



Evaluating Mechanisms to Investigate Attacks on Healthcare

Office of the United Nations High Commissioner for
Human Rights — Fact-Finding Missions

OHCHR-FFM

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ORIGINS AND SUMMARY

The United Nations High Commissioner for Human Rights (HCHR), as part of his or her functions has the authority to deploy fact-finding missions to investigate and make recommendations on situations relating to violations of international human rights law. The HCHR can also establish such fact-finding missions at the request of the UN's principal organs.

The purpose of such OHCHR-FFMs is to establish facts and the circumstances in which these facts occurred, and assess whether these facts amount to violations of international law, for the purpose of identifying corrective action, obtaining reparations for victims of violations, and/or to ensure the perpetrators of violations are held to account.

Several OHCHR fact-finding missions have investigated and reported on attacks on healthcare committed in situations of armed conflict (see section 8 below).

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- UN General Assembly [Resolution 48/141](#) creates the function of the High Commissioner for Human Rights (HCHR) as the United Nations official with principal responsibility for the UN's human rights activities under the direction and authority of the Secretary-General. In that capacity, and as part of his or her mandate to provide "assistance to Governments to help implement international human rights standards on the ground"¹, the HCHR has the authority to establish and deploy fact-finding missions to investigate alleged violations of international human rights law.
- OHCHR-FFMs investigate alleged violations of international human rights law (IHRL), and, in situations of armed conflict, alleged violations of international humanitarian law (IHL).

Relevant rules, guidelines, and methodology

- 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).

¹ <http://www.ohchr.org/EN/AboutUs/Pages/Mandate.aspx>

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

<p>FULL</p> <p><i>The mechanism can look into all incidents that Res 2286 seeks to address</i></p>	✓	N/A
<p>PARTIAL</p> <p><i>The mechanism can look into some but not all incidents the Res 2286 seeks to address</i></p>		While the mandate of the HCHR does not explicitly include IHL, the OHCHR has increasingly included alleged violations of IHL within its area of work, in particular with regard to the monitoring, investigation and reporting on alleged violations and abuses in specific countries. An OHCHR-FFM would therefore be able to investigate incidents of violence against healthcare that fall within the purview of SCR 2286 to the extent that they amount to violations of international human rights and/or humanitarian law.
<p>CONDITIONAL</p> <p><i>The mechanism can only look into incidents where a certain condition related to the mechanism's mandate is met</i></p>		N/A
<p>SINGLE INCIDENTS</p> <p><i>The mechanism can be used to investigate single incidents within the purview of that Res 2286</i></p>		The HCHR can also establish an OHCHR-FFM to investigate a single incident of an alleged violation of international human rights and/or humanitarian law, including incidents of violence against healthcare.

Geographic scope

<p>GLOBAL</p> <p><i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	The HCHR can establish an OHCHR-FFM to investigate alleged violations of international human rights and/or humanitarian law regardless of where these have occurred.
<p>REGION-SPECIFIC</p> <p><i>The mechanism can only be activated to look into incidents that occurred in a specific region</i></p>		N/A
<p>COUNTRY-SPECIFIC</p> <p><i>The mechanism can only be activated to look into incidents that occurred in a specific country</i></p>		N/A

Type of investigative activities

MONITORING AND REPORTING <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i>			OHCHR FFMs do not have a general monitoring role; they are established to investigate and report on specific situations or incidents of violations of IHRL or IHL. It is at the discretion of the High Commissioner to produce a report on its findings.
FACT-FINDING & INVESTIGATING	Identify violations of international law <i>Establishing facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i>	✓	OHCHR-FFMs establish facts, and the circumstances in which these facts occurred, and assess whether they amount to alleged violations of IHRL and/or IHL.
	Identify those responsible <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i>	✓	OHCHR-FFMs also identify which entities and/or individuals are responsible for alleged violations, or have influence over those who allegedly engaged in such violations.
	Identify perpetrators crimes <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i>	✓	OHCHR-FFMs can also be mandated to assess whether certain violations would amount to international crimes, and identify the perpetrators of such crimes. It is at the discretion of the HCHR to make these names public and/or share them with prosecuting authorities or not.
COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i>		✓	While the OHCHR-FFM methodology does not follow protocols and procedures immediately suitable for criminal proceedings, the information and evidence collected by OHCHR-FFMs could, if made available (at the discretion of the HCHR), be used by judicial authorities as leading information for a criminal investigation.
ASSESSING VICTIMS' GRIEVANCES <i>Identifying direct/indirect consequences of attacks and assess need for reparations</i>		(✓)	OHCHR-FFMs can and sometimes do assess the need for reparations.
RECOMMENDATIONS TO	Prevent future incidents <i>Identify/propose corrective measures to prevent future incidents</i>	✓	OHCHR-FFMs may make recommendations with the view of "improving the promotion and protection of all human rights [and IHL where applicable]" ² to all relevant actors, including the HRC, the ICC, the UNSC, the broader international community, and national authorities and tribunals.

