



21<sup>st</sup> WORLD DAY AGAINST THE  
DEATH PENALTY

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

**TORTURE AND THE DEATH PENALTY**

- I. Introduction: What are the UN special procedures and how do they work?
- II. Why civil society organizations should use UN special procedures?
- III. How do I request an intervention from the 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?

Annex

**I. Introduction: What are the 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 on the occasion of the 21<sup>st</sup> World Day Against the Death Penalty. It aims to provide guidelines 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 is intended for lawyers and civil society organizations who may be interested in working with the various UN human rights mechanisms, including the special procedures, but may not know how to get started. It was written by the International Federation of ACATs (FIACAT) with contributions from Amnesty International, Penal Reform International, and the World Coalition Against the Death Penalty.

Torture, which is strictly 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 recognized as lawful under international law, if applied in full compliance with 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 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 comprised of independent human rights experts or groups of experts, who operate independently of governments, thereby playing an important role in monitoring the authorities and their policies around the world. As of 24 April, 2023, there are 59 special procedures: 45 thematic mandates<sup>1</sup> and 14 country mandates.<sup>2</sup>

To establish the link between the death penalty and torture, the following most relevant thematic mandates can be identified<sup>3</sup> (although many other thematic mandates related to the death penalty exist):

- 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).<sup>4</sup>

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, with one from each UN regional group. Mandate holders act in their personal capacity, which means they are not paid for their work and do not represent their country of nationality. Nevertheless, they are usually supported by a UN staff member.<sup>5</sup>

The special procedures have **four main 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 intergovernmental organizations like the EU) through letters addressing specific cases of human rights violations<sup>6</sup>. The special procedures act upon information received from relevant and credible sources, from NGOs or individuals acting in a personal capacity. In these letters, attention is drawn to allegations of human rights violations and requests for clarification are made to the government. The letters may touch upon:
  - a. Past human rights violations – also called “letters of allegation.”

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<sup>1</sup> List of thematic mandates:

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

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

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

<sup>4</sup> Directory of special procedures mandate holders:

[https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryJuly2020\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryJuly2020_en.pdf)

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

<sup>6</sup> 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: [https://academy.ishr.ch/upload/resources\\_and\\_tools/SP\\_module\\_sample\\_communicationsUA\\_TURKMEKISTAN.pdf](https://academy.ishr.ch/upload/resources_and_tools/SP_module_sample_communicationsUA_TURKMEKISTAN.pdf)

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

- b. Current or potential human rights violations – also called “urgent appeals.”
- c. Concerns regarding legislation that does not meet international standards – referred as “other letters.”

Independent experts have submitted communications regarding individuals who have been subjected to torture and sentenced to death. An example of such a case is the following:

- *Case of Mr. Aqil bin Hassan Al-Faraj (Saudi Arabia), 25 February 2022*<sup>8</sup>

“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:** Special procedures may seek agreement of a government to visit a country in order to observe and understand the human rights context. During such visits, they meet with relevant parties, including government officials and civil society organizations (human rights defenders, NGOs, lawyers, journalists, etc.). Many states have issued a standing invitation allowing any mandate holder to visit, so that their collaboration with the special procedures is strengthened.<sup>9</sup> The special procedures can also provide advice for technical cooperation. Civil society can take action before a visit, by requesting the special procedures to focus on a particular country, or by sharing with them information to help them prepare for a planned visit. Furthermore, civil society organizations can monitor the dissemination of the visit’s report and the implementation of its recommendations.
3. **Annual reports and thematic studies:** all special procedures submit an annual report to the Human Rights Council. These reports detail the work undertaken by the experts over the course of the year, including communications and country visits, and analyze emerging trends. Mandate holders present these reports in plenary sessions, before entering in an interactive dialogue with States and NGOs. Most of the reports are also presented to the UN General Assembly. They often include a study on a topic related to the mandate of the specific special procedure. These thematic studies are based on information gathered during investigations, dialogues with States, and contributions or calls from civil society organizations, and participate in the development of international human rights law.

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<sup>8</sup> Communication about Mr. Aqil bin Hassan Al-Faraj

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

<sup>9</sup> Updated list of States that have issued a standing invitation to the Special Procedures -

<https://spinternet.ohchr.org/StandingInvitations.aspx?lang=En>

For example, the previous Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, made the link between torture and the death penalty in his report published August 9, 2012. 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.”<sup>10</sup>

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

## II. Why civil society organizations should use the special procedures?

Any individual, civil society organization, intergovernmental entity, or national human rights body can approach the special procedures. There are three 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, acts of torture or arbitrary detention.

