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## **The UN Special Procedures: A Guide for Sexual Orientation and Gender Identity Advocates**

### **Overview**

This guide is designed as a practical aid to working with the United Nations system of independent human rights experts, known as the Special Procedures, for non-governmental organizations (NGOs) and advocates working on issues of sexual orientation and gender identity.

The Special Procedures system is made up of experts, usually titled Special Rapporteurs, assigned to investigate and report on the realization of certain rights around the world, or in specific countries. Over the past decade they have become one of the most effective international instruments for confronting violations of the rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) people. Amongst other examples they have taken action against killings, violence, deprivation of liberty, denials of the rights of freedom of expression and association, as well as discrimination in access to public services. Often their independence allows them to shine a light on issues that are otherwise deemed too politically 'sensitive' for discussion at the international level. The Special Procedures have therefore proved themselves to be of considerable value to the community of LGBTI activists.

### **I. Who and What are the Special Procedures?**

#### **Introduction**

"Special Procedures" is the collective term used for a group of human rights experts tasked by the United Nations with investigating, and reporting on, the situation of human rights around the world. They are mostly individuals, titled Special Rapporteur, Independent Expert or Special Representative, but some of the Procedures are also Working Groups typically comprising five members. The different titles can sometimes denote differences in working methods but any such distinctions are usually minor. They Procedures are established by the UN's main inter-governmental body for dealing with human rights issues - until 2006 the Commission on Human Rights and now the Human Rights Council (HRC - see box).

There are two broad categories of Special Procedures: country and thematic 'mandates'. The [country mandates](#) report on the situation of human rights in a specific State, while the [thematic mandates](#) consider the occurrence of a specific phenomenon, such as torture, or the realization of a certain right, such as the right to education, around the world. There are currently 9 country and 30 thematic mandates.

#### **What the Special Procedures Do**

The specific tasks assigned to any given Procedure vary according to the resolution establishing the mandate. The [webpages](#) of the various mechanisms give more detailed information on the relevant resolutions and the mandate's work. For the most part, however, the tools available to the Special Procedures are the same:

## 1. Communications

From the activist's perspective, perhaps the most important of the tools available to the Special Procedures are communications with governments. These communications follow up on information received by the Special Procedures about violations of the rights covered by their mandates, and seek to bring such violations to an end as well as seek redress for victims. They can take the form of **allegation letters** in the case of violations that have already occurred, or **urgent appeals** in the case of violations that are ongoing or about to occur and can therefore serve a preventive function. It is also possible for communications to be sent expressing concern about enacted or proposed legislation or government policy that is likely to threaten the enjoyment of certain rights. In recent years some experts have begun a practice of sending communications to non-state bodies, including corporations and intergovernmental actors.

Usually communications are based on information submitted to the Special Procedures by NGOs or victims themselves. It is also increasingly common for the communications to be sent jointly by two or more mandates where the violations fall into multiple categories. The communications, and any government responses, are summarized in an addendum to the annual report to the HRC.

## 2. Country Visits

A key way in which the Special Procedures inform themselves about situations in countries is through **on the ground visits**. During such visits the experts attempt to gain an understanding of the realization of the rights covered by their mandates, as well as the more general human rights situation, by meeting with government representatives, victims and members of civil society, as well as by visiting sites of relevance to their mandate.

At the end of the visit the experts made recommendations and present a report to the HRC. The number of visits made by each expert, or group of experts, varies widely but as a general rule no more than three are made in any given year.

In addition, in exceptional circumstances Special Procedures may be mandated by the HRC to undertake urgent missions, individually or as part of a group, to assess particularly urgent human rights situations and to update the Council.

## 3. Reporting to the Human Rights Council

All Special Procedures submit an annual written report to the HRC. The reports usually include a summary of the year's work, and address emerging thematic or normative issues [see below]. They are issued with addenda covering any country visits made and a summary of communications sent and replies received. The reports are usually made available on the HRC [webpage](#) in the weeks leading up to the Council session at which they will be presented.