² Article 4 (b), [Resolution A/RES/48/141](#), text between brackets added on the basis of the practice of OHCHR-FFMs.

	<p>Ensure accountability <i>Identify appropriate avenues and concrete actions to ensure accountability</i></p>	✓	<p>In certain cases, OHCHR FFMs have also recommended “ensuring accountability for certain crimes” (e.g. OHCHR-FFM for the Central African Republic (2013)). In its report to the Human Rights Council on the situation in the Central African Republic, the OHCHR-FFM recommended that the “Human Rights Council appoint a special procedure on the situation of human rights in the Central African Republic (CAR) to ensure accountability for serious crimes, by means of referral to justice, possibly to the International Criminal Court”. It is worth noting, that a year later, the situation in the CAR was referred to the ICC, by the CAR authorities themselves.</p>
	<p>Ensure reparations and/or address victims’ other grievances</p>	(✓)	<p>OHCHR-FFMS can and sometimes have made recommendations on reparations.</p>

4 INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY

Members	Election/appointment	Guarantees of independence & impartiality
<p>OHCHR-FFMs are internal mechanisms to the OHCHR and thus composed of OHCHR staff. However, in some cases, the HCHR can be assisted by independent experts. OHCHR maintains a talent pool; a list of “well qualified high-level persons”³ for FFMs.</p>	<p>The members of a specific OHCHR-FFM are selected and appointed by the HCHR.</p>	<p>There is an extensive selection process during which candidates are expected to disclose any information that may lead to questions being raised about their independence, impartiality, and integrity⁴.</p>

³ OHCHR Guidance and Practice: Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law (2013) (p.4) http://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf

⁴ Ibid p.21.

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
<p>An OHCHR-FFM is established by the High Commissioner of Human Rights:</p> <ul style="list-style-type: none"> - upon his/her own initiative (e.g. OHCHR Fact-finding mission to Darfur (2004), OHCHR mission to Kyrgyzstan (2005), OHCHR fact-finding mission to Togo (2005), OHCHR mission to Western Sahara (2006), OHCHR Fact-finding mission to Kenya (2008), OHCHR mission to Bangladesh (Myanmar) (2017)); - at the request of the concerned State (e.g. OHCHR inquiry into alleged massacre in the Choco region of Colombia (2002)). 	<p>An OHCHR FFM is established by the HCHR in his own authority. The HCHR does not require further authorization from States or UN organs. The HCHR can send an OHCHR-FFM to a neighboring country if the country concerned by the investigation does not permit its deployment (e.g.: OHCHR-FFM on Uzbekistan (2005), where the HCHR sent the FFM to investigate from neighboring Kyrgyzstan).</p>	<p>The duration of activating and completing the work of an OHCHR-FFM can vary depending on the complexity of the issue at hand. However, their lifespan is usually shorter than similar mechanisms established under the mandate of relevant UN organs.</p>

	Pre-existing	To be established when activated/created
Human resources	<p>OHCHR-FFMs are composed mostly of OHCHR staff. OHCHR can also rely on seconded staff from other UN agencies for specific FFMs.</p> <p>If the HCHR chooses to be assisted by independent experts, the HCHR selects experts from the existing pool of experts managed by OHCHR.</p>	<p>OHCHR-FFMs are supported by a secretariat provided for by OHCHR. Its staff is recruited by the High Commissioner⁵; mostly from OHCHR staff, but can also include seconded staff from other UN entities and externally hired staff or consultants.⁶ The secretariat "provides substantive and technical expertise and support" to the OHCHR-FFM.⁷</p>

⁵ "Guidance and Practice: Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law" (p.22) http://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf

⁶ Ibid p.23.

⁷ Idem.

