



20th WORLD DAY AGAINST THE DEATH PENALTY

**REFERRAL TO THE SPECIAL PROCEDURES OF
THE UNITED NATIONS HUMAN RIGHTS
COUNCIL:**

TORTURE AND THE DEATH PENALTY

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I. Introduction: What are UN special procedures and how do they work?

Although the methods in this tool are applicable to many other issues beyond capital punishment, this practical guide has been written at the occasion of the 20th World Day Against the Death Penalty, on how to engage with the United Nations (UN) special procedures to draw attention to the link between the death penalty and torture or other cruel, inhuman, or degrading treatment or punishment (CIDTP). This tool was written for lawyers and civil society organizations who may be interested in working with the various UN human rights mechanisms, among them the special procedures, but may not know how to get started. This tool was written by the International Federation of ACATs (FIACAT) with contributions from Amnesty International and Penal Reform International, and the World Coalition Against the Death Penalty.



Torture, prohibited in all circumstances by Article 5 of the Universal Declaration of Human Rights, is a peremptory norm of international law and thus cannot be derogated. Nevertheless, the death penalty is lawful under international law, if applied in full respect of international restrictions and safeguards, as per the narrowly construed exception under article 6 to the International Covenant on Civil and Political Rights. Various reflections and interpretations of the international law today point to a growing recognition of the death penalty as a form of torture or other cruel, inhuman or degrading treatment or punishment (CIDTP).

There are several ways in which individuals and non-governmental organizations (NGOs) can work with the UN to report human rights violations. One way is through the special procedures of the UN Human Rights Council (HRC).

Special procedures are established by the HRC to examine, monitor, report and make recommendations on the human rights situation in a specific country or territory, or on a thematic area. They are independent human rights experts or groups of experts, who are independent from governments and therefore play an important role in monitoring the authorities and their policies around the world. As of July 1, 2022, there are 58 special procedures (45 thematic mandates¹ and 13 country mandates²).

To establish the link between the death penalty and torture, the following most relevant thematic mandates can be identified³ (but many other thematic mandates can be found related to the death penalty):

- the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment.
- the Special Rapporteur on extrajudicial, summary or arbitrary executions.
- the Working Group on Arbitrary Detention.

A directory of special procedures mandate holders is available on the website of the Office of the High Commissioner for Human Rights (OHCHR)⁴.

Special procedures mandate holders carry titles of special rapporteurs or independent experts. However, some procedures consist of working groups, which are composed of five members, one from each UN regional group. Mandate-holders mostly act in their personal capacity, which means that they are not paid for their work and do not represent their country of nationality. However, they are usually supported by a UN staff member, appointed, and paid by the OHCHR Secretariat⁵.

The special procedures have main **four tools at their disposal**.

1. **Communications:** One of the tools of the special procedures is direct communication with governments or other actors (such as companies or for example the EU) through letters⁶. The special procedures will act on information

¹ List of thematic mandates:

<https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=En>

² List of country mandates: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?lang=En>

³ Detailed information on these thematic mandates is available in the annex to this document.

⁴ Directory of special procedures mandate holders:

https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryJuly2020_en.pdf

⁵ Special Procedures of the Human Rights Council: <https://ijrcenter.org/un-special-procedures/>

⁶ What can a letter consist of? This letter was drafted by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders in November 2018:

received from relevant and credible sources. In these letters, they draw attention to allegations of human rights violations received from NGOs or individuals and request clarification from the government. The letter may concern⁷:

- a. past human rights violations - this letter is also called a "letter of allegation"
- b. current or potential human rights violations - this letter is also called an "urgent appeal"
- c. concerns about legislation that does not meet international standards- these are called "other letters". Independent experts have written submissions about people who have been tortured and sentenced to death, see for example:

- *Case of Mr. Aqil bin Hassan Al-Faraj (Saudi Arabia), 25 February 2022⁸*

"We also wish to respectfully express our concern at the reported case of Mr. Al-Faraj who appears to have been sentenced to death without due process and fair trial, including lack of access to adequate legal assistance, therefore contrary to Article 10 of the Universal Declaration of Human Rights (UDHR); could not resort to any remedy to challenge the lawfulness of his detention (Article 9, UDHR); and was allegedly subjected to torture or other cruel, inhuman or degrading treatment or punishment and was forced to sign a confession under torture, contrary to Articles 1, 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Saudi Arabia in 1997."

