



Evaluating Mechanisms to Investigate Attacks on Healthcare

Commissions of Inquiry and Fact-Finding Missions
established by principal organs of the United Nations

UNSC-Cols, UNGA-Cols,
& UNSG-Cols

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ORIGINS AND SUMMARY

Three of the UN's principal organs, the General Assembly (UNGA), the Security Council (UNSC), and the Secretariat through the secretary-general (UNSG), can and have mandated commissions of inquiry and other investigative and fact-finding mechanisms (Col/FFMs)¹ to investigate alleged violations of international human rights law (IHRL) and international humanitarian law (IHL). These are independent international investigative bodies that are non-judicial in nature and established on an ad hoc basis as deemed necessary by their mandating authority.

Their primary purpose is to inform action by the UN organ that established them. As such, they have been used primarily for dispute resolution and accountability purposes. They have also, however, been used to foster action by member states to halt ongoing and prevent future violations. Due to their ad hoc nature and the different mandates and working procedures of their mandating authorities, these Col/FFMs differ in duration, mandate, methods of investigation, and standards of proof. Their findings and recommendations to the UN, including its organs or specific UN offices or departments, UN member states, concerned states, or other parties to a conflict are usually publicly available.

The principle organs of the UN have never established a Col/FFM specifically to investigate attacks on healthcare, but to the extent that such attacks amount to alleged violations of IHL/IHRL, they could do so. Indeed, several Col/FFMs with a broad mandate to investigate violations in a given context have investigated and reported on incidents of violence against healthcare.

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- **UNSC-Cols:** Under Article 34 of the [UN Charter](#), the Security Council can establish Col/FFMs to investigate situations or disputes whose continuation might endanger international peace and security and has done so. It has become common practice for the Security Council to request the secretary-general to establish a Col/FFM (under Chapter VI or VII) without referring to a concrete provision as a legal basis for its request.

¹ While not all mechanisms were labeled commissions of inquiry or fact-finding missions or mechanisms, for the purpose of this research and for ease of reference, the various investigative mechanisms established by the UN are collectively referred to as Col or Col/FFMs. A comprehensive and up-to-date list of such mechanisms, sorted by mandating authority, is available [here](#).

- **UNGA-Cols:** Under Articles 10–12 of the [UN Charter](#), the General Assembly can establish Col/FFMs to examine and make recommendations for the General Assembly or member states to take action on questions related to the maintenance of international peace and security and has done so.
- **UNSG-Cols:**² Under Article 98 of the [UN Charter](#), the secretary-general shall perform such functions as are entrusted to him or her, inter alia by the General Assembly or Security Council. Both organs may thus direct the secretary-general to establish a Col/FFM in respect to various situations. In addition, under Article 99 of the [UN Charter](#), the secretary-general may bring any matter that in his or her opinion may threaten the maintenance of international peace and security to the attention of the Security Council. In this capacity, the secretary-general can and has mandated commissions of inquiry, fact-finding missions, or panels of experts on his or her own authority. The secretary-general has also established Col/FFMs based on his authority to use his good offices to assist UN member states in preventing disputes between them or in dealing with situations on their territory that could escalate, but also to ensure accountability for international crimes (e.g., [UNSG-Col on Togo in 2000](#), or the [UNSG-Col on Guinea in 2009](#)). The “good offices” role of the secretary-general arose out of practice and was formally recognized by the General Assembly in 1988.³

Relevant rules, guidelines, and methodology

- Each Col/FFM established by a principal organ of the UN, including a Col/FFM established by the secretary-general, has its own specific terms of reference (ToR). These are adopted by the (president of the) organ concerned, usually with the support of the UN Secretariat and increasingly with the support of the Office of the High Commissioner for Human Rights (OHCHR). Many ToR provide that the Col will develop its own rules of procedure. These too are often informed by general practice.
- OHCHR, “[Guidance and Practice: Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law](#)” (2015), including “Model Standard Rules of Procedure for Commissions of Inquiry/Fact-Finding Missions on Violations of International Human Rights Law and International Humanitarian Law (Annex II).”

