

Lessons Learned from the First Generation of UN Investigative Mechanisms for Future Criminal Accountability:

Considerations for CSO engagement with the United Nations Independent Investigative Mechanism for Myanmar

An Analysis by the Ferencz International Justice Initiative



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Key Report Highlights

This report—*Considerations for CSO Engagement with the United Nations Independent Investigative Mechanism for Myanmar* (Report)—is designed primarily to inform and assist civil society organizations (CSOs) from Myanmar that may wish to engage with the Independent Investigative Mechanism for Myanmar (IIMM). The Report highlights a number of recommendations for CSOs and mechanism officials' consideration (see pp. 14-16); a subset of those is highlighted on this page.

- **Clarify the IIMM Mandate and Set Expectations**

It is critical that CSOs and victims' communities planning to engage and work with the IIMM fully understand the extent and limitations of its unique mandate. The IIMM represents one important but discrete step toward justice and accountability by preparing case-files for future prosecutions; the IIMM is not mandated to prosecute perpetrators itself. CSOs and other justice champions will need to continue to advocate for an independent court(s) to try these cases. Working effectively with the mechanism will be a *long-term* endeavor, and should be viewed as a new, additional opportunity for human rights engagement that complements—not replaces—ongoing work.

- **Anticipate a Potential Gap in Independent, Public Reporting & Advocacy**

While the IIMM represents a strong step toward international accountability, it must adhere to strict confidentiality requirements when creating legal case-files. Given that the IIMM's creation coincides with the end of the Fact-Finding Mission's (more public) mandate, it likely will leave an important public and independent reporting and advocacy gap. CSOs and NGOs engaged in human rights advocacy for political change in Myanmar should consider carefully how to maintain and build pressure through other processes. States should consider ways to ensure the Special Rapporteur and other UN mechanisms are equipped and sufficiently resourced to address this gap.

- **Support Security and Witness Protection**

As the IIMM may offer few resources for security and witness protection, civil society organizations, international NGOs, and governments should establish appropriate programs and security infrastructure to ensure that engagement with the IIMM does not endanger witnesses and victims' communities.

- **Ensure Communication and Engagement with Affected Communities**

Regular and transparent communication, coordination, and engagement between Mechanism officials and affected communities are key to maintaining trust in and political support for the Mechanism's long-term mandate. Dedicated IIMM outreach personnel and points of contact, as well as official agreements (e.g., MOUs and protocols), and opportunities for dialogue and capacity building, can foster positive working relationships.

I. Introduction and Purpose

1. The struggle for justice and accountability in Burma/Myanmar (hereinafter Myanmar¹) has reached a milestone. Until now, concrete steps to address impunity for the most serious international crimes committed by the military—including well-documented patterns of mass atrocities indicating war crimes, crimes against humanity and genocide—have largely been *ad hoc*, partial, or symbolic. In 2018, however, Member States of the United Nations (UN) Human Rights Council took the extraordinary step to pursue justice and accountability with the establishment of the Independent Investigative Mechanism for Myanmar (IIMM). While there is no guarantee that the IIMM process will lead to meaningful accountability, it provides the best chance to date. The engagement of CSOs with the IIMM will be an essential part of the process.
2. This Report is designed primarily to inform and assist CSOs from Myanmar that may wish to engage with the IIMM. Based on desk research and interviews with UN staff and CSOs working with similar mechanisms in other contexts, the Report aims to help CSOs from Myanmar better appreciate what to expect in terms of the risks, benefits, and the various forms of engagement with the IIMM. The Report can also assist IIMM staff to build the best possible relationship with CSOs from Myanmar.
3. The Ferencz International Justice Initiative consulted UN staff and civil society activists working at, or engaged with, the following investigative mechanisms (collectively referred to as “the Mechanisms”)²:
 - Syria: The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic Since March 2011 (Syria IIM);
 - South Sudan: The Commission on Human Rights in South Sudan (CHRSS); and
 - Iraq: UN Investigative Team for Accountability of Da’esh (UNITAD).

II. UN Investigative Mechanisms: A recent trend

4. The first international courts to prosecute atrocity crimes were the post-World War II tribunals at Nuremberg and Tokyo. Due largely to the political constraints of the Cold War period, the second ‘generation’ of international tribunals were not established until the mid-1990s. Over the last 25 years, international criminal tribunals and hybrid courts have been mandated to address atrocity

¹ The UN uses Myanmar; the US Holocaust Memorial Museum generally uses “Burma/Myanmar” or “Burma.” Given that this research focuses on the UN mechanism, Myanmar is used in this report.

² See Annex B for a detailed comparison of these three country-specific mechanisms and the IIMM.

crimes³ from various conflicts, including the former Yugoslavia, Rwanda, Sierra Leone, East Timor, Cambodia and the Central African Republic. The first permanent atrocity crimes court, the International Criminal Court, was established in 2002 by international treaty, with its jurisdiction limited by the State Party system.

5. In recent years the political momentum has shifted again. Disappointed with slow trials and mounting costs of many UN-backed courts, and hobbled by Russian and Chinese objections, the UN—with support from states committed to international justice—have sought out other options to pursue justice for atrocity crimes, particularly in countries where accountability is unlikely to be achieved through the domestic justice system. This has led to UN Member States establishing international, independent investigative mechanisms—through the Security Council, Human Rights Council, and the UN General Assembly—which are mandated to prepare case-files for future criminal prosecutions.
6. There is significant overlap between the mandates of (a) UN-mandated commissions of inquiry and fact finding missions and (b) UN-mandated investigative mechanisms. Both types collect, analyze, and preserve information and evidence of serious human rights abuses and/or international crimes. Commissions of inquiry and fact finding missions are usually mandated to undertake human rights investigations, focusing on establishing what happened, through witness testimony, for example. The investigative mechanisms take one-step closer to prosecutions by preparing complete case-files—for specific crimes and against named individual perpetrators—to a criminal law standard (see paragraph 12). This is why the investigative mechanisms may be seen to be more like international crimes institutions, rather than human rights bodies.
7. However, unlike international criminal tribunals and hybrid courts, these investigative mechanisms do not have built-in judicial chambers and do not (currently) have the authority to charge individuals or prosecute them directly. Rather, they must send the case-files to *other* courts for prosecution (see paragraph 12). The IIMM is the latest manifestation of this type of mechanism.