2. **Country visits:** In order to observe and understand the human rights context of a country, special procedures may seek agreement of a government to travel to that country and meet with relevant parties, such as government officials and human rights defenders. To strengthen their collaboration with the special procedures, many states have issued a standing invitation for any mandate holder to visit⁹. The special procedures can also provide advice for technical cooperation.
3. **Annual reports and thematic studies:** all special procedures submit an annual report to the Human Rights Council. This report presents the work undertaken by the expert during the year, including communications and country visits and examines emerging trends. The reports are presented in plenary by the mandate-holders and are subject to an interactive dialogue with States and NGOs. Most also report to the UN General Assembly. These reports often contain a study on a topic related to a mandate. These thematic studies are based on information from their investigations, from their dialogue with States or from civil society through calls for contributions and contribute to the development of international human rights law.

For example, the previous Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, makes the link between

https://academy.ishr.ch/upload/resources_and_tools/SP_module_sample_communicationsUA_TURKMEKISTAN.pdf

⁷ For more information about the communications: <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>

⁸ Communication about Mr. Aqil bin Hassan Al-Faraj

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27113>

⁹ Updated list of States that have issued a standing invitation to the Special Procedures - <https://spinternet.ohchr.org/StandingInvitations.aspx?lang=En>

torture and the death penalty in his August 9, 2012 report. As such, he stated in the said report that:

"...especially relevant to the emergence of a customary norm to consider the death penalty as running afoul of the prohibition of torture and cruel, inhuman and degrading treatment, is evidence of a consistent global practice by States that reflects the view that the imposition and enforcement of the death penalty in breach of those standards is a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment. This conclusion originates from the fact that international law does not attribute a different value to the right to life of different groups of human beings, such as juveniles, persons with mental disabilities, pregnant women or persons sentenced after an unfair trial, but considers the imposition and enforcement of the death penalty in such cases as particularly cruel, inhuman and degrading and in violation of article 7 of the Covenant and articles 1 and 16 of the Convention against Torture."¹⁰

4. **Press releases:** Special Procedures can also engage in advocacy and raise public awareness of situations of concerns through press releases and statements, including by calling on the international community to act to respond to such a situation, mostly through the HRC.

II. Why should civil society use the special procedures?

Any individual, civil society organization, intergovernmental entity, or even a national human rights body can approach the special procedures. There are two main reasons why it is beneficial for lawyers, NGOs, and other members of civil society to bring cases to the special procedures on behalf of their clients and victims facing the death penalty or arbitrary detention.

- NGO submissions to the special procedures can trigger a process of dialogue with the concerned state, which must respond to the special procedure's communication within a specified timeframe. The individual or NGO that referred the case to the special procedure can then review the state's response to the allegations, which can serve as a source of information on the state's position on what happened/is happening to the victim.
- Bringing a case to the special procedures can be part of an advocacy strategy on behalf of a client or victim. It can be a particularly useful strategy when national avenues for drawing attention to a situation have been exhausted.

¹⁰ General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, 9 August 2012: <https://undocs.org/Home/Mobile?FinalSymbol=A%2F67%2F279&Language=E&DeviceType=Desktop&LangRequested=False>

- The special procedures are universal and do not require prior treaty ratification. They also do not require exhaustion of domestic remedies. They are now of the most flexible mandates among the UN's human rights mechanisms.

III. How do I request an intervention from the special procedures?

Step 1. Submit the information

OHCHR has made available an online form for submission of information to the special procedures. It is also possible to send a physical file containing the information to the following address: OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland. However, it is preferable to use the online form, which allows you to follow up on your request.

We strongly encourage you to **visit and familiarize yourself with the OHCHR webpage** on civil society interaction with the special procedures:

<https://spsubmission.ohchr.org/>

It should be noted that the consent of the person facing the death penalty concerned must be obtained before an expert is contacted. Some special procedures have established questionnaires (these are mirrored in the

online forms) to be completed in order to send them a communication, so it is important to refer to the page of each mandate. Nevertheless, in general, it is necessary that all communications contain the following elements:

- identity of the alleged victim(s);
- identity of the alleged perpetrator(s) of the violation;
- identity of the person(s) or organization(s) submitting the communication (this information is confidential);
- description of the violation (location, date of the incident and details of the circumstances in which the alleged violation occurred);

There are also certain admissibility requirements that must be met:

- the violation must fall within the mandate of the covered proceeding(s);
- it can be made against any UN member State;
- the alleged victim, his or her family or representatives must indicate whether they consent to action being taken on their behalf and indicate whether:
 - the name of the victim will be disclosed in a communication to the government;
 - the name of the victim to appear in a public report.

