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# **The Human Rights of Lesbian, Gay, Bisexual and Transgender People:**

## **A primer to working with the United Nations Treaty Monitoring Bodies and the Special Procedures of the United Nations Commission on Human Rights**

### **I. Introduction**

The purpose of this document is to provide basic guidance on how non-governmental organizations (NGOs) can use the United Nations (UN) Treaty Monitoring Bodies (referred to as the “Treaty Bodies”) and the Special Procedures of the UN Commission on Human Rights (the Commission) to raise cases concerning the promotion and protection of the human rights of people who are lesbian, gay, bisexual or transgender (LGBT)<sup>1</sup>. Accurately documented information from international, national and local NGOs, which is credible and objective, can be used by the Treaty Bodies and Special Procedures to monitor the compliance of states with international human rights law and to make recommendations accordingly. The analysis and conclusions of the Special Procedures and Treaty Bodies can lead in turn to changes in national law and practice, as states endeavour to bring their laws and policies into line with international standards.

The submission of individual cases and briefings which demonstrate patterns of violations relevant to LGBT rights can also result in the Treaty Bodies and Special Procedures giving attention to this area of human rights protection, including through the development of jurisprudence. Indeed, their contribution has already been considerable and has helped to advance the understanding of the relationship of human rights to issues of sexuality and gender identity. However, this progress is yet to be reflected in the UN’s political bodies. For example, at the 59<sup>th</sup> session of the Commission in 2003, the Brazilian Government introduced a draft resolution on “Human Rights and Sexual Orientation”, which expressed concern at the occurrence of human rights violations against persons because of their sexual orientation, called upon states to promote and protect the human rights of all persons regardless of their sexual orientation and asked the High Commissioner for Human Rights and the Special Procedures to pay attention to the issue. The draft resolution did not attempt to create a new body of rights, but sought to reaffirm existing non-discrimination principles established under

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<sup>1</sup> The terms “treaty bodies” and “special procedures” are explained in this document. The UN Commission on Human Rights is a body of 53 member states, which meets annually for six weeks in Geneva, Switzerland. It is the main body responsible for considering questions relating to human rights and for adopting measures to improve the human rights situation globally.

international human rights law. However, the draft faced strong opposition from the Organization of Islamic Conference (OIC), and less vocally the Holy See, with the OIC proposing 55 amendments to the text.<sup>2</sup> Finally the Chair proposed that consideration of the draft be postponed until the following year. However, at the 60<sup>th</sup> session of the Commission in 2004, consideration of the draft resolution was postponed for another year after it again met with significant hostility from some states and consensus could not be reached.<sup>3</sup>

Consequently, it is crucial that NGOs and LGBT rights defenders continue to provide a steady flow of information on rights violations based on sexual orientation and gender identity to the Treaty Bodies and Special Procedures so that pressure is applied to the political bodies.

The range of abuses that LGBT face worldwide can potentially be addressed by all of the Treaty Bodies and many of the Special Procedures (see Annex 2, which provides an overview of the main provisions of the core international human rights treaties). As Amnesty International has documented, these abuses include cases of torture and ill-treatment motivated by the real or perceived sexual orientation of detainees; extrajudicial executions of LGBT people during “social cleansing” operations and death penalty cases which appear to result from blatant homophobia in the administration of justice; abuses of the right to health for LGBT people who are targeted for forced psychiatric and drug treatment to “cure” them of their homosexuality; discriminatory legislation and homophobic “hate speech”; the suppression of freedom of opinion and expression of LGBT people; and cases of intimidation, imprisonment, violence or death of LGBT human rights defenders.<sup>4</sup> There are other abuses, including in the area of economic, social and cultural rights, where the mandates of the Treaty Bodies and many Special Procedures are also relevant.

This document provides practical advice on how to use these bodies to raise individual cases as well as general situations of violations of the human rights of LGBT people.

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<sup>2</sup> The Organization of Islamic Conference is an intergovernmental grouping of 56 states created in 1969, whose aim is to safeguard the interests and ensure the progress and well-being of Muslims the world over.

<sup>3</sup> See Amnesty International public statement “*UN Commission on Human Rights: sexual rights are human rights*”, AI Index: POL 30/020/2004, April 2004, “*Human Rights and Sexual Orientation and Gender Identity*”, AI Index: ACT 79/001/2004, March 2004, and “*Joint Oral Statement of Amnesty International and Human Rights Watch on civil and political rights*” delivered at the 60<sup>th</sup> Commission on Human Rights, AI Index: IOR 41/011/2004, April 2004. At the 60<sup>th</sup> session, there was a sustained attack against sexual autonomy, sexual orientation and sexual and reproductive health and rights, across four resolutions: extrajudicial, summary or arbitrary executions; violence against women; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as human rights and sexual orientation.

