



United Nations

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**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 ('Mechanism')**

Proposal as at 6 April 2017<sup>1</sup>



*One of the millions of Syrian refugees forced to flee their homes © EPA*

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<sup>1</sup> This proposal is based on projected income as at 31 March 2017

## WHY CONTRIBUTE TO THE SYRIA MECHANISM

As the Syrian conflict enters its seventh year in March 2017, violations and abuses of international human rights law and international humanitarian law are alleged to be continuing.

On 21 December 2016, the General Assembly adopted resolution 71/248, by which it decided, in paragraph 4, to establish 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.

The Mechanism will provide assistance in the investigation and prosecution of persons responsible for the most serious crimes under international law in full independence, impartiality and objectivity.

### OHCHR's role

The Office of the High Commissioner for Human Rights (OHCHR) is the lead UN entity on human rights. In 1993, the General Assembly entrusted both the High Commissioner for Human Rights and the OHCHR with a unique mandate to promote and protect all human rights for all people.

In paragraph 5 of General Assembly resolution 71/248, the General Assembly requested that the Secretary-General undertake, without delay, the steps, measures and arrangements necessary for the speedy establishment and full functioning of the Mechanism. The Secretary-General requested that the OHCHR support the establishment of the Mechanism. Thus, OHCHR is providing personnel and expertise to set up the Mechanism. The Mechanism will start operating independently once its Head and Deputy Head assume their functions.

### SYRIA

Syrian and international civil society actors have been documenting violations of international humanitarian law and violations and abuses of human rights law for several years.

“As the conflict enters its 7th year, this is the worst man-made disaster the world has seen since World War (...)”

Ensuring accountability, establishing the truth and providing reparations must happen if the Syrian people are ever to find reconciliation and peace”

**Zeid Ra'ad Al Hussein,  
High Commissioner for  
Human Rights**

An initial human rights response of the United Nations to the crisis in Syria was the establishment by the Human Rights Council of the Independent International Commission of Inquiry on Syria. The Commission has a key mandate to document facts on alleged violations of international law with a view to future accountability.

Violations and abuses have consistently been documented and reported by the Commission. The rise of extremist Islamic movements, in particular the so-called Islamic State in Iraq and the Levant (ISIL), has shocked the world.

Several resolutions of the Security Council, the General Assembly as well as the Human Rights Council have called for accountability for the crimes reportedly committed since March 2011. The same call was made repeatedly by the Secretary-General of the United Nations, the High Commissioner for Human Rights and a large number of civil society organizations. Impunity on all sides led the Secretary-General and the High Commissioner to call for a referral by the Security Council of the situation in Syria to the International Criminal Court (ICC).

After repeated vetoes in the Security Council on resolutions dealing with Syria, on 21 December 2016, the General Assembly adopted resolution 71/248 establishing the International, Impartial and Independent Mechanism to assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011 (IIIM or the Mechanism) with the mandate to collect, consolidate, preserve and analyse evidence of such crimes and prepare files in order to facilitate and expedite fair and independent criminal proceedings in tribunals or courts that have or may have jurisdiction over these crimes in the future.

The creation of such a mechanism is a crucial building block to further accountability for alleged crimes reportedly committed in the context of the conflict in Syria, by organizing information and evidence in the possession of the Mechanism, so as to maximize its use in future criminal investigations and prosecutions. As per paragraph 4 of resolution 71/248, the Mechanism will collect, consolidate, preserve and analyse evidence; and prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts, in accordance with international law. Particularly, paragraph 5 of the terms of reference of the Mechanism provides that it shall collect evidence and information by receiving it from other sources who have worked in this regard.

On 19 January 2017, the Secretary-General submitted his report to the General Assembly on the implementation of resolution 71/248 (A/71/755), annexing the terms of reference of the Mechanism, including its mandate, methodology, legal framework, protection of victims and witnesses, composition and funding. The report is attached in annex I.

