



Evaluating Mechanisms to Investigate Attacks on Healthcare

Special Procedures of the Human Rights Council

HRC-SPs

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ORIGINS AND SUMMARY

The Human Rights Council's special procedures (HRC-SPs) are individual independent human rights experts, or groups of such experts, who monitor, report on, and advise on human rights issues. They can have either thematic or country mandates.¹ HRC-SPs are ad hoc mechanisms and technically temporary, although very few special procedure mandates have been discontinued once established.

HRC-SP mandates are human rights-oriented, but several HRC-SPs working on issues or countries affected by armed conflict have also reported on alleged violations of international humanitarian law (IHL). HRC-SPs rarely report on attacks on healthcare. However, the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has published a [report](#) on the right to health in situations of conflict that looks into this issue in detail.

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- The [constitutive resolution of the HRC](#) mandates the HRC to “address situations of violations of human rights” and “respond promptly to human rights emergencies.” It specifically states that the HRC shall “maintain a system of special procedures,” a power that its predecessor, the Human Rights Commission, already had ([ECOSOC Resolution 1235 \(XLII\)](#)).
- In light of the mandate of the HRC, HRC-SPs address violations of international human rights law (IHRL) in specific countries, or specific violations of IHRL. However, as many HRC-SPs have been established to address violations occurring in countries affected by armed conflict or on issues related to conflict, they have also relied on international humanitarian law (IHL).

Relevant rules, guidelines, and methodology

¹ A full list of current country mandates can be found [here](#), and of thematic mandates [here](#). Mandate holders can be called by many names, including special rapporteurs, special representatives, working groups, and independent experts. For the purpose of the present project, it was not possible to examine all mandates and reports of HRC-SPs. The information in this fact sheet is based on general information available on HRC-SPs, a closer examination of the mandate and reports of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the mandates and reports of the HRC-SPs for Syria, Iraq, Afghanistan, Mali, Myanmar, the Occupied Palestinian Territories, Sudan, Somalia, the Central African Republic, the human rights of internally displaced persons (IDPs), the promotion and protection of human rights and fundamental freedoms while countering terrorism, trafficking, violence against women, and torture.

- o OHCHR, [Manual of Special Procedures](#), 2008
- o OHCHR, [Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council](#), 2007
- o OHCHR, [Terms of Reference for Country Visits by Special Procedures](#), 2016

3 SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

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

<p>FULL <i>The mechanism can look into all incidents that Res 2286 seeks to address</i></p>	✓	HRC-SPs are human rights mechanism and mostly focus on violations of IHRL. However, mandate holders have a great deal of flexibility in how to approach an issue, and were they to look into issues related to the right to health in situations of armed conflict, they could very likely look into all incidents Security Council Resolution 2286 seeks to address.
<p>PARTIAL <i>The mechanism can only 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 certain condition related to the mechanism's mandate is met</i></p>		N/A
<p>SINGLE INCIDENTS <i>The mechanism can be activated to investigate single incidents within the purview of Res 2286</i></p>		N/A

Geographic scope

<p>GLOBAL <i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	HRC-SPs can be established to investigate alleged violations or abuses regardless of where they occurred.
<p>REGION-SPECIFIC <i>The mechanism can only be activated to look into incidents that occurred in a specific region</i></p>		N/A
<p>COUNTRY-SPECIFIC <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

<p>MONITORING AND REPORTING <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i></p>		✓	HRC-SP mandate holders produce annual reports that contain general trends and developments on the situation of human rights in a given country or on a human rights issue globally as a function of their mandate. HRC-SP mandate holders can also produce thematic studies on particular topics of relevance to their mandate.
FACT-FINDING & INVESTIGATION	<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>	✓	HRC-SP mandate holders can carry out country visits in order to conduct fact-finding missions and investigate alleged violations of IHRL and, where relevant, IHL.
	<p>Identify those responsible <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i></p>	✓	HRC-SP mandate holders can identify those responsible for violations. In particular, they can issue recommendations to governments concerning alleged human rights violations they are responsible for.
	<p>Identify perpetrators of crimes <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i></p>		HRC-SP mandate holders do not address issues of individual criminal responsibility.
<p>COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i></p>			Mandate holders to not collect evidence of alleged crimes.
<p>ASSESSING VICTIMS' GRIEVANCES <i>Identifying direct/indirect consequences of attacks and assess need for reparations</i></p>		✓	HRC-SPs can receive petitions from victims of human rights violations and communicate with the relevant government to verify the complaint.
RECOMMENDATIONS TO	<p>Prevent future incidents <i>Identifying/proposing corrective measures to prevent future incidents</i></p>	✓	HRC-SPs' annual reports can contain recommendations to countries and other stakeholders for preventing or ending alleged violations of international law. Examples include recommending compliance with international law (e.g., independent expert on Mali in January 2016 , independent expert on Sudan in July 2016), legal and judicial reform (e.g., special rapporteur on Eritrea in June 2015 , special rapporteur on Myanmar in March 2016), and training for military and police personnel (e.g., special rapporteur on Eritrea in June 2015). Following a country visit, mission reports can also contain similar recommendations (e.g.,