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SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

Substantive scope: type of incidents within purview of Res 2286 the mechanism can investigate

² These are to be distinguished from boards of inquiry and other fact-finding mechanisms established by the secretary-general in his or her capacity as chief administrator of the UN (Article 97 of the [UN Charter](#); see factsheet on UNSG-Bols) or on the basis of General Assembly [Resolution 42/37C](#) (1987) (see factsheet on UNSG-IMCBW).

³ [UNGA Resolution 43/51](#) (1988) approves the “Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field,” para. 22 of which provides that “the Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, sending a representative or fact-finding missions to areas where a dispute or a situation exists.”

<p>FULL <i>The mechanism can look into all incidents that Res 2286 seeks to address</i></p>	✓	In principle, Col/FFMs established by the UN's principal organs can be mandated to investigate any incident of violence against healthcare that falls within the purview of Security Council Resolution 2286.
<p>PARTIAL <i>The mechanism can look into some but not all incidents that Res 2286 seeks to address</i></p>		N/A
<p>CONDITIONAL <i>The mechanism can only look into incidents where a specific condition related to the mechanism's mandate is met</i></p>	✓	In practice, the type of incidents a particular Col/FFM can look into depend on its mandate. Most Col/FFMs are mandated to investigate alleged violations of international law (IHRL and, increasingly, IHL), but they also have the discretion to look into the wider context and, as such, could look into all incidents of violence against healthcare that fall within the purview of Security Council Resolution 2286, even those that do not qualify as violations or serious violations of the law. Some Col/FFMs have been mandated to solely investigate alleged violations of IHRL or even specific human rights violations (e.g., UNSG-Col on Togo in 2000 , which was mandated to investigate extrajudicial killings), which limits the type of incidents of violence against healthcare they could investigate.
<p>SINGLE INCIDENTS <i>The mechanism can be used to investigate single incidents within the purview of Res 2286</i></p>	✓	While uncommon, Col/FFMs can and have been established to investigate single incidents that amount to serious violations of IHL.

Geographic scope

<p>GLOBAL <i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	The UN's principal organs can establish a Col/FFM to investigate incidents regardless of where these have occurred. In practice, Cols established by the UN's principal organs have investigated incidents that occurred in a specific country or territory, but they could also establish a Col to cover a broader region. For UNSC and UNGA-Col/FFMs, however, the country or countries concerned by the investigation must already be on their agenda, under either a country-specific or a relevant thematic agenda item, or be placed on the agenda before a Col can be established.
<p>REGION-SPECIFIC <i>The mechanism can only be activated to look into incidents that have occurred in a specific region</i></p>		
<p>COUNTRY-SPECIFIC</p>		

The mechanism can only be activated to look into incidents that have occurred in a specific country		
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Type of investigative activities

<p>MONITORING AND REPORTING <i>Actively monitoring conflict to identify trends/patterns of violations of IHL/IHRL</i></p>	✓	Depending on their mandate and on the context, some Col/FFMs established by UN organs focus more on identifying trends or patterns of violations rather than investigating specific incidents. As many mandates are broad, covering violations in general, and have relatively short time frames, an investigation of every incident is generally not possible, and many Col/FFMs focus on specific incidents that are particularly grave or illustrate a broader trend or pattern.		
	<p>FACT-FINDING & INVESTIGATION</p>	<p>Identify possible violations <i>Establishing facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i></p>	✓	Most Col/FFMs mandated by UN organs conduct investigations into alleged violations of IHRL, which requires them to assess the facts and circumstances of incidents against that framework. As many concern situations of armed conflict, they also increasingly make legal assessments under IHL.
		<p>Identify those responsible <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i></p>	✓	Several Col/FFMs established by UN organs have also explicitly been mandated to identify those responsible for violations of IHRL/IHL (e.g., UNSC Panel of Inquiry on Liberia in 1993 , UNSG-Col on Côte d'Ivoire in 2000 , UNSC-Col on Darfur in 2004 , UNSC-Col on Côte d'Ivoire in 2004 , UNSG-Col on Timor-Leste in 2006 , UNSG-Col on Guinea in 2009 , UNSC-Col on the Central African Republic in 2013).
		<p>Identify perpetrators of crimes <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i></p>	✓	A smaller number of Col/FFMs established by UN organs were explicitly mandated to identify individuals with alleged individual criminal responsibility for war crimes or crimes against humanity (e.g., UNSC Commission of Experts on Rwanda in 1994 , UNSC-Col on Burundi in 1995 , UNSC-Col on Côte d'Ivoire in 2004 , UNSC-Col in the Central African Republic in 2013). The UNSC Commission of Experts on Rwanda in 1994 and UNGA Group of Experts on Cambodia in 1998 were even requested to look at the question of the jurisdiction before which perpetrators could be brought to justice. It is common practice, however, not to publish the names of individual perpetrators of

