular witness and victims' groups. Despite the effects of the COVID-19 pandemic, the Mechanism made important progress in multiple areas.

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<sup>1</sup> A/HRC/45/60.

## A. Expansion of the collection and preservation of evidence

5. The Mechanism aims to conduct the collection of information and evidence objectively and professionally, pursuing all situations, incidents, persons and entities within its mandate. To date, the Mechanism has collected and processed for potential sharing over 1.3 million information items from a broad range of sources and covering a variety of formats, including documents, photographs, videos, geospatial imagery, witness statements and open-source materials. The Mechanism collected and processed the majority of this information – over 900,000 information items – after 1 January 2021. Several factors contributed to these results, including a strategic orientation of investigative priorities, targeted identification of potential information providers, continued monitoring of ongoing developments in Myanmar, the development of capabilities for open-source investigations, and the establishment of a secure and state-of-the-art electronically stored information management system.

### Investigative priorities

6. Taking into account the scope, complexity and diversity of the Myanmar context and continuing constraints, the Mechanism continued to develop its investigative activities in a manner that focused on accessible information and evidence while also building the foundation for longer-term collection and verification efforts. Given the impossibility of investigating all of the crimes committed in Myanmar, the Mechanism developed a specific strategy for prioritizing the collection and verification of evidence concerning selected situations, incidents and individuals and groups suspected of perpetrating crimes. The objective is to deploy limited resources in a manner that will allow the Mechanism to build viable case files proving individual criminal responsibility that are representative of the crimes committed against various groups in Myanmar. Investigations are prioritized on the basis of several substantive and operational criteria. These include the scale, nature, manner of commission and impact of the crimes, including sexual and gender-based crimes and crimes against children; the degree of responsibility of alleged perpetrators; the prospect of an investigation meeting international criminal standards; and the likelihood of a court or tribunal taking jurisdiction over the crime(s) in question.

7. The strategy helps to guide the targeted identification of potential information sources and providers and the collection of information and evidence that is necessary to demonstrate individual criminal responsibility. Based on an assessment of the materials received from the independent international fact-finding mission on Myanmar, the Mechanism has already selected certain incidents and situations as priorities.

8. Investigating sexual and gender-based crimes and crimes against children is a priority for the Mechanism. These crimes are among the gravest of international crimes and require targeted outreach and dedicated expertise. The Mechanism's investigation strategy ensures that these crimes continue to be integrated in all investigations, are given particular attention from the outset, and that their full range of criminality, gravity and impact is holistically addressed alongside other conduct, incidents and patterns of crimes, such as the Rohingya crisis and ethnic conflicts prevailing in northern Myanmar.

9. The COVID-19 pandemic continued to have an impact on the implementation of the investigation strategy, most notably by preventing the Mechanism from travelling to locations where potential information providers and witnesses are located. This has curtailed a vital element of the investigative process: verification of existing information and evidence in the Mechanism's possession and the conduct of in-person data collection and interviews of witnesses who may have first-hand information regarding the commission of crimes falling within the Mechanism's mandate. Where possible, the Mechanism continued to place emphasis on the identification of potential information sources that could be contacted through secure electronic means, scaling up the collection and consolidation of information and evidence through open-source investigations and identifying potential witnesses for future in-person interviews.

10. In this regard, the Mechanism has made every effort to ensure that any such engagement is conducted in a safe and secure manner for both stakeholders and Mechanism personnel, and that any sensitive information that may be exchanged remains confidential. In

identifying potential witnesses for interview at a later date, 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.

11. However, with respect to the forensic value of witness statements, there is no substitute for in-person interviews. Face-to-face interactions are the best method to ensure the integrity of witness statements. They help build trust between the interviewer and the witness and allow the interviewer to confirm that the witness is not under any duress or undue influence from outside parties. In-person interviews also guarantee the confidentiality of the process. They provide an opportunity for Mechanism personnel to address any concerns that witnesses may have about their safety and security and to explain to witnesses how the information provided will be used. In-person interviews that result in a signed witness statement are by far the best method to ensure the information's usefulness and its broadest possible admissibility in national, regional and international courts or tribunals.

### **Targeted identification of information providers**

12. The Mechanism continues to engage with a broad range of information and evidence providers, including national authorities, United Nations entities, international organizations, non-governmental organizations, civil society actors, corporate entities and individuals, with the aim of securing the most relevant materials and information capable of advancing its mandate. Adjusting for the pandemic, most of these engagements were facilitated through secure remote means.

