



19TH WORLD DAY AGAINST THE DEATH PENALTY

ENGAGING THE SPECIAL PROCEDURES OF THE UN HUMAN RIGHTS COUNCIL: WOMEN AND THE DEATH PENALTY

1. Introduction: What are UN Mechanisms and How Do They Operate?

While the methods in this tool are applicable beyond the scope of capital punishment, for the **19th World Day Against the Death Penalty**, Reprieve and the World Coalition Against the Death Penalty have drafted this *How-To* on engaging the **United Nations (UN) Special Procedures** for elevating cases pertaining to women who have been sentenced to the death penalty. This tool has been drafted for lawyers and civil society organizations who would like to work with the various UN Human Rights Mechanisms, but who may not know where to begin. Drafted by Reprieve with generous input from the Advocates for Human Rights, the International Federation of ACATS (FIACAT), and World Coalition Against the Death Penalty.

There have been numerous cases of women who have been sentenced to death whose cases contained human rights violations ranging from grossly unfair trials (protected under Article 10 of the Universal Declaration of Human Rights) to being a under the age of 18 when the offense was committed (protected under Article 37 on the UN Convention on the Rights of the Child.)

There are various ways that individuals and non-governmental organisations (NGOs) can work with the UN to **report a specific case of human rights violation**. One way is to engage with the UN Human Rights Council Special Procedures.

The Special Procedures of the Human Rights Council refer to independent human rights experts or groups of experts with mandates to report and advise on human rights from a thematic or country specific perspective. The Special Procedures are independent of government and therefore play an important role in monitoring governments and their policies across the world. As of September 2020, there were **44 thematic**¹ and **11 country**² mandates.³ For violations regarding women sentenced to death thematic mandates you may want to explore are:⁴

- the Working Group on Arbitrary Detention;
- the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; and

¹ For the list of Thematic Mandates: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM>

² For the list of Country Mandates: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx>

³ Special Procedures of Human Rights Council: <https://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>

⁴ Detailed information on these thematic mandates has been made available in the appendix.

- the Working Group on Discrimination against Women and Girls.

A visual directory of the special procedures can be found on the Office of the High Commissioner on Human Rights (OHCHR)'s website.⁵

Special Procedures mandate holders are individuals and are often called Special Rapporteur or Independent Expert, however, some of the procedures also consist of working groups, which often comprise 5 members from each region. The mandate holders often serve in a personal capacity – this means they are not paid for their work and do not represent their country of citizenship. However, they will usually have a paid staff member appointed by the secretariat of the Office of the High Commissioner on Human Rights (OHCHR)⁶ The Special Procedures have **4 working methods**:

1. **Communications:** One of the tools of the Special Procedures is direct communication with governments through a letter⁷. In these letters, the expert will raise an allegation received from an NGO or individual and request clarification from the government. The letter might address:⁸
 - a. Past human rights violations – this is known as ‘letter of allegation’.
 - b. Ongoing or potential human rights violation – this is known as an ‘urgent appeal’.
 - c. Concerns over laws that do not abide by international standards. Special Rapporteurs have written letters on behalf of the following women:
 - i. Lisa Montgomery (in the **USA**)⁹
 - ii. Kanizan Bibi (in **Pakistan**)¹⁰
 - iii. Women on death row in **America**¹¹
 - iv. Anonymous women sentenced to death for killing her husband after a forced marriage (in **Sudan**)¹²
2. **Country visits:** In order to understand the human rights context of a specific country, a special rapporteur will go on mission and meet with relevant stakeholders such as government

“We would like to highlight that article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, provides that capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial (...) We note with concern that Ms. Montgomery did not receive effective representation during the initial proceedings.”

– Excerpt from the Communication written on behalf of Lisa Montgomery in November 2020. See footnote 8.

⁵ Directory of Special Procedures Mandate Holders:

https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryFebruary2021_en.pdf

⁶ Special Procedures of the UN Human Rights Council <https://ijrcenter.org/un-special-procedures/>

⁷ What can this letter look like? This letter was written by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders in November 2018: https://academy.ishr.ch/upload/resources_and_tools/SP_module_sample_communicationsUA_TURKMEKISTA_N.pdf

⁸ What are Communications? <https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

⁹ Communications on Lisa Montgomery :

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25703>

¹⁰ Communications on Kanizan Bibi :

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25313>

¹¹ Communications on Women on Death Row in America:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26045>

¹² Communications on a woman sentenced to death in Sudan:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23841>

officials and human rights defenders. However, a rapporteur can visit only after receiving an official invitation from the relevant authorities.

3. **Reporting:** All Special Procedures submit an annual report of their work to the Human Rights Council. The report covers the work undertaken by the expert and examines emerging trends. For example, the Working Group on Discrimination against Women and Girls found in its report on Women deprived of liberty that “[j]udicial gender bias often subjects women to disproportionate sentencing for non-conformity with gender stereotypes. In some cases, the penalties may even surpass aggravated imprisonment and attract the death penalty.”¹³
4. **Educational work:** An example of educational work involves an expert issuing a press statement about a specific human rights violation. Experts often undertake thematic studies and request inputs on specific topics to gather information for such studies and the publish reports based on their findings.