<sup>4</sup> AI campaigns for the release of anyone imprisoned solely because of their sexual orientation, including those prosecuted for having sex in circumstances which would not be criminal for heterosexuals. Individuals who are imprisoned on these grounds are considered to be prisoners of conscience. Reports on AI’s research and campaigning on the protection of LGBT rights are available from: <http://web.amnesty.org/library/eng-347/index>, and information about AI’s LGBT networks is available from AI national sections’ website: <http://web.amnesty.org/contacts/engindex>

## **II. The Treaty Bodies**

### **a. What are the Treaty Bodies?**

International treaties on human rights are the foundation of the international legal system for the promotion and protection of human rights. By ratifying or acceding to a human rights treaty, a state party consents to be legally bound by the obligation to respect the rights enshrined in the treaty and to guarantee their enjoyment by all individuals under its jurisdiction. There are seven core international treaties on human rights: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Each treaty establishes a committee of experts, known as a Treaty Body, which is entrusted with monitoring the compliance of states parties with their obligations under the relevant treaty.<sup>5</sup> The seven Treaty Bodies are: the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee against Torture (CAT), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC) and the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW). Each Committee consists of experts who are independent and impartial and elected by states parties for their recognized expertise and competence in the field of human rights.<sup>6</sup> They serve in a personal and unpaid capacity for four-year terms.

Six of the Treaty Bodies are supported by secretariats which are based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, Switzerland. The CEDAW's secretariat is provided by the Division for the Advancement of Women in New York, USA. Contact details for both are provided below, together with practical advice on how and where to find information highlighted in this Section.

### **b. What are their functions?**

In order to fulfil their monitoring task, Treaty Bodies meet periodically throughout the year and carry out one or more of the following functions: review states' reports, examine individual communications, consider violations through inquiry procedures and elaborate general comments. The table contained in Annex 1 offers a general overview of some of the main functions carried out by each Treaty Body.

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<sup>5</sup> One exception is the Committee on Economic, Social and Cultural Rights (CESCR), which was established, not by the International Covenant on Economic, Social and Cultural Rights, but by ECOSOC resolution 1985/17.

<sup>6</sup> The members of the CESCR are elected by ECOSOC from a list of candidates submitted by states parties.

The principal activity of all Treaty Bodies is the **consideration of the periodic reports** submitted by states parties on the measures they have taken to implement the provisions of the human rights treaty, i.e. to harmonize their domestic legislation, policies and practices to the standards set out in the international instrument. This is an obligation incumbent on all states parties to a human rights treaty. The Treaty Body examines state reports at its sessions, including through a dialogue with the state representatives who answer questions posed by the experts. Following these discussions, the Treaty Body adopts recommendations, or “concluding observations”, in which it assesses the state party’s progress in implementing the treaty, expresses its concerns and makes recommendations.<sup>7</sup>

Four Treaty Bodies accept, under certain conditions, “**communications**”, (also referred to as “complaints” or “petitions”), from individuals, and in some instances groups of individuals, complaining of a violation by a state party of their rights under the corresponding treaty. A Treaty Body examines a communication on its admissibility and its merits before taking its “decision”, also known as “opinions” or “views”, on whether the state has violated a right protected by the treaty. In its views, it may call upon the state to provide the victim with an appropriate remedy. Although a Treaty Body is not a court and has no means of enforcement, its views have an authoritative force and states parties are expected to abide by them in accordance with their obligations to implement treaties in good faith, to prevent similar violations in the future and to provide effective enforceable remedies in case a violation has been established.<sup>8</sup>

Two of the Treaty Bodies, the CAT and the CEDAW, may initiate an **inquiry procedure** allowing them to carry out investigations, including missions, to a state party when they receive “reliable information” – from any source – indicating the widespread and systematic practice of torture, or grave or systematic violations of the rights set forth in the Convention on the Elimination of All Forms of Discrimination against Women. These proceedings are confidential and conducted in co-operation with the state party concerned. After all stages of the inquiry have been completed, a Treaty Body may make public a summary account of the results, including its recommendations to the state.