1. NGO submissions to the special procedures can trigger a process of dialogue with the concerned State, which must respond to the special procedures' communication within a specified timeframe. The individual or NGO that referred the case to a specific special procedure can then review the State's response to the allegations, which can serve as a source of information regarding the State's position on what happened/is happening to the victim.
2. Bringing a case to the special procedures can be part of an advocacy strategy on behalf of a client or victim. This approach can be particularly useful when national avenues for drawing attention to a situation have been exhausted. It also contributes to raise awareness among the international community on the issue, and may enable mobilization on behalf of the client or victim.

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<sup>10</sup> 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>

3. The special procedures are universal and do not require prior treaty ratification. They also do not require exhaustion of domestic remedies. As such, they are one 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 an **online form** available for submitting information to the special procedures.<sup>11</sup> 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 consent from the person facing the death penalty must be obtained before an expert is contacted.*

Some special procedures have established questionnaires (which are mirrored in the online forms) to be completed in order to send them a submission, so it is important to refer to the page of each mandate. Nevertheless, in general, all communications should 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 will appear in a public report.

Submitting a situation to the special procedures does not guarantee the automatic review of the situation. The submission is more likely to be considered if the following good practices have been implemented, and if the submission:

- ✓ Is not politically motivated;

<sup>11</sup> See: <https://spsubmission.ohchr.org/>

- ✓ 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 made your submission online or via email, you should receive an automatic answer, acknowledging that your application was successfully submitted. However, this does not mean that your submission has been considered yet; it only confirms that the submission has been received by the mandate. 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.

Priority is given to the most serious and urgent cases. Therefore, it may take longer for your submission to receive the attention of independent experts. Incomplete submissions or excessive unnecessary information can significantly slow down the response time of the special procedures.

You will not be contacted for further information, and you will only know if the information you submitted has been taken into account when the communication will be 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).<sup>12</sup>

## As a general rule

It should be noted that civil society organizations 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 submit information on behalf of a client or victim, as discussed in this tool's 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 promoting 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 implemented measures to counter intimidation and reprisals.<sup>13</sup> Since 2016, for example, the

<sup>12</sup> <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

<sup>13</sup> 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>

Assistant Secretary General on human rights has been working closely with mandate holders to ensure a unified response to acts of intimidation and reprisal.

#### **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?**

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 include information related to gender, race, sexual orientation and mental health, 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 applicable to the situation of your country.
  - 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 victims of gender-based violence, as well as on the 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 dedicated to women's rights 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,"<sup>14</sup> developed for the World Day 2021, can be consulted.

## Annex

### Information on the thematic mandates on torture and the death penalty

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#### 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 four main activities:

1. Sending 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;
2. Conducting fact-finding visits;
3. Presenting an annual report on his or her activities to the Human Rights Council;
4. Engaging 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. For example, the Special Rapporteur's intermediary report in 2012 partly focused on the death penalty and prevention of torture and other cruel, inhuman or degrading treatment.

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<sup>14</sup> <https://worldcoalition.org/document/19th-world-day-special-procedures-of-the-un-human-rights-council/>



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)<sup>15</sup>: link established between the death penalty and torture in paragraphs 25 - 81.

Currently, Ms. Alice Jill Edwards (Australia) is the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and started her mandate on August 1, 2022.

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment can be contacted by e-mail: [hrc-sr-torture@un.org](mailto:hrc-sr-torture@un.org).

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

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### 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 seven main activities<sup>16</sup>:

1. Reporting on an annual basis to the Human Rights Council on the situation of extrajudicial, summary or arbitrary executions together with conclusions and recommendations;
2. Reporting to the Council serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration;
3. Drawing 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;
4. Responding effectively to information he/she receives;
5. Enhancing dialogue with governments, and following-up on recommendations made in reports after visits to particular countries;
6. Continuing monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment;
7. Applying a gender perspective in his/her work.

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<sup>15</sup> 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>

<sup>16</sup> 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>

On several occasions, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has 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*<sup>17</sup>

“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”

Currently, Mr. Morris Tidball-Binz (Chile) is the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions can be contacted by e-mail: [hrc-sr-eje@un.org](mailto:hrc-sr-eje@un.org).

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

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### 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 field visits upon invitation of States. 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):<sup>18</sup> 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.

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<sup>17</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26353>

<sup>18</sup> <https://undocs.org/fr/A/HRC/WGAD/2019/32>

The current WGAD is composed of five members: Ms. Miriam Estrada-Castillo (Ecuador, Chair-Rapporteur), Mr. Mumba Malila (Zambia, Vice-Chair), Ms. Ganna Yudkivska (Ukraine, Vice-Chair, in charge of follow-up), Mr. Mathew Gillett (New Zealand, Vice-Chair in charge of communications) and Ms. Priya Gopalan (Malaysia, Chairperson-Rapporteur).

The WGAD can be contacted by email: [wgad@ohchr.org](mailto: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>