Financial resources	OHCHR-FFMs are funded through OHCHR's general budget. Exceptionally, when established at the request from the UNSG, they could have additional sources of funding (e.g. through the UNSG's unforeseen expenses account).	The budget of a FFM will have to be reconsidered when the FFM's secretariat employs external or seconded staff rather than solely OHCHR staff. This budget will have to cover all expenses and allowances for secretariat staff.
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7 OUTCOME AND FOLLOW-UP

Confidential reporting to and/or dialogue with parties to the conflict		N/A
Public reporting to UN and/or other international organizations	✓	OHCHR FFM's reports are, in most cases, made public. However, their publication is at the discretion of the HCHR (e.g. the HCHR may decide not to publish the report to give the parties concerned an incentive to address the problems identified by the OHCHR-FFM and engage in a political dialogue with the OHCHR). The HCHR may also share the OHCHR-FFM's findings and recommendations with concerned Member States or other parties to a conflict prior to publishing. The State in question then has a "right to reply" which the HCHR can take into consideration, at his discretion. The HCHR reports annually to the Human Rights Council on the OHCHR's activities, which may include references to the work of OHCHR-FFMs.
Transmissibility to judicial mechanisms		OHCHR can share evidence collected with national and international judicial authorities, in line with UN policy and practice on the release of confidential information, ⁸ provided that, in its assessment, victims, witnesses and their families are adequately protected. Informed consent is a key element for the disclosure of information.
Possible follow-up mechanisms	✓	OHCHR undertakes various follow-up activities, such as ⁹ : <ul style="list-style-type: none"> • Monitoring and publishing reports on human rights situations;

⁸ [Convention on the P&I of the UN](#) (1946), Section 21, and applicable Secretariat guidelines (e.g. [ST/SGB/2007/6](#)).

⁹ "Guidance and Practice: Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law" (p 112) http://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf

		<ul style="list-style-type: none"> • Providing information from the FFM's report to thematic special procedures mechanisms of the HRC, including the UPR; • Developing technical cooperation activities necessary to put the recommendations made in the final report into practice; • Identifying advocacy opportunities to promote the implementation of the recommendations; • Monitoring the safety of persons who cooperated with the FFM and assisting them in responding to threats; • Produce a stand-alone public report that can be shared with member states and UN organs for further action on their part; • Address certain issues through press releases and other statements.
<p>Available enforcement measures</p>	<p>✓</p>	<p>The Human Rights Council, based on the findings and recommendations of OHCHR-FFMs, can:</p> <ul style="list-style-type: none"> - Ensure that the situation of a country remains on the agenda of the Security Council and that the Council remains seized (as recommended by the OHCHR-FFM Syria and the OHCHR-FFM Iraq).¹⁰ - Appoint a special procedure on the situation of human rights to ensure "accountability for serious crimes by means of referral to justice, possibly to the International Criminal Court" (as recommended by the OHCHR-FFM Central African Republic). It is worth noting, that a year later, the situation in the CAR was referred to the ICC, by the CAR authorities themselves. - Continue to monitor human rights developments and "progress towards accountability and reconciliation; if insufficient the Council should consider further international action to ensure accountability for international crimes" (as recommended by the OHCHR-FFM Sri Lanka). - Establish an independent expert to report to the Security Council (as recommended by the OHCHR-FFM Libya). <p>The Security Council based on the findings and recommendations of OHCHR-FFMs can, amongst other things:</p> <ul style="list-style-type: none"> - Take action with respect to listing individuals responsible for violations or abuses under the ongoing sanction regime (as recommended by the OHCHR FFM Libya); - Refer the situation to the ICC.

¹⁰ The HRC can only do so if the country is already on the agenda of the HRC.

Out of 12 OHCHR-FFMs, so far, only the OHCHR-FFM on Darfur (2004) has investigated and reported on attacks against healthcare.

Country/year	Investigated violations of IHL		Investigated alleged attacks on healthcare	
Darfur (2004)		Mandated to look into reports of massive and criminal violations of Human Rights in Darfur, and the humanitarian consequences.	(✓)	<p>The OHCHR-FFM reported on acts of blockage of the delivery of humanitarian assistance and impeded access (p.8, 15, 19) which had important consequences for the situation of IDPs (p.23).</p> <p>The OHCHR-FFM recommended the establishment of an international commission of inquiry to “examine the situation, identify the crimes that have been committed and their perpetrators, assess the responsibility of the authorities and recommend measures for securing accountability (...) given the failure of the national legal system to address the problem” (p.4 and 24)</p>