

FREQUENTLY ASKED QUESTIONS

on 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')

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1. What is the purpose of the Mechanism?

By creating the Mechanism in December 2016, the UN General Assembly emphasized the need to ensure accountability for crimes involving violations of international law committed in Syria. In paragraph 4 of resolution 71/248, the UN General Assembly decided to establish the 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’.

2. What is the Mechanism’s mandate? What will it do?

The Mechanism is mandated to conduct two tasks: one, to collect, consolidate, preserve and analyse evidence of violations; and second, to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts, in accordance with international law. The UN Secretary-General released a report in January 2017 with terms of reference that further explain the mandate of the Mechanism.

3. How and when was the Mechanism established? When will it start its work?

It was formally created by the UN General Assembly on 21 December 2016, by resolution 71/248. It is now in the process of being established and it is expected that the Mechanism will start its substantive work by the summer of 2017. A start-up team has already been formed. Efforts to finance the Mechanism are underway, as is the process to recruit its Head and Deputy-Head.

4. How will the Mechanism collect evidence?

The Mechanism will collect evidence and relevant information by receiving it from other sources, including the Syria Commission of Inquiry, the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism, States, international or regional organizations, entities of the UN system, non-governmental organizations, foundations and individuals, whether at the request of the Mechanism, or on the initiative of those sources. The Mechanism will also directly collect, as appropriate, additional evidence or information, including interviews, witness testimony, documentation and forensic material.

The Mechanism will adopt procedures, in accordance with international criminal law standards, to collect evidence. It will take appropriate measures to respect and ensure respect for the confidentiality, privacy, interests and personal circumstances of victims, and take into account the nature of the crime. All the materials produced or obtained by the Mechanism will be classified as strictly confidential and the Mechanism will ensure an uninterrupted chain of custody of the evidence in its possession.

5. Can organisations and individuals send evidence and information to the Mechanism?

The Mechanism can collect evidence and relevant information from any organisation, including non-governmental organizations, foundations and also any individuals. Once the Mechanism is set up and starts functioning, additional information will be provided on how to contact and share information with the Mechanism.

6. What will the Mechanism do with the evidence it receives and collects?

The Mechanism is expected to consolidate and analyse the evidence and information in its possession and to preserve it. The Mechanism is also expected to systematically organize the information and evidence in its possession in order to prepare files to facilitate and expedite fair and independent criminal proceedings against authors of violations. Thus, the objective is to ensure that the use of evidence and information collected can be maximized in future criminal investigations and prosecutions. The Mechanism will seek to establish the connection between crime-based evidence and the persons responsible, directly or indirectly, for alleged crimes. The Mechanism will focus on the criminal conduct of the persons responsible, including those most responsible for the crimes, without any distinction based on their affiliation or official capacity.

7. What will the files prepared by the Mechanism contain?

The files shall include information, documentation and evidence in the Mechanism's possession, whether such evidence is inculpatory or exculpatory (it indicates or excludes guilt), where such information is relevant to the most serious crimes under international law, and to the mode or modes of criminal liability recognized under international law, including command or superior responsibility.

8. What will the Mechanism do with the files that it prepares?

The Mechanism will share the files with national, regional or international courts or tribunals that have or may in the future have jurisdiction over the investigated crimes, in accordance with international law.

9. What are the conditions for sharing files?

The files prepared by the Mechanism will only be shared with courts or tribunals 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. This can occur either at the request of national, regional or international courts or tribunals or on the Mechanism's own initiative.

10. Can the public access the files prepared by the Mechanism for information on particular persons?

All the materials produced or obtained by the Mechanism will be classified as strictly confidential and will only be shared with courts or tribunals that have jurisdiction over the crimes. Consequently, the public will not have direct access to the files.

11. Will the Mechanism issue indictments or try individuals?

The Mechanism is not a tribunal or court, or a prosecutor's office. Its mandate is to consolidate and analyse the evidence and information it collects, preserve it, establish files, and share these files with competent courts and tribunals so as to assist with the investigation and prosecution of persons allegedly responsible.

12. How will witnesses and victims be protected?

The Mechanism will take appropriate measures to respect and ensure respect for the confidentiality, privacy, interests and personal circumstances of victims, including age, sex, gender and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender-based violence or violence against children. It will also adopt procedures and methods of work regarding the establishment of a witness and victim protection unit, with the support of Member States.

13. What will be the relationship between the Mechanism and the existing Syria Commission of Inquiry?

The mandates of these two bodies are distinct but complementary. The Syria Commission of Inquiry is expected to continue to directly collect information, report on broad patterns of violations and make recommendations, notably to Member States of the UN. Its work will remain visible and publicly reported. In contrast, the Mechanism will primarily build on the information collected by others – notably the Syria Commission of Inquiry – and it is not expected to publicly report on its substantive work. Its role will be to consolidate and analyse evidence, preserve it, and establish files to assist courts.

14. How will the Mechanism inform the public of its work?

The Head of the Mechanism shall submit a report to the General Assembly twice a year on the implementation of its mandate. Beyond that, as all the materials produced or obtained by the Mechanism will be classified as strictly confidential, it is expected that the Mechanism will not publicly share its files, information on its files, or information on persons allegedly responsible.

15. How will the Mechanism be funded and how much funding does the Mechanism need?

The UN General Assembly decided that the Mechanism will be funded at least initially by voluntary contributions by UN Member States. Annual operating needs for the first year have been estimated to amount to just over US\$ 13 million.

16. How much money has already been pledged by States to fund the Mechanism?

As of 10 May 2017, the Mechanism has received pledges of just over US\$ 6 million from 22 States.

17. Who will lead the Mechanism and what is the expected composition of its staff?

The Mechanism will be headed by a senior judge or prosecutor with extensive experience in criminal investigations and prosecutions, 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.

The UN Secretary-General will appoint the Head and Deputy Head of the Mechanism upon consultation with the UN High Commissioner for Human Rights and the UN Legal Counsel. The appointment is foreseen to take place in May or June 2017.

The Mechanism's secretariat is expected to have around 50 staff when it reaches its full size. It will be comprised 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, sexual and gender-based crimes and violence, children's rights and crimes against children. Particular positions include digital forensic officers, legal advisers in international criminal law, military analysts, and positions dedicated to the safety and security of information.

18. Is the Mechanism independent?

The Mechanism is an independent and impartial body. Its Head, Deputy and secretariat will exercise their mandate and discharge their functions in full independence and impartiality without seeking or accepting instructions regarding the performance of their duties from any Government or external source. The Terms of Reference also provide that, as a subsidiary organ of the General Assembly of the UN, the Mechanism and its personnel, records, archives, property and assets shall enjoy the privileges and immunities, exemptions and facilities provided for in the Convention on the Privileges and Immunities of the United Nations.

19. Where will the Mechanism be located?

The Mechanism will be located in Geneva, Switzerland.

20. Will the Mechanism bring peace to Syria?

The mandate of the Mechanism is distinct and independent from the peace process concerning Syria, and it will not participate in nor interfere with negotiations. A different part of the UN, led by the UN Special Envoy for Syria, Staffan de Mistura, is mandated to convene representatives of the Syrian government and the opposition to engage in formal negotiations on a political transition process; and to determine the modalities and requirements of a ceasefire in consultation with relevant parties. By creating the Mechanism, the UN General Assembly underlined the importance of accountability for sustainable peace in Syria.