All Treaty Bodies issue “**general comments**” or “general recommendations”, which are authoritative interpretations of the provisions of the treaty and provide guidance to the states

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<sup>7</sup> There are two factors which negatively impact upon the effectiveness of the monitoring process: firstly, some treaty bodies have a backlog of unprocessed state reports and a significant delay (from one to several years) exists between the receipt of a report and its consideration; secondly, the majority of states parties fail to present their reports on time – some have never reported at all, while others have reports which are more than five years overdue.

<sup>8</sup> When it adopts its views on an individual communication, the Human Rights Committee recalls that, by becoming a party to the first Optional Protocol, a state party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the state party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in a case where a violation has been established. See: <http://www.unhchr.ch/tbs/doc.nsf>

on how to implement the treaty. The process of drafting a general comment usually allows for NGO contributions, and takes place over a number of sessions.<sup>9</sup> Some Treaty Bodies also organize days of general discussions, which represent an international forum of debate open to NGOs and offer the opportunity to further the understanding of the articles of the treaty and related issues.

### c. How have the Treaty Bodies addressed LGBT rights?

Through monitoring states' compliance with the international human rights treaties, the Treaty Bodies have established a growing and comprehensive case law on LGBT rights, which includes the following issues: the harmful effects of discrimination on the grounds of sexual orientation on the enjoyment of other rights, such as the right to privacy, equality before the law or equal protection of the law;<sup>10</sup> the right to life in the case of homosexuals targeted by so-called "social cleansing" operations;<sup>11</sup> the ill-treatment and/or discriminatory treatment of prisoners on the basis of sexual orientation;<sup>12</sup> the predicament of human rights defenders working on LGBT rights;<sup>13</sup> the need for protection of refugees fleeing persecution on the basis of sexual orientation.<sup>14</sup>

In the landmark *Toonen v. Australia* case, the HRC considered that the provisions of the Tasmanian Criminal Code criminalizing same-sex sexual relations constituted an arbitrary interference with the complainant's right to privacy under article 17 paragraph 1 together with the prohibition of discrimination under article 2 of the ICCPR.<sup>15</sup> In this case, the HRC affirmed for the first time that "the reference to 'sex' in articles 2, paragraph 1, and 26 [which protect against distinction or discrimination on any ground] is to be taken as including sexual orientation",<sup>16</sup> and called for the repeal of the offending law, which was subsequently abolished in April 1997. This principle has since been reaffirmed by other Treaty Bodies, including the CRC, CESCR and the CEDAW, which have urged states parties to take measures to prevent or eliminate such discrimination.<sup>17</sup>

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<sup>9</sup> Information about the number of meetings, or sessions, that the Treaty Bodies hold during the year is contained in Annex 1.

<sup>10</sup> See for example: Concluding observations by the Human Rights Committee: Chile (CCPR/C/79/Add.104), 1999, para. 20; Romania (CCPR/C/79/Add.111), 1999, para. 16.

<sup>11</sup> Concluding observations by the Human Rights Committee: Colombia (CCPR/C/79/Add.76), 1997, para. 16.

<sup>12</sup> Concluding observations by the Committee against Torture: Brazil (A/56/44), 2001, para. 119; Egypt (CAT/C/CR/29/4), 2002, para. 5(e).

<sup>13</sup> Concluding observations by the Committee against Torture: Venezuela (CAT/C/CR/29/2), 2002, para. 10(d).

<sup>14</sup> Concluding observations by the Committee on the Elimination of Discrimination against Women: Sweden (CEDAW/A/56/38), 2001, para. 334.

<sup>15</sup> Communication no. 488/1992, 31 March 1994, CCPR/C/50/D/488/1992

<sup>16</sup> *Toonen v. Australia*, para. 8.7. In other words, no individual can be denied the enjoyment of the rights protected by the ICCPR, including equality before the law and equal protection of the law, because of his/her sexual orientation.

<sup>17</sup> See for example: Concluding observations by the Human Rights Committee: Poland (CCPR/C/79/Add.110), 1999, para. 23; Concluding observations by the Committee on Economic, Social and Cultural Rights: China (Hong Kong Special Administrative Region) (E/C.12/1/Add.58), 2001, paras. 15(c) and 31; Ireland (E/C.12/1/Add.35), 1999, para. 5. Note that the Committee on Economic, Social and Cultural Rights has considered discrimination in

Through the development of their jurisprudence, the Treaty Bodies have demonstrated the linkages between discrimination on the grounds of sexual orientation and other violations of human rights.<sup>18</sup> The HRC consideration of the case of *Young v. Australia* expanded the principle of non-discrimination and equal protection to the area of partnership rights and found that the denial of pension benefits to the same-sex partner of a deceased war veteran constituted a violation of article 26 of the ICCPR, in the absence of the state being able to provide justification for distinctions on the basis of sex or sexual orientation.<sup>19</sup>

All cases and documents referred to above are available from the OHCHR.