III. The IIMM: An overview

a. Mandate and Limitations

8. Building on the political momentum established by reports from the Special Rapporteur for Human Rights in Myanmar (Special Rapporteur) and the Independent International Fact-Finding Mission on Myanmar (FFM), the mandate of the IIMM was established by Member States in the UN Human Rights Council in its resolution 39/2, adopted in September 2018:

22. Decides to establish an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international

³ “Atrocity crimes” is a non-legal term generally used to refer to genocide, crimes against humanity, and war crimes.

law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;

23. Also decides that the mechanism shall:

- (a) Be able to make use of the information collected by the fact-finding mission and continue to collect evidence;
- (b) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with other entities, as appropriate;
- (c) Report on its main activities on an annual basis to the Human Rights Council as of its forty-second session and to the General Assembly as of its seventy-fourth session.

9. The creation of the IIMM was welcomed by Member States in the UN General Assembly in its resolution 73/264, adopted in December 2018, which also highlighted the importance of cooperation with the Special Rapporteur and FFM.
10. Despite the robust investigative mandate, the IIMM is **not** a full-blown international court. ***Like the other investigative mechanisms, although the IIMM can create legal case-files—including with named suspects—it cannot prosecute, hold judicial hearings, or make judicial findings.*** Therefore, cases that utilize the evidence collected by and case files developed by the IIMM will be heard in “national, regional or international courts or tribunals.” There is a range of current or future courts that could be used; potential options include:
 - The establishment of, and prosecution through, a future *ad hoc* international tribunal located in another country;
 - Prosecution of select criminal cases in national courts in other countries, either in States with a jurisdictional ‘hook’ (such as the presence/residence/nationality of a perpetrator or victim) or in States that permit prosecutions under universal jurisdiction;
 - Prosecution of selected criminal cases in the International Criminal Court involving crimes against humanity for deportation (assuming jurisdiction has been established and accepted through Bangladesh’s status as a State Party of the ICC); and
 - Prosecution for immigration violations in national courts of other countries.
11. Ideally, future criminal trials would take place in the presence of the suspect. However, even if the suspects cannot be apprehended, trials could take place *in absentia* (depending on the relevant rules of the court). In addition to criminal prosecutions and immigration proceedings, there may also be civil cases brought by plaintiffs in other national courts or quasi-judicial / political options targeting the named suspects. Examples include individual sanctions for human rights violations under national sanctions regimes, such as the US Global Magnitsky Human Rights and Accountability Act, or the UK Sanctions and Anti-Money Laundering Bill 2018.

b. IIMM and FFM: Key differences

12. In considering engagement with the IIMM, CSOs should note the differences between the IIMM and FFM in terms of the likely approach to evidence collection and public reporting:

- *Evidence collection*: The FFM’s establishment of facts and circumstances has essentially laid the groundwork for the IIMM’s further investigations. But since the IIMM’s core mandate is specifically to “prepare files in order to facilitate [...] criminal proceedings” (rather than to expose human rights violations generally) its investigations may include additional requirements and formalities when it comes to collecting evidence. For example, the IIMM will need to develop a theory of responsibility and collect “linkage evidence” that connects specific crimes to individual perpetrators, establishing all elements of a crime as defined by the Rome Statute (e.g., evidence showing the widespread or systematic nature of a crime; evidence showing the intent of the perpetrator). Furthermore, the Mechanism will need to be able to show proper “chain of custody” for evidence it collects. These legal standards are designed to ensure that future prosecutions succeed, but can sometimes be difficult to navigate for CSOs unfamiliar with the documentation standards. CSOs may be asked to provide background information relating to their taking of witness statements and handling of evidence, as well as maintain records of how and where they obtained documentary or other physical evidence in order to preserve (and be able to establish) chain of custody. CSOs can and should request assistance—from donors, the IIMM, and international NGOs with investigation expertise—in developing protocols for collecting information to a criminal justice standard.
- *Public reporting*: In contrast to the FFM and Special Rapporteur, the IIMM’s analysis, casework and intentions are more likely to remain confidential. Since it will focus on preparing case-files, it is less likely to release detailed reports about specific crimes or call for the types of political measures urged by the FFM, such as financial isolation,⁴ targeted sanctions and arms embargoes.⁵ The IIMM’s public reporting function is limited to “its main activities on an annual basis.” Therefore, CSOs may find that the IIMM puts very little information of its analysis and case strategy into the public domain. Given that the mandate of the FFM is ending and there is not a support team for the Special Rapporteur, this could leave an important gap that states, CSOs, and multilateral institutions should consider.

c. Potential Benefits of the IIMM for the Fight Against Impunity

i. The Bigger Picture

13. Building an international crimes case for prosecution tends to require an analysis of complex crimes committed as part of a broader system, which often involve widespread or systematic attacks. Proving the criminal liability of individual actors often involves an assessment of patterns of behavior over time and space, as well as formal and informal relationships within complex

⁴ See for example, “UN Independent International Fact-Finding Mission on Myanmar urges financial isolation of Myanmar military,” FFM, May 14, 2019, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24608&LangID=E>.

⁵ See for example, “UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions and arms embargoes,” FFM, August 5, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24868&LangID=E>.

networks. Therefore, while CSOs may have expertise in a particular geographic or thematic area, they are unlikely to have all the evidence necessary to create a complete case-file.