			alleged crimes, nor those of victims, witnesses, or other persons heard by the Col/FFM.
	<p>COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i></p>	✓	Certain Col/FFMs, particularly those mandated to identify perpetrators of crime and determine criminal responsibility, also collect and preserve evidence in case of future criminal prosecution (e.g., UNSG-Col on Guinea in 2009 , UNSC Commission of Experts on the Former Yugoslavia in 1992). The UNSC Commission of Experts on the Former Yugoslavia in 1992 even created a special database to provide a comprehensive record of evidence of specific IHL violations.
	<p>ASSESSING VICTIMS' GRIEVANCES <i>Identify direct/indirect consequences of attacks and assess need for reparations</i></p>	✓	While less common in practice, Col/FFMs established by UN organs can also look into the impact of violations of IHRL/IHL on individuals and communities and assess the need for reparations and other means to address victims' grievances.
RECOMMENDATIONS TO	<p>Prevent future incidents <i>Identify/propose corrective measures to prevent future incidents</i></p>	✓	Col/FFMs established by UN organs can and usually do make recommendations to prevent future violations, which can include recommendations regarding the training of police or armed forces (e.g., UNSG-FFM Abkhazia in 1993); legislative, judicial, or policy reform (e.g., UNSC-Col on the Central African Republic in 2013 , UNSG-Col on Guinea in 2009 , UNSC-Col on Darfur in 2004); and the training of judges, lawyers, and prosecutors (e.g., UNSC-Col on Darfur in 2004).
	<p>Ensure accountability for violations of IHL/IHRL <i>Identify appropriate avenues and concrete actions to ensure accountability</i></p>	✓	Col/FFMs established by UN organs can make recommendations to ensure accountability and combat impunity for violations of international law, as many have done. Such recommendations can include, for example, the establishment of truth commissions (e.g., UNSC-Col on the Central African Republic in 2013 , UNSC-Col on Darfur in 2004) or the exercise of national or international jurisdiction for the purpose of criminal prosecutions (e.g., UNSC-Col on the Central African Republic in 2013 , UNSG-Col on Guinea in 2009 , UNSC-Col on Darfur in 2004 , UNSG-Col on Togo in 2000 , UNSG UN Investigative Team on the Democratic Republic of the Congo in 1997 , UNGA Group of Experts on Cambodia in 1998 , UNSC Commission of Experts on Rwanda in 1994 , UNSC-Col on Burundi in 1995 , UNSC FFM on Burundi in 1993 , UNGA-Col on Mozambique in 1973).

	<p>Ensure reparations and/or address other victims' grievances</p>	<p>✓</p>	<p>While less common in practice, Col/FFMs established by UN organs have also made recommendations to address victim's grievances, such as the restoration of property rights (e.g., UNSC-Col on the Central African Republic in 2013), provision of information on missing persons (e.g., UNSG-Col on Guinea in 2009), and payment of compensation and reparations (e.g., UNSG-Col on Guinea in 2009).</p>
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4 INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY

Members	Election/appointment	Guarantee of independence & impartiality
<p>Col/FFMs established by UN organs are generally composed of three to seven independent commissioners with different areas of expertise relevant to the Col/FFM mandate.</p> <p>The commissioners are generally supported by UN staff from relevant departments or agencies, in particular but not limited to OHCHR.</p>	<p>UNSC-Cols: Members are appointed by the president of the Security Council or, in cases where the Security Council has delegated the establishment of the Col to the secretary-general, by the secretary-general.</p> <p>UNGA-Cols: Members are appointed by the secretary-general or by the president of the General Assembly (in consultation with member states).</p> <p>UNSG-Cols: Members are appointed by the secretary-general.</p>	<p>Commissioners are independent experts who serve on the Col/FFM in their personal capacity.</p> <p>In some cases, the resolution establishing a UNSC-Col has explicitly recommended that the members be impartial. Similarly, some UNSG-Col mandates clearly state that investigations should be conducted with the highest standards of objectivity, independence, and impartiality (e.g., UNSG UN Investigative Team on the Democratic Republic of the Congo in 1997, UNSG-Col on Côte d'Ivoire in 2000, UNSG-Col on Guinea in 2009).</p> <p>The commissioners, as well as the UN staff supporting them, enjoy UN privileges and immunities that allow them to carry out their functions independently.</p>

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
<p>Col/FFMs established by UN organs are ad hoc investigative mechanism. They can be established:</p> <ul style="list-style-type: none"> • Upon request from a UN member state (e.g., UNSG-Col on Timor-Leste in 2006, UNSC-Col on Côte d'Ivoire in 2004, UNSG-Col on Togo in 2000, UNSG-Col on Côte d'Ivoire in 2000, UNGA Group of Experts on Cambodia in 1998, UNSC-FFM on Burundi in 1993, UNGA-FFM on Vietnam in 1967); • Upon recommendation from the OHCHR (e.g., UNSC-Col on Côte d'Ivoire in 2004); or • At the initiative of the mandating organ itself (e.g., UNGA-Col on Mozambique in 1973, UNSC Commission of Experts on Rwanda in 1994, UNSC-Col on Burundi in 1995, UNSC-Col on Darfur in 2004, UNSG-Col on Guinea in 2009, UNSC-Col on the Central African Republic in 2013). 	<p>UNSC-Cols are established by a Security Council resolution requiring nine affirmative votes, including the concurring votes of permanent members (Art. 27.3 of the UN Charter).</p> <p>UNGA-Cols are established by a General Assembly resolution requiring a simple majority of those member states present and voting, unless it is an important question as defined in Article 18 of the UN Charter (see also Rules 83–85 of the UNGA Rules of Procedure).</p> <p>UNSG-Cols are established through a simple decision by the secretary-general. When deciding to create a Col/FFM, the secretary-general generally seeks the consent of the member states on whose territory the Col/FFM would carry out its activities.</p>	<p>The time it takes for a Col/FFM mandated by a UN organ to be established depends on the availability of the required resources and the deadline imposed by the mandating authority. Overall, Col/FFMs established by UN organs have usually been established within a month.</p> <p>The time to produce a report is much more variable and is often dependent on the resources available. Some Cols/FFMs, such as the UNSC-Col on Darfur in 2004, produce their final report within four months of the constitutive resolution or decision. Others, like the UNSC-Col on Burundi in 1995 and the UNSC Commission of Experts on the Former Yugoslavia in 1992, produced their final reports about one year and one and a half years later, respectively. The mandating authority can and has in the past imposed specific deadlines for reporting.</p>

	Pre-existing	To be established when activated/created
Human resources	OHCHR maintains a list of well-qualified high-level persons and experts who may be considered to serve as members of investigative bodies established by UN organs. The latter are supported by a secretariat provided by OHCHR (e.g., UNSC-Col on Darfur in 2004 , UNSG-Col on Guinea in 2009 , UNSC-Col on the Central African Republic in 2013), other UN entities such as the Office of Legal Affairs (e.g., UNSC Commission of Experts on the Former Yugoslavia in 1992), or in-country UN staff (e.g., UNSC-Col on Burundi in 1995 , UNSG Mapping Exercise on the Democratic Republic of the Congo in 2008).	Where necessary or appropriate, the mandating authority can also urge UN member states and/or other international organizations to offer expert personnel in support of its Col/FFMs.
Financial resources	Col/FFMs established by UN organs are generally funded through the regular UN budget. However, several Col/FFMs established by UN organs have mentioned budgetary constraints and lack of funding as an impediment or obstacle to being fully able to fulfill their mandate. Many Col/FFMs are based at OHCHR headquarters in Geneva in order to be able to rely on the resources of that office.	The Security Council and General Assembly can call upon the secretary-general to set up a trust fund in order to receive voluntary contributions from states and other actors to finance the operations of Col/FFMs and have done so. This was the case with the UNSC Col on Burundi in 1995 and the UNSC Commission of Experts on the Former Yugoslavia in 1992 . Similarly, the UNSG Mapping Exercise on the Democratic Republic of the Congo in 2008 was funded by voluntary contributions by ten donors (UN member states and the MacArthur Foundation).