13. Since it began operations, the Mechanism made dozens of formal requests for information to a variety of such entities and individuals. The majority of those to whom the requests have been addressed have either provided information to the Mechanism or are currently in discussions about doing so. In addition, the Mechanism has continued its efforts to initiate cooperation with Member States that may be in possession of information relevant to the Mechanism's mandate, including the authorities of Myanmar. Where applicable, the Mechanism may negotiate cooperation arrangements to enable streamlined processes for the provision of the material to the Mechanism, as set out below.

### **Monitoring of developments in Myanmar**

14. As the Mechanism's mandate is ongoing, the Mechanism also conducts contemporaneous monitoring of developments in Myanmar that may constitute serious international crimes or violations of international law.

15. Since the military seized power on 1 February 2021, the Mechanism has experienced an exponential increase in communications from individuals and organizations seeking to share information about alleged crimes and human rights violations in Myanmar. From these submissions, the Mechanism has collected over 210,000 information items, including videos, photographs and documents. While the Mechanism was able to temporarily adjust and mobilize critical resources to address this unprecedented influx of information and work, the situation exposed the need for additional resources and capacity, especially for the collection and analysis of information and evidence gathered from open sources.

### **Scaling up open-source investigations**

16. The critical need to collect and analyse open-source information, such as videos, photographs and geospatial imagery publicly available on the Internet or social media, concerns both recent events in Myanmar and earlier incidents that appear to constitute serious international crimes and violations of international law. Open-source information is particularly valuable for the Mechanism, as 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.

17. Given that the availability of open-source information is extensive and has continued to grow, especially after 1 February 2021, the Mechanism is mobilizing extrabudgetary resources in order to enhance its capacity to conduct open-source investigations. Specialized capacity in open-source investigations will enable the Mechanism to use the most advanced

techniques to collect and analyse such information with efficiency, thoroughness and accuracy, as well as to systematically document investigative methods and preserve evidence in accordance with international best practices. It will also allow the Mechanism to keep abreast of some of the most innovative and ground-breaking advances taking place in international criminal law in the field of open-source investigations.

### **Electronically stored information management systems and cybersecurity**

18. To facilitate the processing of the growing collection of information and evidence in the Mechanism's possession, the Mechanism took concrete steps to expand its physical and digital storage capacity and to develop a state-of-the-art electronically stored management system in line with United Nations standards and industry best practices. The system governs the entire chain of the Mechanism's processing of information and evidence in its possession, from collection to organization, preservation, review, analysis and preparation of files for potential sharing with third parties. This includes a robust system for the management of potential evidence, materials and information providers that facilitates the tracking of all information requested and collected by the Mechanism and/or shared with third parties. The Mechanism has also improved the processing and accessibility of digital evidence, including through the use of analytical tools and technology services to facilitate the processing of specialized videos and natural language material. Such tools will enhance the Mechanism's capacity to handle more complex data and evidence formats, such as documents, videos, digital images and audio, including open-source materials.

19. The Mechanism has prioritized the protection of its information storage system, equipment and tools, which in turn contributes to the protection of its personnel and, crucially, the individuals and organizations engaged by the Mechanism. It has implemented methodologies and processes within the system to ensure the necessary information security and cybersecurity, the integrity of the evidence and the required chain of custody. The Mechanism's cybersecurity framework, which continues to evolve as new threats are identified, combines responsive and preventive approaches. It allows the Mechanism to respond quickly to all known cybersecurity threats. Through regular training and internal notifications, the Mechanism is also carrying out its work in line with the latest developments in cybersecurity and protective measures.

20. Building these technology and cybersecurity capacities from the outset has been instrumental in ensuring that the Mechanism has been able to continue its operations in a secure manner with little to no disruption during the COVID-19 pandemic. Furthermore, these efforts have equipped the Mechanism with the ability to share relevant materials in an efficient manner as and when requested by national, regional and international courts and tribunals.

### **Looking ahead**

21. Notwithstanding the continuing uncertainties related to COVID-19, the Mechanism expects that the progressive relaxation of travel restrictions will enable the resumption of essential activities that were suspended during the pandemic. This includes the in-person collection and verification of information and evidence, as well as high-level engagement missions to facilitate the negotiation of cooperation arrangements and advance the Mechanism's outreach efforts. The Mechanism will ensure that security considerations are integrated into all aspects of its mission planning.