2. Why Should Civil Society Engage with the Special Procedures?

Absolutely any individual, civil society organization, inter-governmental entity or even a national human rights body can engage with the Special Procedures. There are two main reasons lawyers, NGOs, and other civil society members should engage the special procedures on behalf of clients as well as victims facing the death penalty or unjust detention.

- Communications from an NGO to the Special Procedures usually prompt a communication process with a given State, which should respond to the communication in a specific timeframe. As a result, you will then have the opportunity to review the State’s response to your allegation, which can serve as a source of information about what the State claims is happening/has happened to your client or victim.
- Engaging with the Special Procedures can be part of an advocacy strategy on behalf of a client or victim. This can be a particularly useful strategy when national opportunities to call attention to a specific case have been exhausted.

3. How to Engage with the Special Procedures?

Step 1. Submit the information.

There is a formal process for engaging with a special procedure on a case. This involves filling either filling in an online form that can be found on the OHCHR website or submitting your information

We highly encourage **that you visit and familiarize yourself with the OHCHR online webpage** devoted to explaining how to interact with the Special Procedures:
<https://spsubmission.ohchr.org/>

directly to the OHCHR at urgent-action@ohchr.org.¹⁴ You may also send in a physical file of information through the post, addressing your package to OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland. It is preferred, however, that you prioritize using the *online form* to keep better track of the request.

It should be noted that the consent of the individual subject to the death penalty must be obtained before a

¹³ Women deprived of Liberty, *Report of the Working Group on the issue of discrimination against women in law and in practice*, May 2019 <https://undocs.org/en/A/HRC/41/33>

¹⁴ Online form and page to engage in a Special Procedure: <https://spsubmission.ohchr.org/>.

special rapporteur can be involved in the case. The following information must be submitted to the special procedures (either through the online form or through email) before a case can be assessed.

- The name of the alleged victim (s).
- The name of the alleged perpetrator (s) of the human rights violation.
- The name of the person or organisation submitting the communication.
- Description of the violation.
- Consent: the alleged victim, their family, or representatives must indicate whether they consent that:
 - The name of the victim is disclosed in communication to governments.
 - The name of the victim appears in a public report.

Just because you send-in a submission on an alleged human rights violation does not necessarily mean it will automatically be considered. For a better chance that your submission will be listened to follow the best practices:

- ✓ Your submission should not be politically motivated!
- ✓ Your submission should use factual language and give a factual description of the alleged human rights violation.
- ✓ The submission you send should have credible sources and include information not only found in the mass media.
- ✓ Only include relevant information- and keep it as concise as possible.
- ✓ Where possible, prioritize using the online form, instead of via email or the postal system.

Step 2. Wait

If you have submitted your information either via email or on-line you should receive an automatic acknowledgement that your submission was successfully sent. This does NOT mean that your submission has been taken into consideration, only that it has been received by the appropriate mechanism. The Special Procedures mechanisms receive a high volume of submissions, and unfortunately, they do not provide status-updates on your submission.

Attention is given to the most serious and urgent cases first however it may take longer for your submission to garner attention. Incomplete submissions or too much unnecessary information may significantly slow down the reaction time of the Special Procedures.

You will not be contacted for more information and may only find out if the information you submitted was taken into account upon the release of the communication published in one of the 3 triannual communications reports to the Human Rights Council.

In general

It should be noted that civil society can engage with **several special procedures at once**; a single communication can be sent to several special procedures if it falls within their mandates.

While the procedure may not bare immediate fruit, as seen in the section [“Why Should Civil Society Engage with the Special Procedures?”](#) there are strategic advantages in taking the time to submit information on behalf of a client or victim. It is entirely up to you and the victim to decide if engaging with the Special Procedures at the UN Human Rights level is the right step to obtain awareness and justice.

Appendix

Information on Thematic Mandates Related to Women & the Death Penalty

Working Group on Arbitrary Detention

The mandate of the Working Group on Arbitrary Detention is to protect individuals from arbitrary deprivation of liberty before, during and after trial, as well as from arbitrary administrative detention. The concept of arbitrary detention is not limited to detention contrary to law, but includes inappropriateness of detention, injustice, lack of predictability and failure to respect due process.

As part of its mandate, the Working Group on Arbitrary Detention investigates cases of arbitrary deprivation of liberty. It requests and receives information from governments, intergovernmental organizations, NGOs, and individuals. It sends communications and urgent appeals to governments on cases of arbitrary detention. It conducts field visits at the invitation of States. It drafts reflections on general issues and presents an annual report to the Human Rights Council.