## FACTS & FIGURES

- 400,000 persons killed
- 13.5 million in need of humanitarian assistance
- 7 million internally displaced
- 4.9 million refugees in neighbouring countries
- 1 million refugees in Europe

## GOALS AND OBJECTIVES

The Mechanism is mandated to collect evidence or relevant information pertaining to violations of international humanitarian law and human rights violations and abuses.

### GOAL 1:

**To collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses**

#### 1.1 Collection

- The Mechanism will collect evidence and information by receiving it from other sources, including the Independent International Commission of Inquiry on the Syrian Arab Republic, the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism, States, international or regional organizations, entities of the United Nations system, non-governmental organizations, foundations and individuals, whether at its request or on the initiative of those sources. General Assembly resolution 71/248 called upon all States, all parties to the conflict as well as civil society to cooperate fully with the Mechanism, in particular to provide it with any information and documentation that they might possess, as well as any other forms of assistance pertaining to its mandate.
- It will collect additional evidence or information, including interviews, witness testimony, documentation and forensic material, as appropriate.
- The Mechanism will seek to establish the connection between crime-based evidence and the persons responsible, directly or indirectly, for such alleged crimes, focusing in particular on linkage evidence. It focuses on evidence pertaining to mens rea and to specific modes of criminal liability, including under the principle of command or superior responsibility established under international criminal law.

#### 1.2. Consolidation and analysis of evidence

- The Mechanism will systematically organize all the information, documentation and evidence in its possession, such as interviews, witness testimony, documentation and forensic material, to ensure that their use can be maximized in future criminal investigations and prosecutions.
- The analysis conducted by the Mechanism will include a preliminary assessment of the information, documentation and evidence in its possession, based on its reliability and probative value, identifying gaps in evidence and documentation and/or the need for additional information.

#### 1.3. Preservation

- The Mechanism will systematically record and preserve all information, documentation and evidence, including interviews, witness testimony, documentation and forensic material, in accordance with international criminal law standards, in order to maximize the possibility of its admissibility in future legal proceedings.
- The Mechanism will ensure an uninterrupted chain of custody of the evidence in its possession.
- The Mechanism will be equipped with the capacity necessary to preserve all forms of evidence and otherwise enter into an agreement with Member States to be given access to safe, secure and reputable entities that can assist in this regard, with all due guarantees of security and strict confidentiality and respect for the privileges and immunities of the United Nations.

## **GOAL 2:**

**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**

### **2.1 Preparation of files**

- On the basis of the documentation and evidence of violations and abuses that it has collected, consolidated, preserved and analysed, the Mechanism will prepare files focusing on the criminal conduct of the persons responsible. These shall include the persons most responsible for the crimes, without any distinction based on their affiliation or official capacity. The files shall include relevant information, documentation and evidence in the Mechanism's possession, both inculpatory and exculpatory, pertaining to the imputable crimes and to the mode or modes of criminal liability recognized under international law, including command or superior responsibility.

### **2.2 Sharing information with courts and tribunals to facilitate and expedite fair and independent criminal proceedings**

- The Mechanism will share information with national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law, in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards.
- The Mechanism will only share information with those jurisdictions that respect international human rights law and standards, including the right to a fair trial, and where the application of the death penalty would not apply for the offences under consideration. The Mechanism may share information either at the request of national, regional or international courts or tribunals or on its own initiative. The Mechanism will adopt procedures and methods of work further regulating the sharing of information to facilitate and expedite fair and independent criminal proceedings, duly considering the requirements pertaining to the security of information.

## **OPERATIONS**

The Secretary-General decided that the Mechanism will be located in Geneva, the most appropriate geographical location considering the terms of resolution 71/248, by which it was established that the Mechanism would closely cooperate with the Independent International Commission of Inquiry on the Syrian Arab Republic in all aspects of its work.