22. In addition, and to complement other specialized investigative capacities, the Mechanism is seeking to enhance its capacities to collect and analyse financial information as part of its broader investigations into crimes within its mandate. Such information is expected to complement the Mechanism's criminal investigations in several ways, including in identifying potential perpetrators, criminal motives and modes of liability, and in establishing jurisdictional elements.

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

23. While still in the early stages, the Mechanism has put much effort into ensuring that its analytical work is keeping pace with its growing collection of information and evidence. The Mechanism organizes the evidence collected from many different types of sources and analyses both specific incidents and broader situations. Through a rigorous assessment, the Mechanism seeks to determine what facts can be proven, whether these facts fulfil the elements of crimes within the Mechanism's mandate, and whether the facts establish the criminal responsibility of individual perpetrators. This includes situations, incidents and persons/entities related to the events occurring after 1 February 2021, in addition to situations related to the Rohingya crisis and ethnic conflicts prevailing in northern Myanmar.

### **Developing analytical tools and sharing packages**

24. Based on its analytical work, the Mechanism has increased 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 accountable persons responsible for crimes in the Mechanism's mandate. In line with its investigative strategy, the Mechanism has been assessing and further developing its analytical capacities and tools covering the broad range of alleged crimes and perpetrators in the context of Myanmar. Through this process, the Mechanism has determined that information needs to be well organized, collated into coherent files pertaining to a specific situation, incident or person/entity, and tied together by clear analysis, to ensure that the information will be relevant and useful to investigative, prosecutorial or judicial authorities to the best extent possible. In order to ensure that each case file is specific and of a manageable size, the Mechanism is producing compilations, with supporting information and analysis, that meet the requests of entities for the relevant criminal or legal proceedings. As at 30 June 2021, the Mechanism has prepared 11 compilations of evidence and analysis available for potential sharing.

25. Furthermore, the Mechanism is developing analytical tools and products that address cross-cutting elements, structures and patterns of crimes within its mandate, covering multiple situations and incidents that have occurred since 2011. These tools are being designed to be used and applied to multiple case files that the Mechanism is preparing for potential sharing.

26. In addition, the Mechanism has also continued to ensure close and timely cooperation with the International Criminal Court and the International Court of Justice, as called for by the Human Rights Council in its resolution 43/26. In *The Gambia v. Myanmar*, the International Court of Justice is currently considering the complaint of the Gambia 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.

### **Analysis of events in Myanmar since the military's seizure of power**

27. As noted above, the Mechanism's mandate covers the most serious international crimes and violations of international law committed in Myanmar since 2011. The temporal scope is therefore ongoing and the mandate to collect evidence continues to apply to events since the military seizure of power in February of 2021.

28. The Mechanism has consistently explained that the constitutional process in Myanmar, fair elections and democracy are not part of its subject matter mandate. The terms of reference for the Mechanism state that the reference in the mandate to violations of international law include violations of international human rights law and international humanitarian law. Therefore, issues related to violations of the Constitution or the laws of Myanmar, the overturning or fairness of elections, and who should be recognized as the legal government of Myanmar are not within the legal competence of the Mechanism. However, serious international crimes and human rights violations can occur in the context of disputes over political processes within a country. Since the coup, the Mechanism has been carefully following developments to determine whether recent events constitute crimes that fall within its mandate.

29. In addition to preserving and analysing thousands of communications collected from individuals and organizations concerning events in Myanmar, the Mechanism has also closely followed public reporting, contacted individuals and entities who have information about events, including those who were eyewitnesses, and consulted with persons having specialized expertise to assist in the analysis of the information collected.

30. The Mechanism's preliminary analysis of collected information concerning events in Myanmar since the 1 February 2021 military coup indicates that crimes against humanity falling within the Mechanism's mandate, including murder, persecution, imprisonment, sexual violence, enforced disappearance and torture, have likely been committed.