14. One of the main advantages of the IIMM is that it can collate evidence from multiple sources, inside and outside Myanmar, and build a comprehensive picture of the most serious crimes and related individual responsibility. Evidence collected by certain CSOs that may seem insignificant in and of itself, may become far more relevant when combined with evidence collected by others. The ability to crosscheck evidence will allow the IIMM to establish reliability.
15. By becoming the central repository for evidence of mass crimes in Myanmar, the IIMM will be uniquely placed to establish the bigger picture and maximize chances of successful prosecutions in the future.

ii. Evidence Storage

16. Safe and secure storage of evidence is a major challenge for CSOs from Myanmar. With its substantial resources and UN backing, the IIMM will likely have the state-of-the-art evidence storage and management systems to ensure secure preservation and maintenance of evidence. With the establishment of the IIMM, human rights data from 2011 onwards will have a reliable, secure, and confidential home.

iii. Expert Analysis

17. Assisted by the digital evidence management systems, the IIMM's international criminal law experts will be able to organize, crosscheck, and analyze vast quantities of data. With experience in international courts, the IIMM staff will have the capacity to build cases and make assessments to the required international standard.

iv. Capacity Building / Legacy

18. Through interacting with the IIMM, CSOs from Myanmar will gain insight into the international standards required for evidence collection and will be well-placed to improve their own internal practices and methodologies for documentation. The IIMM's acceptance of evidence and witness testimony may be seen as a stamp of approval for CSOs and increase the long-term credibility of their crucial work on accountability in the eyes of the host government, the donor community, and foreign and international tribunals.

v. Maintaining International Focus

19. With the 24-hour news cycle and fast moving diplomacy, even the most horrendous events can slip off the political agenda. With the release of its final report in September 2018, the FFM's work will soon come to an end. Therefore, the establishment of the IIMM should help the international community to remain focused on the mass crimes committed in Myanmar, but this will likely require support from and coordinated advocacy by civil society organizations. With coordinated and consistent advocacy from civil society, the existence of the IIMM could:

- Encourage Member States of the UN to set-up an *ad hoc* tribunal to prosecute the crimes and/or encourage national courts in other countries to prosecute cases through universal jurisdiction; and

- Serve to discourage the commission of further abuses.
20. CSOs that engage with the IIMM should find creative ways to foster diplomatic and public pressure, particularly in circumstances where the IIMM is unable to do so.

d. What to Expect

21. The IIMM is in the set-up phase. On April 2, 2019, the UN Secretary-General appointed an experienced (US national) war crimes prosecutor—Nicholas Koumjian—to serve as Head of the IIMM. Over the coming months the IIMM will continue to hire staff, establish its systems and internal protocols, and start engaging with CSOs. The IIMM will be based in Geneva; it may also set up a regional office in Asia.
22. From mid-2020 onwards the IIMM’s evidence collection and analysis teams will likely be operational. It will collect crime-base evidence (to establish the elements of the international crimes) and linkage evidence (to establish the individual responsibility of the perpetrators). Once the evidence has been entered into the data management systems and analyzed, the IIMM will start creating case-files. It may take several years before the first case-file is ready to forward to a prosecutorial body.
23. At this stage it is impossible to know what crimes and cases will be prioritized. Like any criminal investigation, the IIMM must “follow the evidence.” It may start with the “low hanging fruit” (i.e., cases that are easiest to prove) or with cases that have the most obvious jurisdictional link to a willing national court. Whatever the ultimate order of cases, it is important that CSOs do not see the order as a sign of political / ethnic bias by the IIMM. The IIMM will undoubtedly *attempt* to create case-files representing the full spectrum of atrocity crimes in Myanmar. The best way for CSOs to ensure that cases from their region are prioritized is to provide the IIMM with credible and reliable evidence as quickly as possible.

IV. Risks, Frustrations, and Best Practices: Lessons learned from other investigative mechanisms

24. When deciding whether or not to engage with the IIMM, CSOs and individual victims must take into account a range of sensitive issues. While the IIMM provides the best chance of obtaining justice for victims in the future—and CSO engagement is key to its success—, engagement may come with several significant risks and frustrations. Based on interviews with CSOs and UN staff working with the Mechanisms for Syria, South Sudan, and Iraq, this section discusses the main issues that may arise and the best practices employed at these other Mechanisms.

a. Communication, Feedback, and Transparency

i. Initial Engagement: Explaining the role and mandate

25. CSOs particularly appreciated the early meetings held between Mechanism officials and civil society leaders. These helped create personal connections between key actors and build trust from the outset.

26. However, with multiple international bodies engaged in investigations in each country, several interviewees noted the challenge of distinguishing them from one another. Syrian activists stressed that it took more than a year for some CSOs and victims' groups to fully understand the specific role of the Syria IIIM. South Sudanese CSOs thought that victims could still not differentiate between the various international bodies, noting that the CHRSS's information sheet merely restated its formal mandate, without explanation. CSOs would have appreciated straightforward explanations from the outset, written (and translated) in simple language and distributed amongst CSOs and grassroots victims' communities.
27. CSOs also felt that basic information on the Mechanisms' structures, staffing, locations, travel schedules, and timelines should have been shared more openly. This would give them a better sense of when engagement would start and how intensely. For example, CSOs were surprised to learn that the Mechanisms' slow start was due to the lengthy recruitment processes for UN staff.
28. In the case of Myanmar, it will be particularly useful for CSOs across the country and in refugee camps to understand the differences between the IIMM, FFM, Special Rapporteur, and the Special Envoy. With this information, CSOs will be in a better position to raise awareness and moderate expectations among grassroots communities.

ii. MOUs and Acknowledgements

29. In the case of Syria, CSO activists were invited to help formulate a general protocol for CSO cooperation and engagement, with one CSO taking the lead on drafting the protocol.⁶ Being included in the process was much appreciated and gave CSOs a sense of ownership.
30. Specific MOUs between individual CSOs and the Syria IIIM (often from templates that were adjusted to each organization) have also been used to structure relationships. Tens of MOUs have been signed. These have enabled Syrian CSOs to individually negotiate and clearly understand the terms of their engagement, including ownership of data, restrictions on how data can be used, and sharing of information. Such MOUs were used less in South Sudan and Iraq.
31. Some CSOs were initially reluctant to hand over evidence to the Mechanisms, believing that it could weaken their organization. When the Syrian IIIM started to provide CSOs with official receipts for the evidence they handed over, this helped encourage CSOs that had initially been reluctant to share data. Receipts have been used by CSOs to demonstrate credibility for their human rights work and thereby to raise funds.

iii. Ongoing Information Sharing

32. CSOs engaged with the Syria IIIM were generally very satisfied with the efforts made to provide *general* information. These included the Lausanne process (a semi-annual meeting funded by Swiss and Dutch donors for CSOs to engage with the Syrian IIIM); the appointment of an Arabic-

⁶ Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform, April 3, 2018, https://iiim.un.org/wp-content/uploads/2018/04/Protocol_IIIM_-_Syrian_NGOs_English.pdf.

speaking outreach officer within the IIMM; and English and Arabic-language information bulletins. These types of initiatives should be considered for the IIMM. Syrian activists particularly appreciated the attendance of the head of the Syrian IIMM at the Lausanne process, which they saw as a sign of respect. CSOs felt that the Syrian IIMM should have made greater use of external advisors to help navigate the complexities of Syrian politics and groups.