7 OUTCOME AND FOLLOW-UP

Confidential reporting to and dialogue with parties to the conflict		N/A
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<p>Public reporting to UN and/or other international organizations</p>	<p>✓</p>	<ul style="list-style-type: none"> • For UNSC Cols, the Col transmits its findings to the secretary-general, who reports to the Security Council. The report can also be presented through OHCHR. • For UNSG-Cols, the Col reports to the secretary-general, who can decide to submit the report to the Security Council or the General Assembly. • For UNGA-Cols, reports are submitted to the General Assembly, which can decide also to submit the report to the Security Council. <p>Members of Col/FFMs established by UN organs may share their findings with the governments of concerned states for comments and feedback before transmission to the mandating authority. The ToR of a specific Col/FFM could also provide for this. However, any submission for approval would be contrary to the independence of the Col/FFM.</p> <p>The reports of some Col/FFMs established by UN organs have not been published, or not in full (e.g., UNSC-Col on Liberia in 1993, UNSG-Col on Timor-Leste in 2006, UNSC-Col on the Central African Republic in 2013). The decision to keep the report confidential or only release a summary thereof is at the discretion of the mandating authority.</p>
<p>Transmissibility to judicial mechanisms</p>	<p>✓</p>	<p>As public documents, reports of Cols/FFMs established by UN organs can and have been used by judicial bodies investigating one or more of the incidents or issues covered in the report. Any further information and evidentiary materials gathered by the Col/FFM can be shared with judicial mechanisms if the secretary-general deems it appropriate and in line with UN policy and practice on the release of confidential documents (e.g., UNSC-Col on Liberia in 1993, UNSG-Col on Timor-Leste in 2006, UNSC-Col on the Central African Republic in 2013). For example, in the case of the UNSC Commission of Experts on the Former Yugoslavia in 1992, the commission's database recording alleged violations and the corresponding information and evidentiary materials it gathered was transmitted to the International Criminal Tribunal for the former Yugoslavia.</p>
<p>Possible follow-up mechanisms</p>	<p>✓</p>	<p>There is no pre-established list of follow-up mechanisms to UN-mandated Col/FFMs, but they generally recommend follow-up measures to be taken by the mandating authority or other UN organs, UN member states, or concerned states, such as:</p> <ul style="list-style-type: none"> • Keeping the Security Council seized/informed of the situation (e.g., UNSG-Col on Guinea in 2009; • Bringing the matter to the attention of the Security Council (e.g., UNSC-Col on Burundi in 1995) or the