31. A crime against humanity requires an act committed as part of a widespread or systematic attack on a civilian population. Such an attack does not need to be a military attack. Rather, it is defined as a course of conduct involving the multiple commission of acts against any civilian population,<sup>2</sup> and it may be carried out in a single location<sup>3</sup> or across a broader swath of territory.<sup>4</sup> Acts of violence<sup>5</sup> or any serious mistreatment of a civilian population can constitute an attack for the purposes of establishing a crime against humanity.<sup>6</sup>

32. The attack must also be either "widespread" or "systematic". Determining whether an attack is widespread requires an examination of the scale of the attack and the number of victims. When assessing whether an attack is widespread, one must look to the cumulative effect of the criminal acts in question, or the impact of a single act of extraordinary magnitude.<sup>7</sup> The geographical scale, temporal scope and number of targeted persons of the attack are all relevant in determining whether an attack was "widespread".<sup>8</sup>

33. Preliminary information collected and analysed by the Mechanism indicates that hundreds of civilians have been killed by security forces across Myanmar, including in Yangon, Nay Pyi Taw, Bago, Mandalay, Magway and Sagaing. The available information, including public statements by the military authorities, indicate that thousands of individuals have been arbitrarily detained. Credible reports and video evidence indicate that security forces have carried out acts of torture and sexual violence. From the totality of the information the Mechanism has collected to date, it appears that the events in recent months constitute a widespread attack on a civilian population.

34. The attack is similarly systematic in nature. The term "systematic" refers to the organized nature of the acts of violence and the improbability of their random occurrence.<sup>9</sup> Preliminary information collected and analysed by the Mechanism indicates that security forces have acted in a coordinated manner across the country. Specific groups of individuals appear to have been targeted for arbitrary detention based on their political affiliation, profession (such as medical worker, teacher and journalist) and exercise of political rights. Shortly following the military seizure of power, protests against the coup erupted across the

<sup>2</sup> Rome Statute of the International Criminal Court, art. 7 (2) (a).

<sup>3</sup> International Criminal Court, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 757 ff.

<sup>4</sup> International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, *Bogosora and Nsengiyumva v. Prosecutor*, Case No. ICTR-98-41-A, Appeals Chamber Judgment, 14 December 2011, para. 390.

<sup>5</sup> Extraordinary Chambers in the Courts of Cambodia, *Prosecutor v. Nuon Chea and Khieu Samphan*, Case No. 002/01, Trial Chamber Judgment, 7 August 2014, para. 178.

<sup>6</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. Kunarac et al.*, Case Nos. IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgment, 12 June 2002, para. 86.

<sup>7</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Trial Chamber Judgment, 3 March 2000, para. 206.

<sup>8</sup> International Residual Mechanism for Criminal Tribunals, *Prosecutor v. Šešelj*, Case No. MICT-16-99-A, Appeals Chamber Judgment, 11 April 2018, para. 57; International Criminal Court, *Prosecutor v. Blé Goudé*, Case No. ICC-02/11-02/11-186, Decision on the Confirmation of Charges, 11 December 2014, para. 131.

<sup>9</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeals Chamber Judgment, 29 July 2004, para. 101.

country. During the initial weeks following the military seizure of power, there were few reports of violent responses by security forces and it appears that the security forces avoided the use of lethal force at public protests. However, within a few weeks, there was a noticeable change of tactics, as security forces started employing lethal force, including the use of live ammunition, against protesters in multiple locations.

35. All of the preliminary information available to the Mechanism requires further verification and analysis. The Mechanism continues to collect and analyse evidence relevant to these matters and welcomes further submissions of information. However, in determining whether the recent events in Myanmar fall within its mandate, the Mechanism is of the preliminary view, based on its analysis of the available information summarized above, that Myanmar security forces have committed serious international crimes since seizing power on 1 February 2021. The available information indicates that security forces have carried out a widespread and systematic attack on the civilian population. In this context, the reports of murders, sexual assaults, arbitrary detentions, enforced disappearances, torture and persecution collected by the Mechanism, if substantiated, would amount to crimes against humanity. Therefore, the Mechanism will continue to collect, attempt to verify, and analyse information on specific serious international crimes and human rights violations that may have been committed. In accordance with its mandate, it will also seek the crucial evidence that can be used in courts or tribunals to prove, to the high standards of proof necessary for conviction in criminal cases, which individuals bear criminal responsibility for these serious international crimes.

#### **Looking ahead**

36. The Mechanism will continue to refine its analytical tools, mainstreaming best practices and developing new products that cover cross-cutting contextual elements, patterns and structures or particular incidents and situations. In this regard, it is important to recall that the Mechanism is not a prosecutorial body or a court. Thus, it is dependent upon competent national, regional and international authorities to commence criminal proceedings in relation to the most serious international crimes and violations of international law committed in Myanmar since 2011. In order to maximize the use of the evidence it collects and contribute to criminal accountability processes, the Mechanism will engage with the authorities of jurisdictions that may potentially use its information and files, and proactively keep itself abreast of any ongoing activities, investigations or legal proceedings that may be relevant to its mandate.