33. Although satisfied at a general level, activists in Syria and South Sudan were frustrated by the lack of feedback on the actual development of case-files and prosecution strategy. CSOs recognized the need to maintain confidentiality in terms of naming suspects, but felt that the Mechanisms could have done more to keep CSOs in the loop regarding the overall direction and strategy.

b. Managing Expectations

34. Many CSOs in Myanmar have expressed skepticism about the Khmer Rouge tribunal's high cost and only three accused perpetrators being convicted.⁷ Although future prosecutions relating to Myanmar may not face the same hurdles as Cambodia,⁸ the ECCC's limited record may help put expectations into perspective. If Myanmar CSOs and victims expect the IIMM to quickly initiate prosecutions of a large number of Tatmadaw officers, they are likely to be disappointed. With the Myanmar government and military intent on resisting accountability, CSOs should temper both their own and victims' expectations in terms of numbers and timing of prosecutions.
35. Syrian and South Sudanese CSOs agreed that Mechanism officials had been frank and realistic about the prospect of prosecutions in the near future. CSOs had been told not to expect quick results. While this honesty was appreciated, CSOs remained concerned that many victim communities still held unrealistic expectations of prosecution and restitution, which could lead to a lack of faith in the Mechanisms' work and limit its impact at the national and community-level.

Risk Mitigation Tips

CSOs should consider:

- Preparing to engage with the IIMM over a sustained period, probably several years and perhaps many years, before 'seeing' any results; and
- How to help the IIMM to manage the expectations of victims and affected communities so as to avoid disappointment and maintain trust.

⁷ The Extraordinary Chambers of the Courts of Cambodia (ECCC)—a hybrid justice tribunal to prosecute crimes committed by the Khmer Rouge in the 1970s that many CSOs working for justice and accountability in Burma look to as a comparative learning opportunity—has only convicted three accused after more than a decade at a cost of \$300 million. Articles referencing the cost and length of the Khmer Rouge tribunal were widely circulated among Myanmar civil society via social media. Many activists question the value of this process for victims and their families.

⁸ For example, the ECCC was established 30 years after the events, much of the evidence had been lost, and many of the senior leaders had died. Further, the Court was hobbled by a lack of funding and interference by the Cambodian authorities.

c. Intra-CSO Coordination for Engagement

36. In the Syrian case, semi-annual coordination meetings among CSOs working with the IIM were generally driven by international donors and focused on basic information sharing.⁹ However, more coordinated action or programming among CSOs has been limited by competing programmatic strategies, internal priorities, and confidentiality concerns.¹⁰ While CSOs recognized the benefits of working together to some degree—collective recommendations are taken more seriously, for example—they also warned against Mechanisms trying to impose coordination on unwilling CSOs, which they saw as counter-productive. UNITAD staff noted that it is sometimes easier to hold joint meetings with two groups from different ethnic groups (who do not compete) than two groups from the same ethnicity (who may be in competition).
37. In South Sudan, coordinated engagement with the CHRSS among CSOs was more natural, as much of the work was built from an existing coalition working on transitional justice. To be more effective for engagement with the CHRSS, one South Sudanese activist noted the need for civil society to cluster their coalitions around particular specialties, regional themes or types of crimes, such as sexual violence, prisons, or disappearances. These clusters or working groups could help coordinate the collection and packaging of evidence for the CHRSS.

d. Security and Confidentiality Issues

38. One of the greatest risks associated with human rights documentation (or providing evidence as a victim) is the danger of reprisal by the alleged perpetrators. In countries like Syria, South Sudan and Myanmar, where the current state actors (including security forces) may be targeted for prosecution, the dangers are very real.
39. Given the Myanmar Government's aggressive rejection of the UN Special Rapporteur for Human Rights in Myanmar, the FFM, and the IIMM, CSO staff engaging with the IIMM may risk reprisal from government actors or ultra-nationalist groups. While CSOs have long been cognizant of the risks associated with human rights activism, international justice processes that target abuses perpetrated by the military are particularly sensitive. As travel to Myanmar will likely be difficult for IIMM officials, human rights activists, victims, and witnesses may need to travel in and out of the country, potentially creating more points of interaction with suspicious or uncooperative authorities.
40. For Syria, many of the CSOs engaging with the Syria IIM did not operate within the Syrian Government-held zones and, therefore, did not fear for their physical safety; other CSOs which operated in dangerous environments had to take into account the risks government or non-government forces posed. By contrast, in South Sudan this was the foremost concern—activists

⁹ In another research project undertaken by the Ferencz Initiative, diplomats and UN officials working with victim groups and CSOs in various contexts have underscored that a coordinated strategy from civil society is more effective and more likely to influence international policy decisions.

¹⁰ It is interesting to note that in the Syrian case, most of the civil society organizations working on documentation and evidence collection emerged *after* the conflict and establishment of various other UN mechanisms in 2012/2013 (such as the COI).

had to be extremely careful how they communicated with victims, with international staff, and even within their organization. South Sudanese authorities not only monitor CSOs' phone and online messages, but they also attempted to infiltrate CSOs with intelligence officers. One activist noted that victims are sometimes followed or questioned by authorities following a visit by CHRSS investigators.

41. CHRSS staff were acutely aware of the security issues and implemented a number of careful measures to reduce the risks. In addition, South Sudan CSOs explained several ways that they mitigated the risks, some of which will not be exposed due to the public nature of this Report. These included minimizing communicating by phone or internet on sensitive issues until outside the country, being vigilant about infiltration, coordinating certain actions with like-minded CSOs (a "safety in numbers" approach), and engaging with the CHRSS in ways that reduced attention and according to agreed protocol. Finally, activists often chose to leave South Sudan for "cooling off" periods when the authorities started to focus on them.
42. South Sudanese activists would have liked the CHRSS to offer a more robust program of witness protection, including the possibility for victims to be physically removed from risky situations. However, the CHRSS has limited capacity and relies on the assistance of other actors to help endangered witnesses, such as international NGOs, foreign Embassies, and *ad hoc* local mechanisms. Activists from Syria and South Sudan would have appreciated more information, resources, and/or training from the Mechanisms on digital security.
43. For the case of Myanmar, an extensive but disjointed international and domestic support network exists for the protection of human rights defenders. CSOs from Myanmar are well-placed to ensure that victims and witnesses are cognizant of these networks, and that network coordinators have reliable connections to the IIMM, which may or may not establish its own witness protection unit or referral process. CSOs should also consider and coordinate demands to the IIMM for some manner of witness protection.