Submitting a situation to the special procedures does not mean that the situation will automatically be reviewed. The submission will be more likely considered if the following good practices have been implemented and the submission:

- ✓ is not politically motivated;
- ✓ uses factual language and provides a factual and legal description of the alleged human rights violation;

- ✓ is based on credible sources and includes information that is not found only in the press;
- ✓ includes only relevant information - and is as concise as possible;
- ✓ has been submitted through the online form as a priority, rather than through the email or the postal system.

Step 2: Wait

If you submitted via email or online, you should receive an automatic acknowledgement that your application was successfully submitted. However, this does not mean that your submission was considered, only that it was received by the mandate in question. Special procedures receive a high volume of submissions and unfortunately cannot provide an update on the status of your submission nor act on all cases and situations.

The most serious and urgent cases are given priority, but your submission may take longer to receive the attention of independent experts. Incomplete submissions or too much unnecessary information can significantly slow down the response time of the special procedures.

You will not be contacted for more information, and you will only know if the information you submitted has been taken into account when the communication is published on the Communications Database, 60 days after being sent to a government, or when a response is received from a government (if before the 60 days).¹¹

As a general rule

It should be noted that civil society can submit information to more than one special procedure simultaneously; a single submission can be sent to more than one special procedure if it falls within their mandate. The special procedures often send joint allegation letters or joint urgent actions to governments.

Even if the procedure is not immediately successful, there are strategic advantages to taking the time to submit information on behalf of a client or victim, as discussed in the section "**Why should civil society bring a case to the special procedures?**" It is up to you and the victim to decide whether a referral to the UN Special Procedures is the right approach to raising awareness and respect for human rights.

The special procedures place the highest importance on the protection of human rights defenders in their cooperation with the United Nations in the field of human rights. They have put in place barriers against intimidation and reprisals¹². Since 2016, for example, the Assistant Secretary General (ASG) on human rights has been working closely with mandate holders to ensure a unified response to acts of intimidation and reprisal.

¹¹ <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

¹² Learn more about the Special Procedures response to intimidation and reprisals <https://www.ohchr.org/en/special-procedures-human-rights-council/acts-intimidation-and-reprisal-cooperation-special-procedures>

IV. How can we ensure that the intersectional discrimination faced by women and LGBTQIA+ people on death row is made visible in the use of the UN Special Procedures?

In order to ensure visibility of the intersectional discrimination faced by women and LGBTQIA+ people in the criminal justice procedure leading up to the death penalty, e.g. in the face of torture, you can insert information related to gender, race, sexual orientation and mental health bias into your communications with the thematic mandates related to torture or directly by mobilizing the thematic mandates related to intersectional discrimination faced by women and LGBTQIA+ people

Reminder: The concept of "intersectionality"-recognizes that structural discrimination, for example based on sex, gender, race, class, caste, or another prohibited ground, does not operate in isolation; individuals may suffer additional or unique forms of discrimination when they are subjected to a combination of different forms of discrimination

1. Include issues of intersectional discrimination faced by women and LGBTQIA+ persons on death row in communications with thematic mandates related to torture

When submitting information to thematic mandates directly related to torture (e.g., the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; and the Working Group on Arbitrary Detention), be sure to make visible the specific intersectional discrimination faced by women and LGBTQIA+ persons on death row.

To do this, be sure to:

- disaggregate your data by gender, age, social class, reason for conviction, when referring to people on death row
 - make visible the case of women and LGBTQIA+ people on death row if your country has them
 - Make visible the gender bias in the use of torture for women and LGBTQIA+ people, namely the type of torture used (e.g. sexual torture), the impact of torture on mental and psychosocial health, especially for women victims of gender-based violence, as well as on confessions made (risk of false confessions), etc.
2. Mobilize thematic mandates related to discrimination against women and LGBTQIA+ people

To make visible the intersectional discrimination faced by women and LGBTQIA+ people in the criminal justice procedure leading up to the death penalty, you can also directly engage with the thematic mandates that cover women and gender discriminations.