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

37. The Mechanism has continued to engage with a variety of relevant entities and actors to negotiate and conclude cooperation arrangements or modalities to facilitate the implementation of the Mechanism's mandate. These arrangements concern the collection of information and evidence, the provision of logistical support or specialized services, and the conduct of its activities. This has included a diverse range of actors, including national authorities, United Nations partners, civil society actors, non-governmental organizations and business enterprises. Since it became operational, the Mechanism has concluded 38 cooperation arrangements for the collection, preservation and storage of information, documentation and evidence related to its mandate. In addition, the Mechanism has concluded agreements setting out modalities for the provision of specialized services and logistical support.

38. With regard to cooperation with Member States, the Mechanism continues to engage with States and intergovernmental organizations that may have relevant information and/or may be involved in legal proceedings within the Mechanism's mandate. As recognized by the Human Rights Council and the General Assembly, the cooperation of Member States, in particular those from the Asia-Pacific region, remains particularly important for the Mechanism's investigative activities, including to gain access to and interview witnesses in a manner that ensures their security and privacy. The cooperation of Member States is also needed in order to facilitate the protection of witnesses and prevent any reprisals for cooperation with the Mechanism.

39. Due to the significant constraints placed on travel and in-person meetings as a result of the COVID-19 pandemic, the Mechanism has been unable to progress as planned in its objectives to conduct in-person high-level missions to relevant Member States in whose territories it expects to conduct its activities. Nevertheless, the Mechanism has supplemented such engagements through regular contacts with Member States and relevant authorities in a manner that ensures the confidentiality of the Mechanism's activities and the safety and security of its interlocutors and personnel.

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 will continue to reach out and seek a cooperative relationship with Myanmar, in light of General Assembly resolution 75/238 of 31 December 2020, in which the Assembly called upon Myanmar to cooperate and meaningfully engage with the Mechanism, including by granting unrestricted access for its activities, and with Human Rights Council resolution 46/21 of 24 March 2021, in which the Council made a similar call to relevant actors in Myanmar.

41. With regard to inter-agency cooperation, coordination and liaison, the Mechanism values the cooperation of a diverse set of United Nations partners and entities, both their headquarters in New York or in Geneva and their relevant field offices, including those working on issues related to Myanmar. The Mechanism continues to consult with international courts and other international accountability mechanisms to learn from their experiences and best practices, in line with the respective mandates of each entity. In accordance with its terms of reference, and to the extent synergies are possible, the Mechanism coordinates closely with these entities in the areas of mutual concern, such as information technology systems and data management, witness protection and support, and witness interviews, including on issues related to informed consent.

#### **Looking ahead**

42. Resuming in-person high-level dialogue with key Member States will be a critical priority of the Mechanism for the upcoming reporting period. Cooperation with the Mechanism will depend in part on its ability to build and sustain trusting relationships with essential partners. While remote means will continue to facilitate ongoing engagements, such means would not be an appropriate modality for the dedicated and multilayered negotiations that such arrangements require. 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.

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

43. Public outreach remains a priority of the Mechanism. Communication and public outreach activities continued to play an essential role in promoting a greater understanding of the complex work of the Mechanism and fostering cooperation. In line with the multipronged approach set out in its communications and public outreach strategy of 2020, the Mechanism continued to develop and use various communication tools to explain its mandate, activities and outputs to relevant stakeholders, in particular witnesses and victims.

44. As in-person travel and direct contacts with relevant stakeholders were significantly reduced due to the pandemic, the Mechanism adjusted its communications strategy, adapting it to new circumstances. In view of maintaining an uninterrupted flow of information about its activities, the Mechanism made increasing use of its website, social media and periodic bulletins to communicate effectively with relevant stakeholders. The Mechanism also engaged in dialogue with various groups through virtual means and contacts.