The experts also make an oral presentation of their report to the HRC and engage in an **interactive dialogue** with States and other stakeholders, including NGOs. During this dialogue questions can be addressed to the experts on their present and future work, as well as on the normative development of the rights they cover. At certain times Special Procedures may also be called upon to update the HRC about situations of particular concern that fall within their mandate outside of the usual reporting cycle. It should also be noted that some Special Procedures are mandated by resolutions of the HRC to report also to the Third Committee of the General Assembly.

## 4. Public, Educational and Normative Work

Special Procedures often work in the public domain to foster better understanding of the rights they protect, or to draw attention to particular concerns.

One important example of this kind of work is the issuing of **press statements**. These are usually produced in response to a situation that the expert feels is sufficiently urgent, or severe, to warrant a public response. As with communications these statements will often be made jointly.

Other, less urgent, public work, including media interviews, is also undertaken to draw attention to particular issues or trends. This can include educational activities designed to foster understanding of the right covered by the mandate, such as the launching of a website, or the holding of events within schools and universities.

Special Procedures have also played a key role in coordinating and contributing to the normative development of rights. They do so by meeting and communicating with NGOs, human rights experts and other stakeholders including representatives of intergovernmental agencies to discuss key issues. NGOs can play a leading role in the work of the experts by inviting them to, for example, attend and participate in events, sit on expert panels, or give briefings or keynote speeches.

In addition, several of the Procedures have also made substantial contributions to standard setting in their field, both by contributing to debates on new standards, and by drafting such standards themselves. A key, and particularly relevant, recent example of such contributions was the involvement of eight Special Rapporteurs in the group of experts that drew up the [Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](#).

## **II. Why do the Special Procedures Matter to Activists Working on Sexual Orientation and Gender Identity?**

### **Why Work With the Special Procedures?**

As the previous section outlined, the Special Procedures possess several tools that can be used to strengthen the work of sexual orientation and gender identity advocates. Advocates will, however, have to make a choice about whether to assign scarce resources to working with the experts. Often communicating with experts in Geneva can seem disconnected from NGOs' everyday work, and it is also the case that the Special Procedures have not power to compel governments to respect the rights of their citizens. Why then should activists work with the experts?

In the first place, it is the case that sometimes governments do change behaviour or policy as a result of words or letters coming from the UN. In some circumstances, such as when individuals are at risk of torture or are being detained illegally, urgent recourse to the UN system can save lives. More generally, the power of shame should not be discounted and those words or letters can be well understood as an additional, and potentially influential, way to get across messages that are already being delivered at the local level.

**Example:** The Special Rapporteur on Extrajudicial Executions has raised the question of the [targeting of individuals](#) because of their sexual orientation and made the failure of certain governments to address those killings public, including in the HRC itself. Similarly, the Special Rapporteur on Human Rights Defenders has taken up the [cases](#) of many defenders working on sexual orientation and gender identity whose work and personal safety come under threat as a result of their attempts to assert their rights.

Second, even when there is no obvious progress made as a result of an appeal to the UN, the act of appealing, and of having representatives of the international community take up the case, can provide credibility to local groups and much needed support by making clear that victims are not alone in their struggle. This is particularly relevant with issues of sexual orientation and gender identity where such struggles can often seem very isolated and isolating.

**Example:** On the 23 February 2007, the Special Rapporteurs on Human Rights Defenders, Racism, Violence Against Women and Health issued a [joint statement](#) calling on the Nigerian government to reconsider the notorious “Same-Sex Marriage (Prohibition) Act”, then being considered by Parliament. They expressed concern that “the proposed law will make persons engaging in, or perceived to be engaging in, same sex relationships in Nigeria more susceptible to arbitrary arrests, detention, torture and ill-treatment and expose them even more to violence and attacks on their dignity.” This lent international support to domestic opposition to the bill.

Third, working at the international level can provide opportunities for activists to expand the reach of their organizations: to meet, form alliances and coordinate their work. It may also provide access to new sources of funding.

