

Bulletin No.2 – April 2019

This is the second information bulletin issued by the International, Impartial and Independent Mechanism (IIIM or ‘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. As envisaged when initiating this series of bulletins, they are promoting a two-way communication between the IIIM and a broad range of Syrian NGOs. Following the issuance of the first Bulletin, the IIIM has been contacted by additional Syrian NGOs, either by e-mail (iiimsyria@un.org), or in person on the margin of events attended by representatives of the IIIM.

Some of the NGOs that contacted the IIIM for the first time in response to the inaugural bulletin were requesting to hear more about the IIIM. Others had already decided to share their data with the IIIM, so that it could become part of the central repository of information and evidence created by the IIIM. By doing so, and subject to any agreed conditions, the data can be available to prosecutors and judges investigating or prosecuting serious international crimes committed in Syria. Several NGOs have already taken advantage of the IIIM’s capacity to offer forensic preservation of their materials to criminal law standards, while the NGO retains the ability to continue using the data in question. In some instances, cooperation between an NGO and the IIIM has required the conclusion of a memorandum of understanding.

The IIIM has also received follow-up comments and questions arising from the issues discussed in the first bulletin. The IIIM is strongly encouraging this two-way communication and will continue to make use of the bulletins to address frequently arising questions that may be of interest to broader civil society. The present bulletin will address two of these questions. Firstly, why is it important for the IIIM to maintain a comprehensive central repository of information and evidence, when many NGOs have also been extensively collecting evidence? Secondly, why does the IIIM have to maintain a high degree of confidentiality regarding its substantive work?

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hy is it important for the IIIM to maintain a comprehensive central repository

of information and evidence of crimes committed in the Syrian Arab Republic when many NGOs and other actors have also been extensively collecting evidence?

- **When the General Assembly established the IIIM, it mandated the IIIM to “collect, consolidate and preserve” evidence of crimes committed in the Syrian Arab Republic (<https://undocs.org/A/RES/71/248>). This function is reinforced in the IIIM’s Terms of Reference (<https://undocs.org/A/71/755>). There is a heavy emphasis on the IIIM collecting material from all other relevant sources and to organizing it to facilitate use in criminal proceedings. Consequently, the creation of a comprehensive central repository of information and evidence is the backbone of the mandate the General Assembly has given the IIIM.**
- **There are many benefits to the IIIM’s comprehensive central repository model:**
 - While some NGOs can and have collected open source data, centralized data collected by other NGOs and produced analytical work based on such data, the nature of the IIIM’s mandate permits it to collect information and evidence more broadly, including from other UN entities, international

organisations, States (including evidence collected by the prosecutors for the purpose of their past or on-going investigations), individuals and Syrian NGOs;

- Aggregating data from as many varied sources as possible increases the chances of building stronger cases. It improves the chances of accurately seeing the relevance and probative value of a single piece of evidence, because it can be viewed in the context of the full range of other evidence. It also increases the chances of accurately detecting and countering misinformation;
- The fact that the IIIM's comprehensive central repository covers information and evidence of crimes committed on all sides, also allows the IIIM to piece together a complete picture of events and to therefore anticipate and address potential weaknesses in the evidence;
- The IIIM can ensure the preservation of material in a consistent manner informed by criminal law standards;
- The IIIM can ensure that the central repository contains the full range of evidentiary types, some of which may be difficult for individual NGOs to maintain. These include witness evidence, documentary evidence, digital evidence, satellite imagery and physical evidence;
- Prosecutors and judges find it advantageous to turn to one central repository of the evidence under the auspices of the United Nations as opposed to sending multiple requests for assistance to a large number of entities either for their structural investigations or in every single case;
- By creating a single repository, the IIIM is able to strategically use its investigative capacities to fill in gaps in the overall collection and work towards comprehensive accountability;
- The IIIM's comprehensive repository serves as a reminder to all States and the international community at large that the majority of Member States agreed that credible and comprehensive accountability for the violations and abuses committed is necessary for any sustainable future peace process for Syria.