<p><i>Risk Mitigation Tips</i></p> <p>CSOs should consider:</p> <ul style="list-style-type: none">• Budgeting for and preparing internal security and contingency plans well ahead of time;• Establishing security protocols for phone and internet communications;• Forming larger coalitions / groups for engagement to minimize the chance of becoming an isolated target;• Requesting the IIMM to provide training / advice on communication / digital security; and• Requesting the IIMM to offer or facilitate witness protection measures for vulnerable witnesses.

e. Re-traumatization

44. CSOs and UN staff agreed that engagement with an investigative mechanism will likely require victims to recount their experiences again to different investigators, possibly in even greater

detail. This could cause re-traumatization for any victim, but particularly for those who suffered sexual violence or torture. The other Mechanisms were fully aware of this problem and sought to take this into account when working with vulnerable victims. The CHRSS, for example, works closely with local groups (often UN-funded) who provide services such as psychosocial and medical care, rehabilitation, and family reunification. However, considering the scale of the problem, the Mechanisms did not appear to have a sufficient number of specifically trained investigators and psychosocial experts.

45. In Myanmar, CSOs can play a crucial role in ensuring that the most vulnerable victims are properly identified and offered adequate protection and psychosocial support. This may require restricting interviews and requiring specially trained investigators.

Risk Mitigation Tips

CSOs should consider:

- Assessing vulnerable victims and minimizing the number of interviews they provide;
- Requesting the IIMM to conduct ‘trauma-informed’ investigations, including specially trained investigators for vulnerable victims; and
- Requesting the IIMM to provide psychosocial support (directly or through referral) to vulnerable victims, particularly children and victims of sexual violence and torture.

f. Training / Capacity Building

46. Almost all the civil society activists interviewed felt that the other Mechanisms could have done more to guide CSOs on investigative standards, tools, and techniques. CSOs were keen to understand the relevant legal requirements for evidence collection and handling. However, UN staff at the other Mechanisms noted that (i) they did not have a capacity building mandate and (ii) directly advising or training CSOs could create a conflict of interest. However, the CHRSS organized a yearly sexual and gender-based violence workshop and UN staff at all the Mechanisms acknowledged the obvious advantages of receiving evidence collected according to consistent and high standards.
47. The perceived conflict of interest issue can easily be overcome. If the IIMM proves reluctant to offer advice on investigative techniques and standards directly to CSOs, it can simply facilitate (and even fund) such training by third parties, such as INGOs or other legal technical experts. For example, the Institute for International Criminal Investigations is an independent NGO providing criminal justice and human rights professionals with the training necessary to investigate international crimes. CSOs can download, use, and be trained on the free phone application—Global Rights Compliance’s Basis Investigative Standards—which is specifically designed to

assist CSOs investigating mass crimes.¹¹ To derive the greatest benefit, such trainings should be done at the early stages of the process. CSOs from Myanmar should not hesitate to request such technical advice, training, specific templates, or theme-based guidance, as they deem necessary.

g. Public v. Private Mandate

48. In the case of Syria, two UN-sanctioned investigative bodies, namely the COI and the IIMM, operate simultaneously. The COI's findings are made public, whereas the IIMM's work tends to be private with a view to sharing only with prosecutors and judges at national or international courts and a handful of select other entities. In the South Sudan case, the CHRSS has a broader and more comprehensive mandate, essentially combining the elements of a COI and IIMM.
49. Given the similarities between the Syrian COI and the Myanmar FFM, as well as the Syrian IIMM and the Myanmar IIMM, Burmese CSOs engaging with the IIMM may lose a key avenue for international advocacy and diplomatic pressure as the FFM's mandate ends. Although the IIMM is informally framed as a "next step" from the FFM, as stated above (paragraph 13) it is more likely to keep its work confidential and less likely to call for certain political measures.
50. However, engaged CSOs can urge the IIMM to use its credibility and platform to interpret its annual reporting function as broadly as possible, without compromising its casework. This will help maintain public international pressure on the Myanmar government.

h. Increased Workload

51. Some CSOs from Myanmar may have to consider whether they have the organizational capacity and resources to shift programs toward evidence collection, which requires a specific skill set and may only be a part of their current mandate, if at all. This could be the case even if an organization has a long and credible history of human rights documentation. So far as the IIMM's work remains confidential, submitting evidence to the IIMM could limit the public use of the data for broader human rights advocacy and other quasi-political purposes. CSOs—particularly those with long-standing commitments within their own constituencies—may need to calibrate their workloads and program strategies to view engagement with the IIMM as a new and complementary addition to their existing work, and to plan accordingly.

i. Donor Relationships

52. The democratic nations that support the Mechanisms may also provide funding for human rights CSOs. Syrian activists noted that some donors used the funding as a way to "encourage" CSOs to cooperate and share data with the Syrian IIMM. Although CSOs understood the desire of donors to see investigations coordinated through the Syrian IIMM, certain CSOs resented donor funding

¹¹ See, "Basic Investigative Standards for International Crimes", Global Rights Compliance, (accessed September 13, 2019), www.globalrightscompliance.com/en/projects/basic-investigative-standards-for-international-crimes-investigations.

becoming conditioned on such engagement; some felt that such conditions could backfire, particularly if advocated by the Mechanisms themselves.