The Mechanism will be headed by a senior judge or prosecutor with extensive experience in criminal investigations and prosecutions, at the Assistant Secretary-General level, and a deputy with extensive experience in international criminal justice and an in-depth knowledge of international criminal law, international human rights law and international humanitarian law, at the D-1 level. They should have a proven record of independence and impartiality and be committed to upholding justice, accountability and human rights and ensuring gender equality. Their background, prior public statements or political or other affiliations should not be of a nature that would affect their independence and impartiality or create perceptions of bias. The Secretary-General will make the appointments upon consultation with the United Nations High Commissioner for Human Rights and the Legal Counsel.

Due consideration will be given to appointing women, experts in the areas of sexual and gender-based crimes and justice for children. It is envisaged that the persons selected will initially be appointed for two years on a renewable basis.

The Head and Deputy Head of the Mechanism will be assisted in their work by a secretariat composed of impartial and experienced professional and administrative staff, with expertise in the following areas, among others: international criminal justice, human rights law, international humanitarian law, criminal investigation and prosecution, the military, forensic matters, including in particular digital forensics, forensic pathology and forensic imagery, witness and victim protection, sexual and gender-based crimes and violence, children's rights and crimes against children. The secretariat will build on existing capacities, including through the recruitment or allocation of impartial and experienced staff with relevant skills and expertise in accordance with the terms of reference.

## DEPLOYMENT

It is envisaged that the Mechanism will be established in phases until it is fully functional. Decisions on operationalization will be taken by the Head and Deputy Head of the Mechanism, upon their assumption of their functions, which is expected to occur in the coming months. For information purposes only, the following is an indication of what the progressive deployment of the Mechanism could be like. Namely, the following is a provisional picture of the progressive establishment of a full secretariat that encompasses 50-60 staff, of which a large majority would work on substance, supported by security, administrative, and language services.

### **Phase A – Start-up Team**

A Start-up Team, or Skeleton Team, is taking steps to ensure that the Head and Deputy Head will be able to start their substantive work as soon as possible, after they assume their functions. It will develop a budget proposal, start recruitment, identify office space and begin drafting internal procedures and methods of work.

Staff from the Office of the High Commissioner for Human Rights are in the process of being temporarily assigned to the Mechanism, and they will be recruit additional staff and consultant to set up the Mechanism.

- **Phase B – Initial Team**

It is expected that, once they take up their functions, the Head and Deputy Head will prioritise the establishment of a small initial team constituting an Information Collection Unit and an Analysis Unit. The Information Collection Unit will be responsible for the collection of evidence and other relevant information pertaining to violations of international humanitarian law and human rights violations and abuses. The Analysis Unit will seek to establish the connection between crime-based evidence and those responsible, directly or indirectly, for such alleged crimes, focusing particularly on linkage evidence.

- **Phase C – Full operationalization**

As it progressively build its files, it is expected that the Mechanism will establish its third substantive unit: the Files Preparation and Sharing Unit, and that the capacity of the other units will also be reinforced.

The Files Preparation and Sharing Unit will be responsible for preparing files focusing on the criminal conduct of those responsible, on the basis of the documentation and evidence of violations and abuses collected and analysed by the Mechanism, and share it with the relevant courts and tribunals

It is expected that, as a result of the IIM's sharing its files with courts and tribunals, it will need to increase its security capacity, notably to establish a witness and victim protection unit.

## COOPERATION & THE RELATIONSHIP OF THE MECHANISM WITH OTHER ENTITIES

### OHCHR

The Secretary-General requested that the OHCHR support the establishment of the Mechanism. Thus, the OHCHR is providing personnel and expertise to set up the Mechanism. Once the Head and Deputy Head have been appointed and they assume their functions, the Mechanism will operate independently. The OHCHR, as well as the Commission of Inquiry that it supports, will continue to support the establishment of the Mechanism and provide it with information and assistance as relevant.