#### **d. The role of NGOs in the consideration of states parties' reports**

Although no formal standing has been assigned to NGOs in the state reporting process by the human rights treaties, in practice, NGOs carry out a crucial role as they provide independent information to enable Treaty Bodies to conduct a critical scrutiny of a state report. Treaty Bodies themselves have recognized the importance of NGO participation and have expressly encouraged NGOs to provide information on the human rights situation in the states whose reports are under review. The following points identify the steps in the process.

##### **(i) Ratification of the treaty**

Firstly, NGOs should check which treaties the state has ratified, as well as any reservations or declarations entered at the time of ratification which might limit the scope of the treaty.

##### **(ii) Treaty Body schedule**

The preparation of written submissions must start well in advance of the beginning of a Treaty Body's session. NGOs can find out which states are scheduled for consideration by a Treaty Body by checking the relevant Treaty Body webpage of the OHCHR or the Division for the Advancement of Women in the case of the CEDAW, or by contacting the relevant Treaty Body secretary directly. They will be able to provide information about pre-sessional or post-sessional working groups convened by the Treaty Bodies to prepare "lists of issues" for the states which are scheduled to be examined, i.e. specific issues and concerns the Treaty Body should discuss with the state representatives. Ideally, NGOs should aim to transmit relevant country information sufficiently in advance of the working group meeting in order to inform the dialogue between Treaty Body and state from the outset.

NGOs can also seek advice about states parties' reports scheduled for consideration from one of the organizations responsible for coordinating NGO briefings for the CRC, CEDAW and

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access to health care on the grounds of sexual orientation as an issue of status. See General Comment 14, para.18 on the right to the highest attainable standard of health. See E/C.12/2000/4, 11 August 2000.

<sup>18</sup> See for example: Concluding observations by the Committee on Economic, Social and Cultural Rights: Trinidad and Tobago (E/C.12/1/Add.80), 2002, paras. 14 and 47; Committee on the Rights of the Child: UK, (CRC/C/15/Add.188), para. 43, and General Comment 15, para.13 of the Committee on Economic, Social and Cultural Rights on the right to water, E/C.12/2002/11, 20 January 2003.

<sup>19</sup> Communication no 941/2000, 6 August 2003, CCPR/C/78/D/941/2000

CERD (although NGOs are not compelled to use these channels). Contact information is provided below.

**(iii) Written submissions**

When preparing a submission for the Treaty Bodies, NGOs are advised to review the text of the relevant treaty in order to determine which articles correspond to the issues they wish to raise. Briefings should follow the structure of the corresponding treaty and be organized article by article to facilitate their review by the experts of the Treaty Body. It is important to give context to the briefing so that the Treaty Body's experts are able to understand the broader human rights situation. NGOs should also review the state's own report in order to check the claims being made by the government. If this is not the first occasion that the Treaty Body has considered a report by the government, reference should also be made to the previous concluding observations in order to assess which recommendations are outstanding.

Further explanation of the scope of the articles of the treaty and obligations of a state party may be contained in the Treaty Body's general comments, views on individual cases, concluding observations, as well as the reporting guidelines for states.

Submissions should be prepared in at least one of the working languages of the UN (English, French, Spanish, Russian, Chinese and Arabic). As NGO submissions are not circulated as a formal UN document, there is no official translation for them so it is worth checking which languages the Treaty Body concerned works in and considering making the submission available in all relevant languages. The submission should be sent to the Treaty Body secretary at least six weeks before the session takes place, both in hard copy and electronically. Annex 1 provides information about the number of experts of each Treaty Body.

The written briefing can also be circulated widely before the session takes place to encourage some interest in the proceedings at the national level. This will be useful for post-session activities, including follow-up. As the Treaty Bodies routinely share copies of NGO information with the state party, the briefing could also be provided to the government.