For violations of the rights of women and LGBTQIA+ persons on death row, the following thematic mandates can be mobilized:

- The Working Group on Discrimination against Women and Girls;
- The Special Rapporteur on violence against women and girls, its causes and consequences;
- The Independent Expert on sexual orientation and gender identity

In the same way as for the thematic mandates mentioned above, these mandates can be mobilized by submitting information on the cases of women and/or LGBTQIA+ persons sentenced to death and the discrimination they faced. For more details, the tool "Engaging the Special Procedures of the UN Human Rights Council: Women and the Death Penalty"¹³ developed for the World Day 2021 can be consulted.

Annex

Information on the thematic mandates on torture and the death penalty

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:

- To send urgent appeals to States concerning persons at risk of torture or Other Cruel, Inhuman or Degrading Treatment or Punishment and communications on alleged acts of torture;
- Conducting fact-finding visits;
- To present an annual report on his or her activities to the Human Rights Council;
- To engage in advocacy, raise public awareness, and provide advice for technical cooperation.

The mandate of the Special Rapporteur covers all countries, whether or not they have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, because of their thematic mandate.

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has repeatedly addressed the link between torture and the death penalty. For example, the following report was issued

- Interim report by Juan E. Méndez (August 9, 2012)¹⁴: link established between the death penalty and torture in paragraphs 28, 40, 41, 42 and 58.

¹³ <https://worldcoalition.org/document/19th-world-day-special-procedures-of-the-un-human-rights-council/>

¹⁴ General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, 9 August 2012: <https://undocs.org/Home/Mobile?FinalSymbol=A%2F67%2F279&Language=E&DeviceType=Desktop&LangRequested=False>

Ms. Alice Jill Edwards (Australia) is the current Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and stated her term on August 1, 2022.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment can be contacted by e-mail: sr-torture@ohchr.org.

Useful link: <https://www.ohchr.org/en/special-procedures/sr-torture>

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. His/Her mandate includes 6 main activities¹⁵:

- Report on an annual basis to the Human Rights Council on the situation of extrajudicial, summary or arbitrary executions together with conclusions and recommendations; reporting to the Council serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration;
- Draw the attention of the United Nations High Commissioner for Human Rights to serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration;
- Respond effectively to information he/her receives;
- Enhance dialogue with Governments, and follow up on recommendations made in reports after visits to particular countries;
- Continue to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment;
- Apply a gender perspective in his or her work.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has on several occasions taken an interest in the situation of persons tortured and sentenced to death. For example, the following communication was sent:

- *Communication sent to the Malawi on 26 April 2021*¹⁶

“In this connection, we would like to bring to the attention of Your Excellency’s Government information we have received concerning the increased use of the death penalty against persons accused of involvement in attacks against persons with albinism, and the alleged torture and extra-judicial killings of suspects in crimes committed against persons with albinism”

¹⁵ Resolution adopted by the Human Rights Council on 16 July 2020:
<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F44%2F5&Language=E&DeviceType=Desktop&LangRequested=False>

¹⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26353>

Mr. Morris Tidball-Binz is currently the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

The Special Rapporteur on extrajudicial, summary or arbitrary executions can be contacted by e-mail: eje@ohchr.org.

Useful link: <https://www.ohchr.org/en/special-procedures/sr-executions>

Working Group on Arbitrary Detention

The mandate of the Working Group on Arbitrary Detention (WGAD) 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 lack of respect for due process.

As part of its mandate, the WGAD 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 and adopts opinions. It is the only special procedure that adopts quasi-judicial decisions. It carries out, at the invitation of States, field visits. It drafts reflections on general issues and presents an annual report to the Human Rights Council.

The WGAD has issued opinions on the link between torture and the death penalty, including

- Opinion No. 32/2019 adopted at its eighty-fifth session (12-16 August 2019)¹⁷: the opinion refers to the situation of a man sentenced to death for the fraudulent use of the software he created and insists that secret detention and solitary confinement for a long period of time, with the aim of obtaining a confession, amounts to torture.

The current WGAD is composed of five members: Ms. Miriam Estrada-Castillo (Ecuador, Chair-Rapporteur), Mr. Mumba Malila (Zambia, Vice-Chair), Ms. Elina Steinerte (Latvia), Mr. Mathew Gillett (New Zealand) and Ms. Priya Gopalan (Malaysia).

The WGAD can be contacted 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/en/special-procedures/wg-arbitrary-detention>

¹⁷ <https://undocs.org/fr/A/HRC/WGAD/2019/32>