53. International donor support for the Mechanisms, and for CSOs to engage with them, has played an important role in fostering cooperation, building networks, and developing and maintaining political will for justice more broadly. However, in the face of sometimes shortsighted priorities of human rights donors, CSOs need to ensure that their funders are properly informed of any additional resources required to properly assist the Mechanisms. Equally, both the IIMM and donors should appreciate that certain CSOs may have legitimate reasons not to engage with the IIMM and should not be denied funding purely on that basis.

j. Inter-ethnic Tensions

54. All the Mechanisms deal with mass crimes committed against victims from multiple ethnic groups. In some instances, these groups have been in conflict with one another. The Mechanisms are aware of these tensions and try to avoid being seen as favoring one group over another. For example, UNITAD reached out to all ethnic communities who have suffered, focusing on those events and crimes that are under-documented.
55. The IIMM is unlikely to give equal attention to all the mass violations. It may appear that victims of certain ethnic groups are being prioritized. However, as with any legal strategy, some crimes will be considered ‘low-hanging fruit’ and prioritized for prosecution over others. This should not be seen as an ethnic bias or favoritism.
56. However, if certain groups feel excluded or sidelined, it could lead to declining support among grassroots constituencies. It is incumbent on CSO leaders to strengthen networks and information sharing, find inter-sectional priorities among different organizations’ streams of work, and take advantage of alliances among new players that will undoubtedly emerge.

V. Recommendations

57. With the IIMM in its set-up phase, many CSOs from Myanmar will consider whether and how to engage with this new international Mechanism. The following recommendations—drawn from the lessons of previous investigative mechanisms—should assist CSOs planning to engage with the IIMM, as well as the IIMM itself. Not all the recommendations will be relevant to all CSOs; activists can select those that appear most helpful.

CSOs from Myanmar should consider:

- Carrying out a risk-benefit assessment to ensure that engagement ‘makes sense’ for them and for the victims they represent (see key risk mitigation tips outlined in boxes above);
- How to deal with a reduction in public reporting by the IIMM (compared to the FFM) and whether to urge the IIMM to interpret its annual reporting function broadly;

- How to most effectively engage with Member States to ensure the Special Rapporteur and other UN entities can fill the public reporting and advocacy gap;
- How to most effectively engage with Member States to build support for future independent courts which will prosecute perpetrators of genocide and crimes against humanity;
- Whether and how to coordinate with other CSOs (both within and between ethnic and other identity-based groups) to maximize the effectiveness of engagement with the IIMM, Member States, and reduce the risk of isolation;
- What to request from the IIMM in terms of communication and feedback, such as private meetings, workshops, contact points, and bulletins;
- What technical information to request from the IIMM, such as:
 - Protocols for evidence collection;
 - Priorities in terms of crimes sites and types of evidence; and
 - Timelines for case-files;
- What training to request from the IIMM (either directly or through a third party), such as:
 - The standards required to ensure effective investigations, including chain of custody;
 - The recommended tools for investigations; and
 - Digital and personal security issues;
- How to play a positive role in developing a general protocol;
- Whether CSOs require individualized MOUs and, if so, what should be included;
- How to manage additional workloads and pressures associated with the IIMM;
- Whether to hire international experts to assist with the above issues; and
- How to use their networks in lobbying States to support the IIMM's investigations, as well as future prosecutions.

The IIMM should consider:

- How best to provide clear and effective explanations of the IIMM's mandate and role, including the difference between the IIMM and the FFM and Special Rapporteur;
- How to encourage CSO engagement with the IIMM, including through:
 - Initial in-person meetings chaired by the Head of IIMM;
 - Regular updates through workshops and bulletins;
 - Contact points who speak the main local languages;
 - A general protocol drafted with CSO input translated into the main local languages;
 - Specific MOUs catering for CSO concerns;
 - Receipts for evidence collected;

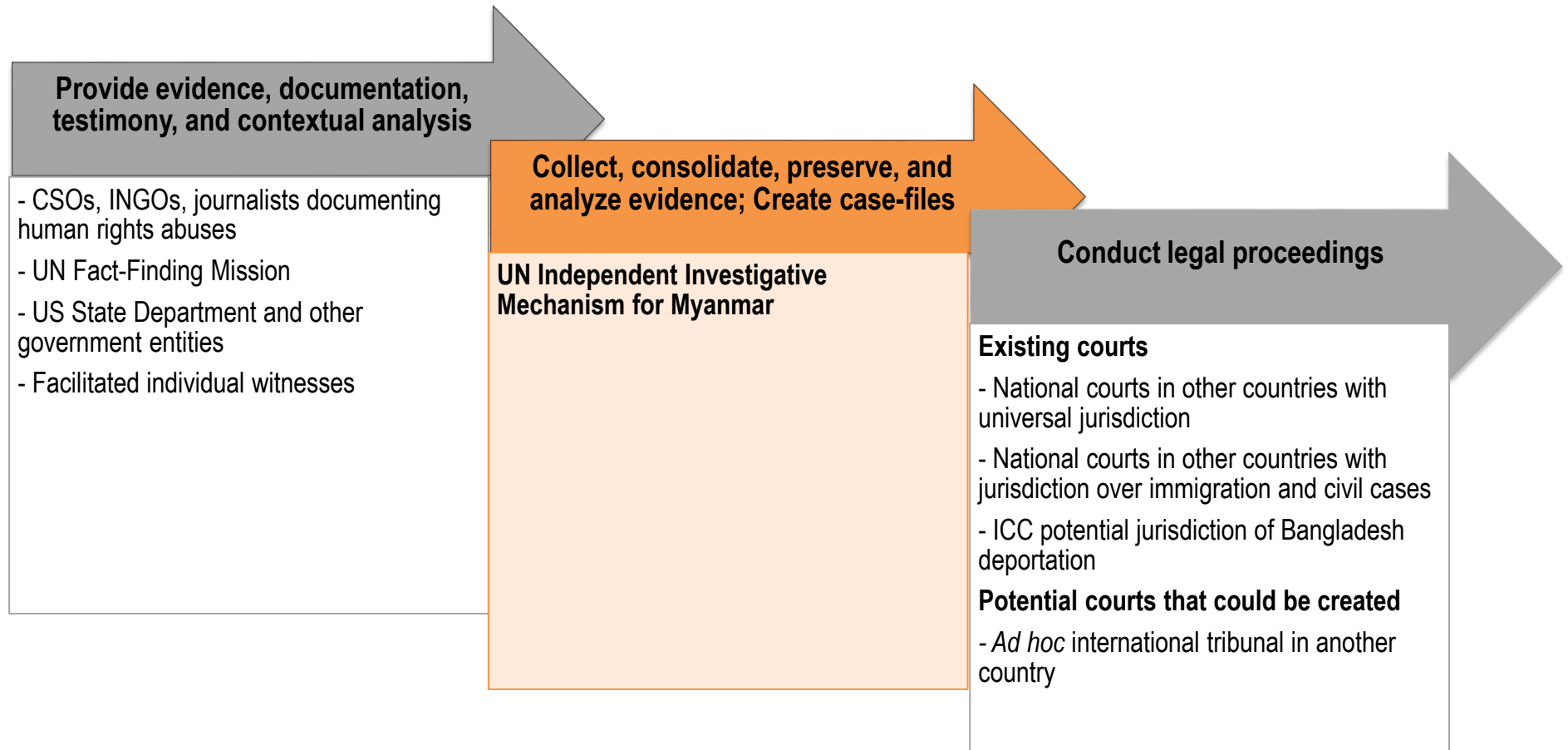
- How to balance the need for public statements and reporting to support CSOs' advocacy work, without compromising confidentiality;
- How to most effectively engage with Member States which could exert political pressure on the Myanmar government and/or which could lend support to future courts;
- How to encourage CSO engagement through donor support, without being coercive; and
- How to ensure CSOs receive capacity building on investigative techniques and standards, without creating conflicts of interest.