**Example:** The Special Rapporteur on Violence Against Women has been a high profile advocate of the connection between rights and sexuality and, in particular, on the [violations](#) that follow from attempts to [control women's sexuality](#).

Lastly, the act of bringing these issues to the international system is important because it forces that system, and the governments that make it up, to acknowledge and confront the difficulties faced by millions of people around the world. Individual efforts are therefore contributions to a larger movement pushing for governments to live up to their promises of universal human rights.

**Example:** The former-Special Rapporteur on the Right to Health asserted on several occasions that sexual orientation is amongst the [prohibited grounds of discrimination](#) under human rights law, and that sexual rights include the right to express one's sexuality as one sees fit. He was criticized for these positions by certain States. Yet, as he pointed out in a later [interview](#), “being a Special Rapporteur is not a popularity contest. Whether controversial or not, it is my job to explain, apply, promote and protect the right to health in the context of international human rights law. We must never lose sight of the fact that millions of men and women are persecuted – and many are killed – on account of their sexual orientation.” The claims of these people are therefore heard despite the reluctance of States to acknowledge their human rights.

## Advantages of the Special Procedures

The methods of work of the Special Procedures offer a number of key characteristics that make them particularly useful to NGOs and advocates working on sexual orientation and gender identity:

**Urgency:** The ability to issue urgent appeals is unique to the Special Procedures and is key in cases of ongoing violations or in preventing violations about to occur. This capacity has saved lives in the past.

**Accessibility:** The UN system of NGO accreditation involves a high commitment of time and resources and is particularly difficult for NGOs working on sexual orientation because of the political sensitivity of the issue. It is important, then, to note that any victim or group can work with the Special Procedures.

**Coverage:** Another key aspect of the relevance of the Special Procedures is that they can operate independent of treaty ratification by States. That is, their work is universal in that they can address violations of rights in any country in the world.

**No Need to Exhaust Domestic Remedies:** Some international human rights mechanisms require victims to have exhausted all domestic avenues of redress before they will act. This is not the case for the Special Procedures.

**Independence:** A crucial characteristic of the Special Procedures is their independence from governments once appointed. This enables them to work on politically sensitive issues and to challenge governments in a way that other bodies are unable to do. They are also able to propose and support progressive interpretations of international law that reinforce the rights of LGBTI people, and to keep issues of sexual orientation and gender identity on the international agenda at a time when States are either actively hostile, or rather timid in the face of the hostility of their peers.

## **Procedures of Relevance to Sexual Orientation and Gender Identity Advocates**

All of the Special Procedures can prove useful to advocates working on sexual orientation and gender identity. There are, however, a number that are worth mentioning in some detail because of their particular relevance, or because of work they have already undertaken.

**Working Group on Arbitrary Detention:** The Working Group considers cases of alleged arbitrary detention and communicates with governments before rendering opinions on the detention. It considers detentions arbitrary where the principles of fair trial have been violated, where persons are detained for exercising their rights, or where detention is simply arbitrary without legal process or basis. In the past the Working Group has identified detention on the basis of sexual orientation as arbitrary because of its discriminatory quality.

**Special Rapporteur on Contemporary Forms of Racism:** The Rapporteur is charged with consideration of racism as well as 'racism discrimination, xenophobia and related intolerance'. As this suggests the primary focus of the mandate is on racial questions, but the Rapporteur has also looked at wider issues of discrimination and intolerance, including on the basis of sexual orientation and gender identity. The Rapporteur has taken up cases of violence and intimidation against LGBT groups exercising their freedom of speech in support of tolerance and non-discrimination.

**Working Group on Enforced or Involuntary Disappearances:** The Working Group considers cases where individuals' whereabouts are unknown and it is suspected that they have been arrested, detained or abducted by, or with the acquiescence of, the State. The Group seeks to ascertain the whereabouts and status of such individuals by writing urgently to the relevant government. In the past, the Group has raised concerns at the practice of 'social cleansing' of individuals because of their sexual orientation.

**Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:** The Rapporteur acts on information of specific cases of alleged extrajudicial, summary or arbitrary executions, or death threats, as well as general information about questions related to the right to life. He has placed a focus in his communications, reports and visits on the killing of individuals because of their sexual orientation as well as on patterns of 'cleansing' of individuals because of their sexual orientation. He has also criticized the application of the death penalty for sexual 'crimes'.

**Special Rapporteur on Freedom of Opinion and Expression:** The Rapporteur reports on, and seeks to protect, the exercise of free speech by individuals, the media, civil society and political groups. As such the mandate is very relevant for cases in which individuals' exercise of free expression has been limited because of their sexual orientation or gender identity, or where groups seeking to protect the rights such individuals have been censored or threatened. It is worth noting that the mandate also seeks to uphold the right to freedom of assembly. The Rapporteur has in the past sent communications on these subjects to governments, as well as drawing attention to discriminatory or provocative portrayals of LGBTI individuals in the media.

**Special Rapporteur on Freedom of Religion or Belief:** The Rapporteur looks at incidents where intolerance impacts on the ability of individuals to practice their religion or beliefs, and also at intolerance flowing from those beliefs. Both aspects of this work are relevant for sexual orientation and gender identity advocates as they cover religiously-motivated intolerance towards individuals on the basis of sexual orientation and the denial of the right of religious expression to LGBT individuals or groups. The Rapporteur has in the past addressed these issues, including in the context of sharia law.

**Special Rapporteur on Human Rights Defenders:** The Special Rapporteur was appointed to further the implementation of the UN Declaration on Human Rights Defenders. She works with organizations and individuals around the world to improve the situation of human rights defenders. A large part of the mechanism's role is the communication of allegations of violations against human rights defenders to the relevant governments. The previous

Rapporteur (Hina Jilani) was very supportive of defenders working on sexual orientation and repeatedly raised concern at the particular challenges they face.

**Special Rapporteur on the Independence of Judges and Lawyers:** The mandate was established to report on the violation of the rights of members of the legal profession through violence or intimidation. The work of the mandate, however, extends beyond this and includes consideration of fair trials, discriminatory treatment during the legal process, or discrimination within the legal profession. All of these issues are very relevant to sexual orientation and gender identity advocates, and the Rapporteur has himself drawn attention to this relevance in past reports and communications.

**The Special Rapporteur on the Right to Health:** The Rapporteur works on the right to health in the fullest sense, including on the underlying determinants of health. Sexual education and the wide societal ramification of HIV/AIDS thus fall within this mandate. The previous Rapporteur (Paul Hunt) devoted considerable attention to issues of sexual rights, including to discrimination on the basis of sexual orientation. He also communicated with governments on issues of access to HIV/AIDS education and treatment, discriminatory access to health care generally, as well as cases of mistreatment in prisons and other detention facilities.

**The Special Rapporteur on the Right to Adequate Housing:** The Rapporteur is tasked with addressing the standard, both material and social, of housing available to individuals and groups, as well as violations of that right. In the course of this work discriminatory practices as well as cases where individuals do not feel able to return home due to fear of violence have been identified. The Rapporteur has also drawn attention to the impact on the right to housing of multiple discriminations faced by women on the basis of their sexual orientation.

**The Special Rapporteur on the Right to Education:** The Rapporteur considers the right to education for individuals as well as the wider questions of the provision of education to society. The mandate has addressed questions of discriminatory access to education as well as the mistreatment of individuals within educational establishments as a result of their sexual orientation or gender identity.

**Special Rapporteur on Torture:** The Rapporteur is a key tool for responding to severe human rights violations. He acts where torture, or cruel, inhuman and degrading treatment, has occurred or where individuals are at risk of such treatment. The Rapporteur has consistently dealt with cases of individuals tortured or persecuted on the basis of their sexual orientation and has argued for such interpretations to be used when making refugee status determinations. Though the Rapporteur is mandated to consider torture committed by government agents, he may also address cases where the authorities have not done enough to prevent torture committed by others.