- **Establishing a truly comprehensive central repository of information and evidence is expensive. The storage and security costs relating to the high volume and broad range of evidentiary types forming part of the repository are significant. It is logical that the costs associated with a comprehensive central repository should not need to be incurred by multiple entities, and appropriate that the United Nations should ensure the necessary resources.**

The establishment of a comprehensive central repository of information and evidence by the IIIM does not diminish the need for accountability work by Syrian civil society. On the contrary, the IIIM can make sure that the information and evidence collected by NGOs is being put to the best possible use in the long-run. Continued work by NGOs is essential and the creation of the IIIM provides a range of new opportunities for civil society to promote accountability through coordinated action with the IIIM. For instance, the IIIM has started to engage with NGOs that are focusing their work on building case files and on victim's representation in proceedings before national jurisdictions. By granting the IIIM access to the material contained in the files they build, the NGOs maximize the chances that the IIIM will

be able to support the accountability process in question with additional information and evidence. Other forms of coordination compatible with the IIIM's requirement of independence and impartiality are being continuously explored with NGOs.

Why does the IIIM have to maintain a high degree of confidentiality about its substantive work?

- **The IIIM's terms of reference require it to preserve the confidential nature of its substantive work. The confidentiality of the IIIM's substantive work is one of the key features distinguishing it from human rights fact finding bodies, such as the Commission of Inquiry for Syria, which report publicly on their work.**
- **There are very good operational reasons for maintaining confidentiality, given the criminal law nature of the IIIM's mandate:**
 - Confidentiality is an important feature of any criminal law investigation process;
 - One of the IIIM's core tasks is to support investigations and prosecutions carried out by others concerning international crimes committed in Syria. It is important for the IIIM to play this support role without interfering with the work of prosecuting and judicial authorities involved in such proceedings. These authorities must be able to decide when and how it is appropriate for them to make public the existence, content and stage of a criminal investigation. It would therefore not be appropriate for the IIIM to disclose publicly the content of a case which it is building prior to such case reaching the recipient authority;
 - The same reason explains why the IIIM can only share the evidence it collects and the analytical work it produces with prosecutors and courts. It cannot, for example, share this material with factfinding or attribution mechanisms which have a public reporting function. Public exposure of evidence gathered by the IIIM through the public reports of others, even without referencing it as IIIM material, could be highly prejudicial to the IIIM's criminal law case file building work and to the eventual prosecution of those cases by other relevant actors.
- **This being said, the IIIM can and will disclose some information about aspects of its investigations in the process of requesting specific assistance from potential information providers, including NGOs. The IIIM will only do this to the extent that operational reasons require, in a format that will not prejudice the investigation, and if satisfied that there is a relationship of trust between it and the entity to which the request is made so that the confidentiality of the investigation may be preserved. This is similar to the situation where a national prosecutor may disclose information about a case investigated when it seeks the IIIM's assistance in providing information in relation to the case. In both cases, the information disclosed for operational reasons must be kept confidential.**
- **Finally, for NGOs that assist survivors in accessing justice by bringing complaints before courts in the name of these survivors, these NGOs become parties to the cases in question. As such, they may have access to material shared by the IIIM in relation**

to the cases in question, to the extent that this is consistent with procedures in place in the jurisdiction in question.

The IIIM also takes the opportunity of the present bulletin to provide a short update regarding its work to develop its victim-centered-approach. The IIIM is committed to developing a deeper understanding of victims' challenges and priorities for justice and to find effective strategies for engaging them in accountability processes. In doing so, the IIIM will take stock of the outcome of the various relevant consultations that have already been conducted by other entities within and outside of the United Nations. The IIIM is also planning to consult members of Syrian NGOs about their perspectives on how to ensure the IIIM's approach to accountability appropriately reflects victims' perspectives. Given the diverse range of victims, the importance of avoiding generalizations, and the need to take into account religious, gender, cultural and other parameters, the IIIM encourages interested NGOs that wish to contribute their views and suggestions to contact the IIIM via the official email address within the next few months.

How can NGOs contact the IIIM?

NGOs willing to collaborate with the IIIM can get in touch with its representatives at any time at the following address:

iiimsyria@un.org

In order to help prioritizing our response to you, you may want to indicate the topic(s) of your communication in the subject line.