CSOs and the IIMM should together consider ways to mitigate the risks associated with:

- Safety and security of CSO staff and victims;
- Re-traumatization of vulnerable victims;
- Unrealistic expectations for CSOs and victims; and
- Additional ethnic tensions.

VI. Annexes

Annex A: The IIMM in the broader landscape of justice actors



Annex B: UN Investigative Mechanisms

UN mechanism	International, Impartial and Independent Mechanism (Syria IIIM)	Commission on Human Rights in South Sudan (CHRSS)
Mandating body	United Nations General Assembly	UN Human Rights Council
Relevant mandate text	To Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 under the auspices of the United Nations to closely cooperate with the Independent International Commission of Inquiry on the Syrian Arab Republic to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law...	(a) To monitor and report on the situation of human rights in South Sudan and make recommendations for its improvement; (b) To assess past reports on the situation of human rights since December 2013 in order to establish a factual basis for transitional justice and reconciliation; (c) To provide guidance on transitional justice, accountability, reconciliation and healing, as appropriate, and — once the transitional Government of national unity is fully formed, operational and commits to ending the violence against the civilian population and to cooperating with the hybrid court for South Sudan — to make recommendations on technical assistance to the transitional Government of national unity to support transitional justice, accountability, reconciliation and healing; (d) To engage with other international and regional mechanisms, including the United Nations, the United Nations Mission in South Sudan, the African Union and its African Commission on Human and Peoples' Rights, the Joint Monitoring and Evaluation Commission Chair and civil society, with a view to providing support to national, regional and international efforts to promote accountability for human rights violations and abuses...
Date of original mandate / resolution	December 21, 2016	March 23, 2016
Relevant UN resolution(s)	UNGA Resolution 71/248 paragraph 4	HRC Resolution 31/20 paragraph 18
Time period for scope of investigation	Since March 2011	Since December 2013
Head / Director	Ms. Catherine Marchi-Uhel (France)	Ms. Yasmin Sooka, Chairperson (South Africa)
Location	Geneva, Switzerland	Juba, South Sudan, with small presence in Addis Ababa, Ethiopia
Staff size	Approximately 60	Approximately 16 [3 commissioners unpaid]
Other country-specific UN bodies / special procedures	Syria Commission of Inquiry (mandated under HRC); Special Envoy for Syria (Geir O. Pedersen),	UN Mission in South Sudan (UNMISS - Peacekeeping)

Annex B: UN Investigative Mechanisms (Continued)

UN mechanism	UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh (UNITAD)	Independent Investigative Mechanism for Myanmar (IIMM)
Mandating body	United Nations Security Council	United Nations Human Rights Council
Relevant mandate Text	To support domestic efforts to hold ISIL (Da'esh) accountable by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group ISIL (Da'esh) in Iraq, to the highest possible standards... to ensure the broadest possible use before national courts, and complementing investigations being carried out by the Iraqi authorities, or investigations carried out by authorities in third countries at their request;... Underscores that the Investigative Team shall operate with full respect for the sovereignty of Iraq and its jurisdiction over crimes committed in its territory, and that the Team's Terms of Reference shall specify that Iraqi investigative judges, and other criminal experts, including experienced members of the prosecution services, will be appointed to the Team to work on an equal footing alongside international experts, and further underscores that evidence of crimes collected and stored by the Team in Iraq should be for eventual use in fair and independent criminal proceedings, consistent with applicable international law, conducted by competent national-level courts, with the relevant Iraqi authorities as the primary intended recipient as specified in the Terms of Reference, and with any other uses to be determined in agreement with the Government of Iraq on a case by case basis; 6. Emphasizes that the Team should be impartial, independent, and credible and should act consistent with the Terms of Reference which set out the framework in which the Team will operate, the Charter of the United Nations and United Nations best practice, and relevant international law including international human rights law...	To collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law; 23. [The Council] Also decides that the mechanism shall: (a) Be able to make use of the information collected by the fact-finding mission and continue to collect evidence; (b) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with other entities, as appropriate; (c) Report on its main activities on an annual basis to the Human Rights Council as of its forty-second session and to the General Assembly as of its seventy-fourth session...
Date of original mandate / resolution	September 21, 2017	September 27, 2018
Relevant UN resolution(s)	UNSC Resolution 2379 (2017) paragraph 2	HRC Resolution 39/2 paragraphs 22-23
Time period for scope of investigation	June 2014 - December 2017	Since 2011
Head / Director	Mr. Karim Asad Ahmad Khan (UK)	Mr. Nicholas Koumjian (USA)
Location	Iraq	Geneva, Switzerland
Staff size	79	Up to 60 anticipated
Other country-specific UN bodies / special procedures	UN Assistance Mission for Iraq (UNAMI)	Special Envoy for Myanmar; Special Rapporteur for Human Rights in Myanmar; Fact-Finding Mission