**Special Rapporteur on Violence Against Women:** The Rapporteur acts upon allegations of violence against women, and, in her reports, analyses patterns of such violence along with their causes and consequences. In the past, the Rapporteur has devoted considerable energy to the issue of the intersection of violence against women and violence on the basis of sexual orientation and gender identity, including violence that is faced by women that challenge societal norms of gender and sex. She has taken action on allegations of violence, including sexual violence, aimed against lesbians, metis, and other women.

### **III. How Can Sexual Orientation and Gender Identity Advocates Work with the Special Procedures?**

Each of the tools available to the Special Procedures provides opportunities for sexual orientation and gender identity advocates. This section outlines how to take advantage of those opportunities.

## Communications

As discussed above the communications procedure may be the single most useful tool of the Special Procedures from the perspective of sexual orientation advocates, who can submit information or allegations to the experts and request that they take the matters up with governments.

**What Kinds of Communications Can be Sent?** There are three main kinds of communications available to the Special Procedures. All types of communication may be sent by individual Procedures or by a combination of them.

**Allegation letters** deal with human rights situations that have already occurred. They outline the allegations involved and then request information from the government on those allegations as well as on any measures taken to provide redress to victims. They may make suggestions as to actions the government should take following on from the incidents they describe. They can deal with cases involving violations against individuals or groups and can also address more general concerns about the human rights situation in a country.

**Urgent appeals**, by contrast, are designed as emergency tools, to bring a halt to ongoing violations or prevent violations likely to occur. The Special Procedures aim to transmit such appeals very soon after having received information and request clarification on the status of individuals, or groups, as well as reminding governments of their responsibilities towards those persons.

**Policy / Legislative Communications** are a relatively new form of communication and are sent to register concern that an existing or proposed policy or piece of legislation has or will impact on the enjoyment of rights by certain members of the population.

**Who Can Submit Information?** In most cases anyone can submit information. There is no requirement that organizations be registered with the UN, and individuals can also submit information. The Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances have slightly more formal requirements and accept information from the individuals concerned (though this is obviously impossible in the case of disappeared persons), their families or representatives as well as NGOs. Families should presumably be understood to include same-sex partners.

**Where Should Information be Sent?** Submissions should be sent to OHCHR at the addresses below. Although the staff will make an assessment of the kind of communication to be made and which Procedure(s) is most relevant, it is useful to indicate whether the situation is urgent, and to which mandate you want to direct your information on the cover of the letter or in the subject line of the email or fax.

By email: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

By post: **Quick Response Desk**  
Office of the United Nations High Commissioner for Human Rights  
Palais des Nations  
8-14, avenue de la Paix  
CH-1211 Geneva 10  
Switzerland

By fax: +41 22 917 90 06

**What Should Be Included?** The process of submitting information is relatively straightforward and the information that activists or advocates already have can usually be turned into a submission with relatively few resources. For the majority of the Procedures the

following essential information should be included:

- Information about the authors of the communication and the sources of information (which is kept confidential). This should include contact details.
- You should state whether the situation is urgent.
- The name of victim(s), age, sex, place of origin and/or residence. If the allegation concerns a large group then information should be provided about that body.
- Details about the allegation including place and date of violation. This should be kept relatively short but supporting documents / photos can be annexed to provide more information. In the case of communications about a law or policy you should provide details of how it operates and why its impact is concerning.
- The perpetrators, including, if possible, names, titles/functions, as well as any possible motive.
- Provide any required background such as relevant legal framework etc. This is particularly important in the case of submissions concerning a general situation.
- Outline actions taken / remedy already sought at national and international level.

**Which Elements of our Submission Remain Confidential?** Generally the identity of the source of information is kept confidential. If you would still prefer not to have your name or that of your organization on a submission it is possible to have other NGOs submit on your behalf.

In addition, persons submitting information can indicate if they require additional elements of their submission to remain confidential and not to be sent to the government concerned. That said, as the process is based on specific violations and individuals or groups, it can be hard for the Special Procedures to act on a situation if they are not able to transmit detailed information to the government concerned.