### Independent International Commission of Inquiry on the Syrian Arab Republic

The Mechanism is complementary to the Independent International Commission of Inquiry on the Syrian Arab Republic. Accordingly, while the Commission focuses on directly collecting information, publicly reporting recent broad patterns of violations, abuses and emblematic incidents and making recommendations, notably to Member States, the Mechanism primarily builds on the information collected by others, in particular the Commission, by collecting, consolidating, preserving and analysing evidence and prepares files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals.

The Mechanism and the Commission have closely related but different mandates. Similarities between the two entities include their territorial and temporal scope and aspects of their subject matter. The Commission considers human rights violations and abuses and violations of international law, including those amounting to crimes against humanity and war crimes. The Commission has also identified, whenever possible, individual, armed units of the Syrian army and armed groups responsible of crimes and violations that have been investigated and put together a large confidential list of perpetrators. The Mechanism will assist in the investigation and prosecution of persons responsible for the most serious crimes under international law. Other anticipated differences between the two entities include variances in their methodologies and standards. The Mechanism will adopt procedures and methods of work regulating the provision of information that the Commission may decide to provide to it.

The Mechanism has an explicit nexus to criminal investigations, prosecutions, proceedings and trials that is not within the mandate of the Commission. Specifically, the Mechanism is required to prepare files to assist in the investigation and prosecution of the persons responsible and to establish the connection between crime-based evidence and the persons responsible, directly or indirectly, for such alleged crimes, focusing in particular on linkage evidence and evidence pertaining to mens rea and to specific modes of criminal liability.

### Other UN entities

The General Assembly requested the United Nations system as a whole to fully cooperate with the Mechanism and to promptly respond to any request, including access to all information and documentation. The Mechanism shall collect evidence and information from other sources, including entities of the United Nations system. The Secretary-General's report underlined in paragraph 36 that the Mechanism will have the full cooperation and support of all relevant United Nations entities in receipt of relevant information and documentation.

### UN Member States

In paragraph 6 of General Assembly resolution 71/248, the General Assembly called upon all States to cooperate fully with the Mechanism to effectively fulfil its mandate and, in particular, to provide it with any information and documentation they may possess, as well as any other forms of assistance pertaining to the Mechanism's mandate.

## Civil society

In paragraph 6 of resolution 71/248, the General Assembly called on civil society to cooperate fully with the Mechanism to effectively fulfil their respective mandates and, in particular, to provide them with any information and documentation they may possess.

## REPORTING

The Head of the Mechanism will submit a report to the General Assembly twice a year on the implementation of its mandate and set out its funding requirements, as appropriate, while preserving the confidential nature of its substantive work.

## PROPOSED BUDGET BASED ON THE PROJECTED INCOME AS AT 31 March 2017

The Mechanism will initially be funded exclusively from voluntary contributions. Member States are encouraged to commit themselves to providing multi-year funding for the Mechanism. The Secretary-General encouraged the General Assembly to revisit the question of the funding of the Mechanism as soon as possible in paragraph 51 of his report in A/71/755.

A United Nations Trust Fund is being established to manage the funds. This Fund will be administered in conformity with the United Nations Financial Regulations and Rules.

Projected Budget 2017	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Staff and other personnel costs	-	396,353	1,098,918	1,519,064	<b>3,014,335</b>
Activities and operating costs	-	495,224	358,528	165,110	<b>1,018,862</b>
Programme Support Costs 13%	-	115,905	189,468	218,943	<b>524,316</b>
<b>Grand Total</b>	-	1,007,482	1,646,914	1,903,116	<b>4,557,512</b>
Cumulative summary total	-	1,007,482	2,654,396	4,557,512	

## ANNEXES

- I. General Assembly Resolution 71/248 establishing the Mechanism
- II. Report of the Secretary-General and Terms of Reference (A/71/755)
- III. Organizational Chart (confidential)
- IV. Frequently asked questions (draft)

## FOR MORE INFORMATION

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