Annex C: UN entities and appointments for Myanmar

UN mechanism	Independent Investigative Mechanism for Myanmar (IIMM)	Independent Impartial Fact-Finding Mission on Myanmar (FFM)
Mandating body	United Nations Human Rights Council	United Nations Human Rights Council
Relevant mandate text	To collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law; 23. [The Council] Also decides that the mechanism shall: (a) Be able to make use of the information collected by the fact-finding mission and continue to collect evidence; (b) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with other entities, as appropriate; (c) Report on its main activities on an annual basis to the Human Rights Council as of its forty-second session and to the General Assembly as of its seventy-fourth session...	To establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims, and requests the fact-finding mission to present to the Council an oral update at its thirty-sixth session and a full report at its thirty-seventh session
Date of original mandate / resolution	September 27, 2018	March 24, 2017
Anticipated End Date	Unknown	September 2019
Relevant UN resolution(s)	HRC Res 39/2 paragraphs 22-23	HRC Resolution 34/22 paragraph 11
Time period for scope of investigation	Since 2011	Since 2011
Head / Director	Mr. Nicholas Koumjian (USA)	Mr. Marzuki Darusman, Chairperson (Indonesia)
Location	Geneva, Switzerland	Geneva, Switzerland
Staff size	Up to 60 anticipated	Estimate of 15-20
Budget	\$11.6 mil. (2019); \$15.1 mil. (2020) (see A/73/477 paragraphs 136-142)	\$235,000 (see A/73/477 paragraphs 73-74)
Coordination with CSOs for information-sharing	Yes - TBD (MOUs?)	YES (<i>ad hoc</i>)
Permission by MMR Gov. to enter MMR (as of 2019)	No	No
Key public reports and functions	Annual activities report TBD (each September), but no mandate to share evidence collection or analysis publicly.	Various statements by FFM Chairperson; Reports: (1) Full account of massive violations by military in Rakhine, Kachin and Shan States (Sept 2018); (2) Economic Interests of the Military (Aug 2019); (3) Justice for Victims of Sexual and Gender-Based Violence (Aug 2019); (4) Final FFM Human Rights Report (Sept 2019)

Annex C: UN entities and appointments for Myanmar (continued)

UN Mechanism	Special Rapporteur for Human Rights in Myanmar	Special Envoy on Myanmar
Mandating Body	United Nations Human Rights Council	United Nations Secretary General
Relevant Mandate Text	To establish direct contacts with the Government and with the people of Myanmar, including political leaders deprived of their liberty, their families and lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar, and to report to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session	This position is a diplomatic appointment made by the UN Secretary-General and housed under the UN's Department of Political and Peacebuilding Affairs. There is no specific legal mandate for the Envoy, but language from the announcement of the Envoy's appointment, coming after the 2017 Rohingya crisis and focusing on the UN's peacebuilding role, reads as follows: " <i>Cooperation with the United Nations and its partners will be critical as the Government of Myanmar carries out its responsibility to provide immediate, life-saving humanitarian assistance to all those in need in Rakhine state, and put in place long-term development and human rights solutions. The Secretary-General has repeatedly underlined his call to address the underlying issues and for an end to violence, unfettered humanitarian access to all areas in Rakhine State, the creation of conducive environment for safe, dignified and voluntary returns and the implementation of the recommendations of the Rakhine Advisory Commission, particularly on the protection of human rights, closure of IDP camps, freedom of movement, access to services and justice, and to the question of citizenship.</i> "
Date of Original Mandate/Resolution	March 3, 1992	April 26, 2018
Anticipated End Date	Renewed by HRC annually at March session	Unknown
Relevant UN Resolution(s)	Commission on Human Rights Resolution 1992/58 paragraph 3	Direct report to Secretary General
Time Period for Scope of Investigation	Regular reports over annualized mandate	Non-investigative mandate
Head/Director	Ms. Yanghee Lee (South Korea)	Ms. Christine Schraner Bergener (Switzerland)
Location	SR is based in South Korea; position in unpaid	New York, USA
Staff Size	1 or 2 Human Rights Officers, in GVA and BKK	5 (4 in NYC, 1 in NPT)
Budget	\$303,300 annually (see A/73/477 paragraphs 71-72)	\$1.2 million for 2019 (see A/73/681 paragraph 3)
Coordination with CSOs for information-sharing	Yes (<i>ad hoc</i>)	No
Permission by MMR Gov. to enter MMR (as of 2019)	No	Yes
Key public reports and functions	HRC oral report in June; UNGA report in September; HRC report in March; with regular end of mission reports/updates	Bi-annual briefings to UNSC and UNGA, as well as ad hoc trip statements; a diplomatic role with little to no investigative authority or findings.

VII. List of Acronyms

CHRSS	Commission on Human Rights in South Sudan
CSO	Civil Society Organization
ECCC	Extraordinary Chambers in the Courts of Cambodia
FFM	Independent Impartial Fact-Finding Mission on Myanmar
ICC	International Criminal Court
IIM	International, Impartial and Independent Mechanism (Syria)
IIMM	Independent Investigative Mechanism for Myanmar
MOU	Memorandum of Understanding
UN	United Nations
UNITAD	UN Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL

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The Ferencz International Justice Initiative

As a *living memorial*, the United States Holocaust Memorial Museum is committed to honoring the victims of the Holocaust by working to prevent, end, and redress today's atrocities. With the creation of the **Ferencz International Justice Initiative** in 2017, we are working towards a more peaceful and just world in which societies affected by genocide and crimes against humanity address their legacies of extreme violence and hatred through meaningful justice processes that place victims and survivors at the center.

Our work aims to help to provide justice, truth, and redress for victims, to hold perpetrators accountable, and to end impunity for the worst crimes. We do this by bringing together coalitions of change-agents—from affected communities and from the halls of power—to incubate new strategies to advance justice. And through education, research, and outreach, we empower and equip these change-agents to press for justice over the long term. Informed by research that shows that ignoring past atrocities increases the risk of future atrocities, the Ferencz Initiative builds on the lifelong work of one of the most effective change-agents of our time—Nuremberg prosecutor Benjamin Ferencz—and is an integral part of the **Simon-Skjodt Center's** mission to prevent, halt, and redress genocide and related crimes against humanity.

The Simon-Skjodt Center for the Prevention of Genocide and the Ferencz International Justice Initiative do not receive government funding; we are supported by private donations.

Cover: Rohingya walk into a section of Balukhali refugee camp in Bangladesh, September 2017. *Greg Constantine for the US Holocaust Memorial Museum.*

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