**(iv) Attendance**

NGOs planning to attend the consideration of the state party report may be able to make an oral presentation to the Treaty Body to provide complementary or updated information to the written briefing. Though NGOs are not allowed to intervene in the public discussions between the state representative and the Treaty Body, they have various opportunities to establish a direct contact with Treaty Body experts, including in formal meetings between the Treaty Body and NGOs, or in informal encounters outside the sessions.<sup>20</sup>

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<sup>20</sup> In this regard, it is worth noting that the Treaty Bodies usually select from among their members a "rapporteur" or members of a working group to lead discussions on a state party report.

Accreditation for NGO attendance at the public sessions of a Treaty Body needs to be organized with the relevant Treaty Body secretary in advance of the session.

**(v) Follow-up to the consideration of a state party report**

The review of a state party report culminates in the formulation of concluding observations, the final outcome of the reporting process. As the benchmark for measuring present compliance and future progress, concluding observations are critical for the state party, for civil society, as well as for different UN actors seeking to integrate them into country-based initiatives. As the Treaty Bodies have no enforcement mechanism, NGOs and others can play an important role in holding governments to account for their implementation of both the treaties and the concluding observations of Treaty Bodies.

The Treaty Bodies are developing mechanisms for scrutinizing the steps taken by states to implement their recommendations. For example, some Treaty Bodies set a deadline for the state to report back to them on the implementation of priority recommendations. Often the process by which a state prepares its report to a Treaty Body does not give rise to much interest at the national level, and many NGOs are not aware of the Treaty Bodies' work. Those which do follow Treaty Body developments can play a role in disseminating the concluding observations as widely as possible, including to parliamentarians and national human rights institutions. In particular, NGOs can alert their media contacts to the conclusions of Treaty Body meetings and encourage them to highlight the consideration of the state party report and the concluding observations in order to inform legislators, politicians and the judiciary, as well as the general public.

It might be desirable to form NGO coalitions around Treaty Body work, including for the purpose of following-up on concluding observations. This can be an effective way to pool resources, skills and expertise, and apply maximum pressure on the government.

**e. Individual communications**

Under certain conditions, four of the seven Treaty Bodies – the HRC, the CAT, the CERD and the CEDAW – are empowered to receive, at any time, a written “communication” (“complaint” or “petition”) from an individual, and in some instances groups of individuals, claiming that his/her rights under the corresponding treaty have been violated by a state party.<sup>21</sup> There are some common features to the process by which the Treaty Bodies review an individual communication, including registration of the communication and the two stages of admissibility and merits, upon which the communication is considered.

**(i) Who can submit a communication?**

NGOs may not present a communication on their own initiative, but they may be entitled to represent a victim who is unable to make the claim, if the NGO has been authorized to act on behalf of the victim or his/her family. NGOs can also do much to raise awareness about the individual communications mechanisms, encourage victims of human rights violations who

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<sup>21</sup> This is the case for complaints to the CERD and the CEDAW.

may be potential complainants to use them, and actively assist a victim or his/her family to file a communication with the appropriate Treaty Body.

**(ii) Submission of the individual communication**

The communication should be transmitted to the “petitions team” of the Treaty Bodies’ Secretariat. The communication should be signed by the victim or his/her representative and sent to the petitions team by mail. Communications can also be sent by fax or email, particularly for urgent matters, but a signed original copy must also be sent in order for the complaint to be officially registered. Ideally, the communication should be submitted in English, French or Spanish in order to be processed without delay.

The communication should specify the Treaty Body to which it relates, indicate all the key elements of the case, including a detailed factual statement on the alleged violation. In all but one case, there is no time limit within which a communication should be submitted, but it is best to do so as soon as domestic remedies are exhausted. However, the CERD specifies that communications should be submitted within six months after the exhaustion of domestic remedies. Individual communications can be sent at any time but it should be noted that it can take as long as two years for a Treaty Body to consider a case from start to finish. The consideration is confidential until the Treaty Body has reached its views.

**(iii) Process for consideration of an individual communication**

Once received and registered by the secretariat of the Treaty Body, the communication is sent to the state party concerned for its response (usually requested within six months), which is shared with the author of the communication. The complainant has the possibility to present further information in reaction to the observations made by the state. In light of all this information, the Treaty Body examines the complaint on its admissibility and its merits, before taking its decision on whether the state party has violated its treaty obligations.<sup>22</sup> At any stage prior to its decision, the Treaty Body may request the state to take interim measures to safeguard the alleged victim from irreparable harm, such as torture or execution.