			<p>country visit reports of the independent expert on Mali in January 2015, independent expert on Sudan in September 2014, and special rapporteur on human rights of IDPs in Syria in April 2016).</p> <p>HRC-SP mandate holders can also send urgent appeals to concerned governments for them to take preventive action.</p>
	<p>Ensure accountability for violations of IHL/IHRL <i>Identifying appropriate avenues and concrete actions to ensure accountability</i></p>	✓	<p>HRC-SP mandate holders can make recommendations for remedying violations, such as investigating and prosecuting perpetrators of violations (e.g., special rapporteur on Eritrea in June 2015, independent expert on Mali in January 2016, independent expert on Sudan in July 2016, independent expert on Somalia in September 2016, special rapporteur of the HRC on trafficking in persons in August 2016).</p>
	<p>Ensure reparations and/or address other victims' grievances</p>	✓	<p>Those HRC-SPs with mandates to receive petitions from victims can make recommendations to ensure remedy and redress.</p> <p>HRC-SP mandate holders can also make recommendations related to reparations or compensation for victims (e.g., special rapporteur on Myanmar in March 2016).</p>

4 INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY

Members	Election/appointment	Guarantees of independence & impartiality
<p>HRC-SP mandate holders can be individual experts or a working group composed of independent experts.</p>	<p>Once an HRC-SP mandate is created, the HRC accepts nominations of experts from governments, international and regional groups operating within the UN human rights system, NGOs, other human rights bodies, individuals, or qualified national human rights institutions.</p> <p>The president of the HRC puts forward a selected candidate (following recommendations made by a Consultative Group), who must be approved at a session of the HRC.</p>	<p>According to HRC Resolution 5/1 (2007), independence and impartiality are of paramount importance in nominating, selecting, and appointing HRC-SP mandate holders.</p> <p>HRC-SP mandate holders make a declaration in writing to be impartial prior to assuming their functions.</p> <p>HRC-SP mandate holders serve in their personal capacity and are not remunerated.</p>

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
<p>HRC-SPs are ad hoc bodies established by the HRC through a resolution requiring a simple majority of members present and voting. They are increasingly being proposed by core groups of states rather than individual countries.</p>	<p>The HRC can establish an HRC-SP without the consent of the concerned state.</p> <p>For country visits, however, the HRC-SP mandate holder has to request an invitation from the concerned government. States can issue standing invitations, which means that they are prepared to receive a visit from any thematic mandate holder. However, this is not an official mechanism and is not binding on states.</p>	<p>HRC-SP country mandate holders are generally appointed for one year, and their mandate can be extended by further HRC resolutions. HRC-SP thematic mandate holders are appointed for a period of three years.</p> <p>HRC-SP mandate holders can serve for a maximum of six years in a given function.</p> <p>HRC-SP country visits vary in duration between one and two weeks but can be shorter or longer if the circumstances so require. Mandate holders can conduct several visits over the course of their mandate.</p>

	Pre-existing	To be established when activated/created
<p>Human resources</p>	<p>HRC-SP mandate holders are supported by OHCHR; the thematic mandates are housed within the HRC and the OHCHR Special Procedures Branch, and country mandates fall under the relevant geographic branch of the OHCHR Field Operations and Technical Assistance Division. OHCHR provides personnel and logistical and research assistance to the HRC-SPs.</p>	<p>N/A</p>

	<p>During country visits, HRC-SP mandate holders are usually accompanied by OHCHR staff. Their work is also facilitated by senior UN officials in the country. According to a 1998 memorandum of understanding, local offices of the UN Development Programme (UNDP) also extend both substantive and logistical support during the missions.</p>	
Financial resources	<p>Resources for special procedures come from the UN regular budget. In addition, some states have expanded the scope of their voluntary contributions to OHCHR to finance the special procedures.</p> <p>A three-year special procedure mandate usually costs around \$1.5 million.</p>	<p>Some mandate-holders have “outsourcing” agreements whereby donor funds are channeled through non-UN organizations, which then support the mandate holder (this can also include human resource and research support).</p>