The Working Group issued several communications about women on death row, including:

- Joint submission to the United States (March 1, 2021).¹⁵ This submission addresses the situation of women on death row in the country and emphasizes that women on death row have often been victims of abuse, do not systematically have access to effective representation, and are often sentenced for behaviours seen as violating the socially imposed gender norms.
- Joint submission to Saudi Arabia (April 2, 2014) on the case of Ms. Satinah Binti Jumadi.¹⁶ Ms. Jumandi, an Indonesian migrant worker in Saudi Arabia, had been sentenced to death for the murder of her employer, who allegedly subjected her to physical and psychological abuse. The communication called on Saudi Arabia to take all necessary measures to prevent her execution.
- Joint submission to Yemen (14 December 2012).¹⁷ Cases of several individuals executed or sentenced to death, including two women who allegedly committed murder while still minors.

The current working Group is composed of five members: Ms. Elina Steinerte (Latvia, Chair - Rapporteur), Ms. Miriam Estrada-Castillo (Ecuador, Vice-Chair), Ms. Leigh Toomey (Australia), Mr. Mumba Malila (Zambia) and Ms. Priya Gopalan (Malaysia).

You can contact the Working Group by email: wgad@ohchr.org or by mail at the following address
Working Group on Arbitrary Detention c/o OHCHR, United Nations Office at Geneva, 8-14, avenue de la Paix, 1211 Geneva 10, Switzerland.

Useful link: <https://www.ohchr.org/FR/Issues/Detention/Pages/WGADIndex.aspx>

¹⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26045>

¹⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17763>

¹⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22147>

Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The mandate of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment includes three main activities:

- Addressing urgent appeals to States concerning persons at risk of torture and communications on alleged acts of torture
- Conducting fact-finding visits
- Presenting an annual report on its activities to the Human Rights Council.

The mandate of the Special Rapporteur covers all countries, whether they have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Special Rapporteur addressed on several occasions addressed the situation of women on death row. For example, the following communications were sent to the State:

- Joint submission to the United States (March 1, 2021). *See above*.
- Joint communication to Sudan (14 May 2018).¹⁸ Case of a woman sentenced to death for the murder of the man to whom she had been forcibly married.
- Joint submission to Brunei (September 25, 2014) regarding the Sharia-based Penal Code which contains death penalty-related provisions that discriminate against women¹⁹.
- Joint submission to Yemen (December 14, 2012). *See above*.

Mr. Nils Melzer (Switzerland) is currently the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment as of November 2016.

The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment can be reached at this email address: sr-torture@ohchr.org.

Useful link: <https://ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has a broad mandate that extends to all executions carried out in violation of the right to life as guaranteed by international human rights instruments.

As part of his mandate, the Special Rapporteur examines cases of extrajudicial, summary, or arbitrary executions and submits serious situations that warrant immediate attention to the Human Rights Council. He sends urgent appeals and communications to States, especially when an extrajudicial, summary, or arbitrary execution is imminent, feared or has taken place. It conducts country visits. Within the framework of his mandate, the Special Rapporteur takes into account the inequalities between men and women.

¹⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23841>

¹⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=14571>

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions addressed on several occasions addressed the situation of women on death row. For example, the following communications were sent:

- Joint submission to the United States (March 1, 2021). *See above*.
- Joint submission to Pakistan (June 3, 2020).²⁰ Case of Ms. Kanizan Bibi, a woman with psychological disabilities who has been on death row for 30 years.
- Joint submission to Sudan (14 May 2018). *See above*.
- Joint submission to Brunei (25 September 2014). *See above*.

Mr. Morris Tidball-Binz is currently the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions as of April 2021.

The Special Rapporteur on extrajudicial, summary, or arbitrary executions can be reached at this email address: eje@ohchr.org.

Useful link: <https://www.ohchr.org/FR/Issues/Executions/Pages/SRExecutionsIndex.aspx>

Working Group on Discrimination against Women and Girls

The mandate of the Working Group on Discrimination against Women and Girls is to study the elimination of discrimination against women in law and practice in all fields and from the perspective of the obligation of States to respect, protect and fulfill the human rights of women. The Working Group takes into account the links between discrimination against women and other grounds of discrimination and considers all women, stressing that women are not a homogeneous group.

The Working Group uses the tools available to all special procedures mandate holders, namely communications, thematic reports, and country visits.

The Working Group on Discrimination against Women and Girls issued several communications on the situation of women sentenced to death, including:

- Joint submission to the United States (1 March 2021). *See above*
- Joint submission to Pakistan (June 3, 2020). *See above*

The Working Group is currently composed of five experts: Elizabeth Broderick (Australia, Chair), Dorothy Estrada-Tanck (Mexico), Ivana Radačić (Croatia), Meskerem Geset Techane (Ethiopia), and Melissa Upreti (Nepal, USA, Vice Chair).

The Working Group can be reached by email: wgdiscriminationwomen@ohchr.org or by mail at the following address Working Group on Discrimination against Women and Girls, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland. The Working Group also has a Facebook page: <https://www.facebook.com/UNWGDRAW>.

Useful link: <https://www.ohchr.org/FR/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>

²⁰ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25313>