45. The Mechanism's website and social media platform have become powerful vehicles for the dissemination of accurate and timely information about the Mechanism's work and mandate. Monitoring by the Mechanism shows that tens of thousands of people are visiting, sharing and amplifying this information in Myanmar and around the world. The Mechanism regularly updates its official website in the English and Myanmar languages. Since issuing its inaugural bulletin in May 2020, the Mechanism has issued several subsequent editions. The bulletins continue to serve as a key tool to provide more in-depth updates about the progress of the work of the Mechanism, highlighting particular initiatives and answering

frequently asked questions about various topics of interest within the Mechanism's mandate. In October 2020, the Mechanism launched a page on Facebook to further bolster its outreach efforts and to share information more widely with civil society actors and the public in Myanmar. This was one of the key recommendations of the survey of civil society actors that the Mechanism conducted in 2019.

46. Recent developments in Myanmar have significantly increased public interest in the work of the Mechanism. In order to explain how the Mechanism's ongoing mandate relates to current events in Myanmar, the Head of the Mechanism has participated in various interviews with national and international media. In a highly fluid situation, managing expectations about what the Mechanism can and cannot do within its mandate has been an essential component of these outreach efforts.

47. In parallel, the Mechanism has consistently engaged with and provided in-person or online briefings to representatives of Member States in Geneva at the ambassadorial and working levels. The Mechanism has also provided online briefings to representatives of Member States in New York and in their capital cities and to regional and intergovernmental organizations. It has maintained regular dialogue with United Nations entities and civil society actors based in the Asia-Pacific region and elsewhere. The Mechanism has also participated in several high-level public online events organized by Member States, civil society actors and United Nations entities on topics related to justice and accountability.

48. The safety of those with whom the Mechanism interacts continues to be of the utmost importance. In this regard, the Mechanism has used its public communication platforms to convey the importance of secure means of communications to help ensure the safety and security of both stakeholders and Mechanism personnel, and the confidentiality of the information exchanged or its engagements.

#### **Looking ahead**

49. For the upcoming reporting period, the Mechanism will seek to expand its engagement with civil society stakeholders working on issues related to Myanmar to better understand their needs and to facilitate more in-depth and structured dialogue with the Mechanism. This will enable civil society stakeholders to engage more meaningfully with the work of the Mechanism, thereby promoting greater understanding and confidence in the Mechanism's contribution to international criminal accountability processes.

50. For 2022, the Mechanism seeks to make more information available in the languages of Myanmar, to work closer with local partners on providing accurate information about the Mechanism and to try to reach a broader and more diverse audience by utilizing different media channels, such as radio and television.

### **III. Operational developments enabling mandate implementation**

51. The Mechanism continued to develop robust governance framework, technology infrastructure and administrative and operational support systems to enable concrete progress on the substantive priorities set out above. During the reporting period, the Mechanism continued to implement the concept of operations put in place by the Head of the Mechanism in 2019, adapting it as necessary in response to the continuing impact of COVID-19. In line with a more streamlined and leaner budget approved by the General Assembly for 2021, the Mechanism continued to build its infrastructure and expertise, refine its administrative processes and consolidate its capacities.

#### **A. Foundational policies, protocols and procedures**

52. The Mechanism remained on track to develop a comprehensive set of foundational policies, protocols and procedures to guide its activities in line with its strategic priorities. In this regard, the Mechanism has adopted over 50 policies, protocols, procedures, guidelines and directives covering a wide range of activities, including case selection and prioritization; investigations and witness interviews; informed consent of information providers and

witnesses; information processing; classification and handling of sensitive information; and security and administration. The perspectives of diverse victims/survivors' groups have been carefully integrated, and the Mechanism is developing specialized policies for addressing victims/survivors of sexual and gender-based crimes and crimes against children. Important progress has also been made on the preparation of security procedures relating to operations both at the Mechanism's premises and in the field.

53. In line with its terms of reference, these foundational documents are 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, as well as relevant jurisprudence. Demonstrating a continuing commitment to learning, the Mechanism continues to draw upon and integrate the good practices of other comparable international accountability mechanisms, where applicable and relevant to its mandate. The Mechanism plans to finalize its core foundational documents by the end of 2021.

## **B. Infrastructure and technology**

54. In December 2020, the Mechanism moved into its new office facility located at the premises of the United Nations Office at Geneva. As stated in its previous report to the Council, the prefabricated office facility was constructed after the Mechanism determined that it was the most cost-effective and technically acceptable option, accruing significant savings for the Organization, yet ensuring the fulfilment of the Mechanism's requirements for mandate implementation, including with regard to the storage of physical evidence, safety and the security and confidentiality of operations and activities. The Mechanism's new premises and its office layout were designed to ensure access by and inclusion of persons with disabilities, and the Mechanism will ensure that the management of its facilities will further advance inclusion to facilitate easy access and use by persons with disabilities.