7 OUTCOME AND FOLLOW-UP

Confidential reporting to and dialogue with parties to the conflict	✓	<p>HRC-SP mandate holders can send an urgent appeal asking the government to take preventive or investigatory action, or a letter of allegation of human rights violations to the government of the state concerned requesting information on and responses to allegations. The existence and content of these remain confidential (only a summary of the communications is made public later on). Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of existing draft legislation, policy, or practice considered not to be fully compatible with international human rights standards.</p> <p>Country visits also allow for an intensive bilateral dialogue with relevant authorities. Prior to publication of the mission report, the report is shared with the government, which can make comments.</p>
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<p>Public reporting to UN and/or other international organizations</p>	<p>✓</p>	<p>HRC-SP mandate holders report annually to the HRC. The HRC can request a mandate holder to report on a specific theme or topic. Country visit reports will be presented as addenda to these reports. Some mandate holders also hold press conferences and issue preliminary findings after their mission.</p> <p>Many mandate holders are also mandated to report to the General Assembly (e.g., HRC-SP on Myanmar in 2015, HRC-SP on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in 2016, HRC-SP on the human rights of internally displaced persons in 2016). Some have also informally briefed the Security Council.</p> <p>Finally, mandate holders can also issue press releases about their activities.</p>
<p>Transmissibility to judicial mechanisms</p>		<p>While judicial bodies have referred to reports of HRC-SPs, this has been out of initiative of the judges and not following a referral to a court.</p>
<p>Possible follow-up mechanisms</p>	<p>✓</p>	<p>There is no systematic mechanism to follow up on country visits. HRC-SP mandate holders can request information from governments concerned and other appropriate sources to assess the status of implementation of their recommendations. Follow-up visits can also be considered (e.g., HRC-SP on torture in August 2016, HRC-SP for the Central African Republic in July 2016).</p> <p>Following the presentation of their report to the HRC, there is an interactive dialogue between HRC-SP mandate holders and states both in the HRC and, where applicable, in the Third Committee of the General Assembly. However, individual interactive dialogues with thematic mandate holders are increasingly being replaced by “clustered” dialogues.</p> <p>The content of HRC-SP reports to the HRC can also be reflected in Security Council and General Assembly resolutions or through the elaboration of soft law instruments (e.g., UN Guiding Principles on Internal Displacement).</p> <p>Following a communication, there can be constructive dialogue with governments, after which governments can take substantive steps to address the alleged violations (e.g., HRC-SP on the human rights of IDPs in April 2017, HRC-SP on the Central African Republic in July 2016).</p>
<p>Available enforcement measures</p>		<p>N/A</p>

There are currently forty-three thematic mandate holders and fourteen country mandate holders.² Both thematic and country mandate holders occasionally report or make recommendations on alleged violations of IHL. Examples of such reports by thematic mandate holders include those of the special rapporteur on the human rights of IDPs ([April 2017 report](#), [April 2016 report](#) on country visit to Syria, [April 2016 report](#) on country visit to Iraq, [April 2017 report](#) on country visit to Afghanistan), special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ([March 2014 report](#)), special rapporteur on torture ([August 2016 report](#)), special rapporteur on trafficking ([August 2016 report](#)), and special rapporteur on violence against women ([June 2017 report](#)). Examples of such reports by country mandate holders include those of the independent expert on Mali ([January 2016 report](#), [January 2015 country visit report](#)), special rapporteur on Myanmar ([March 2016 report](#)), special rapporteur on the Palestinian Territories ([October 2016 report](#)), independent expert on Sudan ([July 2016 report](#), [September 2014 country visit report](#)), and independent expert on Somalia ([September 2016 report](#)).

However, such reporting on IHL is generally broad, and few reports mention attacks on healthcare specifically. One example of a mandate holder addressing this issue is the special rapporteur on the human rights of IDPs in his latest country visit report on Syria ([April 2016 report](#)), which mentions blocking access to healthcare as a method of war, health centers and workers being targeted by shelling and air strikes, and difficulties in access to healthcare for IDPs. The special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health generally deals with issues unrelated to Security Council Resolution 2286. However, in an [August 2013 report](#), the mandate holder specifically looked at the right to health in conflict situations and made a series of recommendations related to attacks on healthcare. Other special procedure reports mention the directly related issue of challenges to humanitarian access (e.g., independent expert on the Central African Republic in [July 2016](#), independent expert on Mali in [January 2016](#) and [January 2015](#), special rapporteur on Myanmar in [March 2016](#), independent expert on Sudan in [July 2016](#)). It is nonetheless interesting to note that healthcare is one of the categories mandate holders look at and report on when conducting country visits.

² Considering the large number of HRC-SPs, the work of many of which spans several years, resulting in numerous reports, the information in this fact sheet is based on the most recent reports of mandates that seemed most relevant for potential investigations into attacks on healthcare.