This means that there is a delicate balance to be struck in sensitive cases between wanting to provide enough information for the Procedures to be able to act without creating a risk that the provision of such information might lead to further persecution.

Furthermore, although the consent of victims is not a requirement for the submission of information, **it is imperative when making a submission that attention be paid to the possible impact on those named.** Consequently, NGOs should also indicate in the submission if they have the consent of the individuals or families concerned.

**What Can be Expected After Submission?** Once OHCHR has received information, the staff will consider the submission to see if there is enough information, and enough credibility to the information, to send a communication. Sometimes, the OHCHR staff will make contact with the source of information to request additional details. They must also be sure that the case falls within the mandate of one or more of the Procedures. For these reasons, as well as limited resources, they are not able to act upon all information that they receive.

In addition, the communication procedure remains confidential until the issuing of the summary of communications and only the Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances acknowledge submissions as a matter of course.

Given these two facts, it is one of the weaknesses of the system that it is hard follow the exact status of any information submitted to the Special Procedures. This can be frustrating as it means that it is often unclear whether the Special Procedures have acted on the information provided. Consequently, if you wish to know the status of the Special Procedures' activity on a case, it may be necessary to send a follow-up letter or email, or to telephone and ask to speak

to the desk officer supporting the relevant mandate. You should also inform OHCHR if there are any changes to the situation addressed in your submission.

**What Can Be Done to Follow-Up a Communication?** Once a communication has been made and a government reply requested it may seem that the process is out of the hands of domestic groups. There are, however, a number of ways in which follow-up can be undertaken.

In the first place, it may be that if a government response is received by OHCHR they will make contact with the original source of the communication to elicit any comments and to see what more can be done. Even when no contact is made it will be possible to see any government response to the Special Procedures' communication once the summary of communications is published and comments on this can be sent to OHCHR.

Secondly, the fact of the communication and any government response (or non-response) can be used in domestic advocacy to press the government to live up to promises it made to the Special Procedures, or to highlight misleading claims. The government could also be encouraged to respond, and its failure to do so could be publicized.

## Country Visits

There are a number of ways in which sexual orientation advocates can engage with country visits to strengthen their own work and that of the Special Procedures. It is useful to refer to the OHCHR [website](#) to see if any visits to your country have been requested or are scheduled.

In the first place, particularly relevant Special Procedures can be encouraged to visit to draw attention to the situation in a country. This can be done by writing to the relevant expert at OHCHR and explaining why a visit would be useful. When seeking to undertake a visit the Special Procedures request an invitation from the host government and, in circumstance where such invitations are not forthcoming, national NGOs can lobby their government to issue them. The government can also be pressed to issue a so-called 'standing invitation' allowing visits by all Special Procedures.

Second, once a visit is planned, NGOs can submit information to assist with the preparation for the visit and to urge the expert to look into areas of particular concern during the visit itself. They can also contribute by publicizing the visit.

Third, during the visit NGOs can meet with the expert to answer questions and to bring concerns to his attention. These meetings can be arranged by making contact with the OHCHR desk officer coordinating the work of the mandate. Given that visits are often of limited length it is often useful to coordinate such meetings amongst domestic NGOs to make sure that as many groups as possible have the change to share their experiences.

Lastly, once a visit has been completed, a report and recommendations will be issued by the expert. This can be used as an advocacy tool for local NGOs, who can also push for the implementation of key recommendations where the government seems reluctant.

See the contact details at the end of this guide for how to contact OHCHR.

## Reporting to the Human Rights Council

During the interactive dialogue that follows the experts' oral presentation to the HRC, there is space for NGOs to make statements or to ask questions in the Council plenary. These interventions can be used to encourage the experts to look at new issues, to draw attention to areas of concern, or to ask for more detail about an aspect of their work. Being in Geneva also provides an opportunity to meet with individual mandate holders or their staff from OHCHR. In addition, experts can be lobbied to address particularly grave situations in their oral presentation, though it is the case that such interventions are a rare occurrence.