55. As noted above, the Mechanism has also made significant progress in the definition, design and implementation of its core specialized technology and infrastructure for handling the information, evidence and material that it receives and collects. With regard to the processing of collected material, the Mechanism has continued to procure and operationalize additional necessary software and equipment to process and record all new material. In addition to the suite of enabling technologies noted above, the Mechanism has also established a dedicated forensic data processing laboratory in its newly constructed office premises, which will enable the performance of advanced analysis and processing of any material it receives. To complement the electronically stored information management system, the Mechanism has established a secure physical storage facility, with various layers of security protections, for the preservation of its physical and digital evidence. As part of the development of its core technology requirements, the Mechanism has established a data storage solution that facilitates the incoming and outgoing flows of material provided to and from the Mechanism in a secure and confidential manner.

56. Looking ahead, the Mechanism is assessing technology solutions, in conjunction with a suitable information governance framework, to establish a comprehensive information management system that covers the entire repository of its materials, including through the development of appropriate procedures for the long-term storage of and access to such material and records, in line with its terms of reference. Furthermore, the Mechanism is in the process of procuring multiple secure cloud-based platforms to bolster its forensic capabilities.

## **C. Administrative and operational support**

57. The Mechanism has made important progress in establishing administrative and operational support structures that enable essential activities related to the administration of its resources and infrastructure, the recruitment and selection of personnel, the coordination of security services, the provision of language services and the protection and support of witnesses and victims.

58. Another critical priority of the Mechanism over the reporting period has been the finalization of the recruitment of a team of highly experienced and innovative professionals with a diverse range of expertise and specializations. In this regard, the Mechanism has redoubled efforts to expeditiously recruit personnel in line with its priority schedule, which matches the timing of the recruitment of personnel with the substantive strategy. While most recruitment efforts were delayed or postponed in 2020 due to the United Nations hiring freeze, barring any unforeseen circumstances or additional liquidity constraints the Mechanism expects to meet its recruitment objectives for 2021.

59. As of June 2021, the Mechanism has filled nearly 75 per cent of the total positions approved by the General Assembly for 2021 and is well advanced in the recruitment process for many of the remaining positions. The recruited personnel bring expertise in the areas of international criminal law, international human rights law, international humanitarian law, criminal investigation and prosecution, legal cooperation, information systems management, storage and preservation of information, military matters, sexual and gender-based crime and violence, crime against children, information technology and security, witness protection and support, and language support. In line with the terms of reference, due consideration is given to the representation of different legal traditions, geographic diversity, gender balance, regional expertise and relevant language skills.

60. 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 remote-working situation, the Mechanism arranged online training sessions to keep its personnel updated on the relevant areas during the COVID-19 pandemic period. With a view to leveraging opportunities and maximizing efficiencies, the Mechanism collaborates regularly with other accountability mechanisms on the organization of training and other learning activities.

61. In the area of language support, the Mechanism is continually seeking to increase its specialized capacities in the many languages spoken in Myanmar to ensure that it can engage with interlocutors and stakeholders in their language(s). In this regard, the Mechanism is both developing internal language capacities to support collection and analytical work and deploying external support to cover the Mechanism's extensive translation and interpretation needs.

#### **IV. Conclusion**

62. **In less than two years, the Mechanism has made concrete progress to swiftly advance its substantive activities and set up foundational and core infrastructure to enable the longer-term implementation of its mandate. With remarkable agility for a new institution, the Mechanism quickly adapted to new challenges and contextual developments, adjusting working methods and strategically allocating its lean resources.**

63. **The Mechanism will continue to build on the momentum it has achieved to date in order to further deepen its substantive work on all fronts, in particular by conducting missions to interview and collect evidence from witnesses and other information providers. As demonstrated by the recent events in Myanmar, the Mechanism's substantive activities are only expanding. It is therefore crucial that the Mechanism, as called for by the General Assembly in its resolution 74/246, is 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.**

64. **The full and meaningful cooperation of all parts of the international community, especially Member States, will remain essential. Without such support, the Mechanism will be hindered from fully delivering on its mandate and playing a unique role in facilitating and supporting criminal proceedings that advance accountability and help render justice for the people of Myanmar.**