		<p>UN Human Rights Council (e.g., UNSG-Col on Togo in 2000);</p> <ul style="list-style-type: none"> Continued monitoring of the situation by the UNSG, Human Rights Council independent experts (e.g., UNSC-Col on the Central African Republic in 2013), or OHCHR (e.g., UNSG-Col on Togo in 2000, UNSC-Col on Darfur in 2004, UNSG-Col on Guinea in 2009); Appointment of an independent expert by the Human Rights Council (e.g., UNSC-Col on Darfur in 2004); Opening an OHCHR in-country office (e.g., UNSG-Col on Guinea in 2009); or Imposing sanctions on alleged perpetrators of violations of international law (e.g., UNSC-Col on the Central African Republic in 2013)
<p>Available enforcement measures</p>	<p>✓</p>	<p>There are no pre-established enforcement measures foreseen for Col/FFMs established by UN organs. However, their reports and recommendations can and have led to action by the Security Council, including under Chapter VII. Such action has included:</p> <ul style="list-style-type: none"> Adopting a resolution endorsing the recommendations of the Col/FFM and calling for their implementation; Establishing a court/tribunal (e.g., International Criminal Tribunals established following the UNSC Commission of Experts on the Former Yugoslavia in 1992 and UNSC Commission of Experts on Rwanda in 1994, Special Criminal Court established after UNSC-Col on the Central African Republic in 2013, Extraordinary Chambers in the Courts of Cambodia established following the UNGA Group of Experts on Cambodia in 1998); Imposing sanctions (e.g., UNSC-Col on Darfur in 2004); Referral to the ICC (e.g., UNSC-Col on Darfur in 2004); or Establishing a tripartite steering committee to lead national consultations on transitional justice (e.g., UNSC-FFM on Burundi in 1995).

Several Col/FFMs established by UN organs with a broad mandate to investigate alleged violations of IHRL/IHL in a given context have investigated and reported on incidents of violence against healthcare. For the sake of brevity, only those that did are listed in the table below. For a comprehensive list of all Col/FFMs established by UN organs, highlighting those that reported on attacks on healthcare, see here.

UNSC-Cols

Year	Investigated violations of IHL		Investigated alleged attacks on healthcare	
Central African Republic (2013)	✓	Mandated to investigate violations of IHL.	✓	The Col mentioned the high level of attacks on aid workers and medical personnel and recommends that the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the government develop better policy to respond to and deter such acts (p. 28).
Darfur (2004)	✓	Mandated to investigate reports of violations of IHL.	✓	The Col mentioned attacks on protected buildings such as hospitals, looting and destruction of hospitals, and killing of wounded persons in hospitals (pp. 60, 63, 70, 72, 75, 89, 125).
Rwanda (1994)	✓	Mandated to provide its conclusions on the evidence of grave violations of IHL.	✓	The Col mentioned that numerous sick and wounded and medical staff in a hospital were murdered (pp. 17–19).
Former Yugoslavia (1992)	✓	Mandated to provide its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of IHL.	✓	The Col mentioned attacks on hospitals and medical personnel and the systematic targeting of some health facilities (pp. 34, 45–46).

UNGA-Cols

	Investigated violations of IHL		Investigated alleged attacks on healthcare	
Mozambique (1973)	✓	Although not specifically mandated to do so, looked into violations of IHL.	✓	The Col reported on the killing of wounded soldiers receiving treatment at a hospital (p. 22) and on raids against hospitals (p. 23).

Cambodia (1998)	✓	Although not specifically mandated to do so, looked into violations of IHL.	✓	The Col reported on hospital patients being dragged from their beds and let to die in the streets (p. 10).
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UNSG-Cols:

	Investigated violations of IHL		Investigated alleged attacks on healthcare	
Democratic Republic of the Congo (1997)	✓	Mandated to investigate gross violations of IHL.	✓	The investigative team reported a systematic denial of medical assistance to the sick and injured (p. 7), as well as the killing of wounded patients in hospitals (p. 25). It made no specific recommendations regarding attacks on healthcare.
Democratic Republic of the Congo (2008)	✓	Mandated to conduct a mapping exercise of the most serious violations of IHL.	✓	The mapping mechanism reported many instances of attacks against healthcare, including hospitals frequently targeted (p. 65), killing of people being treated in hospitals (pp. 75, 81, 119, 134), destruction of hospitals (p. 125), and kidnapping of hospital patients (p. 140). The mechanism was not mandated to make recommendations.
Guinea (2009)	✓	Mandated to investigate alleged human rights violations that took place in Guinea on September 29, 2009, and in the immediate aftermath.	✓	The Col reported on the denial of medical care to victims, deliberate alteration of medical records, military takeover of hospitals and morgues (p. 2), soldiers removing patients from hospitals (p. 31), and the pillaging of health facilities (p. 40). It made no specific recommendations regarding attacks on healthcare.