**(iv) Admissibility of the communication**

The individual communication must apply to the state concerned: the state must be a party to the ICCPR, the CAT, the CERD or the CEDAW (as relevant) and have accepted the individual communications procedure by ratifying the optional protocol or making a declaration recognizing such a competence to the Treaty Body.<sup>23</sup> In addition, the communication:

- must not be anonymous;
- should be made by an individual who is personally affected by the violation and was under the jurisdiction of the state party at the time of the alleged violation;
- must be submitted directly by the victim or by a duly authorized representative;

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<sup>22</sup> A case deemed inadmissible may be reconsidered in light of changed circumstances.

<sup>23</sup> Check also that the state party has not made a procedural reservation limiting the use of the individual complaints mechanism.

- should only be submitted after all available domestic remedies must have been exhausted, unless they are ineffective, unavailable or unduly prolonged;
- should not be under examination – or have been examined in the case of the CAT or the CEDAW – by another procedure of international investigation or settlement at the time the complaint is lodged.

The author of the communication does not have to prove the facts beyond all reasonable doubt, but must make a sufficient case and submit evidence to ensure that the communication is admissible and can progress to the next stage.

**(v) Merits of the communication**

The Treaty Body will review the communication to ascertain whether a violation of the treaty has in fact occurred, bearing in mind reservations which might have been entered by the state party. The violation must have occurred after the ratification of the treaty by the state – though a complaint may be examined if the effects of the violation are still persistent. It can be useful to review the concluding observations, views and general comments of the Treaty Body on the state or the issue concerned in order to find elements likely to strengthen the complaint (e.g. previous positions of the Treaty body on a similar violation). In addition, the communication should be substantiated by all possible evidence (e.g. copies of arrest warrants, court judgments, medical reports).

**(vi) Follow-up to an individual communication**

When they find a violation of the treaty, some Treaty Bodies – the HRC and the CAT – include in their views a request that the state party provide information on the measures it has taken to give effect to their decision. The HRC has established a follow-up mechanism through the appointment of one of their members as Special Rapporteur on follow-up, who is responsible for monitoring the responses of states parties to the request of information on implementation of the views the Treaty Body. He/she can organize meetings with representatives of states which fail to implement the decisions of the Treaty Bodies, and on occasion can even visit the state concerned. The CAT has recently created a similar follow-up mechanism, and it is anticipated that the CEDAW may also replicate this model. NGOs can contribute to the follow-up process by providing relevant and updated information to the Special Rapporteur on follow-up.

**f. Inquiry procedures**

The CAT and the CEDAW may initiate inquiries if they receive “reliable information” containing well-founded indications of systematic violations of their treaties in a state party. An inquiry may begin when there is significant and well-documented evidence to show patterns of violations. NGOs wishing to submit information under an inquiry procedure are advised to contact the relevant Treaty Body secretary for guidance on how to prepare and transmit their submission. As the inquiry process is confidential, NGOs which have submitted information may not know that their information has been taken up until it is recorded in the Treaty Bodies’ annual report.

**(i) Who can submit information to the inquiry procedures?**

NGOs have been the sole providers of the information which has stimulated the few inquiries which have been undertaken by the CAT, and of the first inquiry recently completed by the CEDAW. This does not preclude individuals from submitting such information.

**(ii) Differences between an inquiry and an individual communication procedure**

Unlike the individual communications procedure, inquiries concern patterns of violations, and can be sought on behalf of others without their authorization. Submissions to the inquiry procedures can be made anonymously, although this may cause difficulties when the Treaty Body seeks to verify the reliability of the information. There is no provision for interim measures under the inquiry procedure. Neither is there a requirement that domestic remedies be exhausted before it can proceed.

**(iii) Opt-outs of the inquiry procedures**

Before preparing a submission to an inquiry procedure, NGOs should first check that the state concerned has ratified the CAT or the CEDAW, and that it has not opted-out of the inquiry mechanisms. With the CAT, a state can do so by declaring under article 28 that it does not recognize the competence of the Treaty Body to undertake inquiries. The inquiry procedure of the CEDAW is established through its Optional Protocol and so a state must have ratified the Optional Protocol without opting out of the inquiry mechanism, as permitted by article 10.

**(iv) Preliminary stage of consideration**

There are two parts of the process by which the CAT or the CEDAW determine whether an inquiry procedure should be initiated. The first part is the “preliminary consideration of information”, whereby the Treaty Body receives information which is deemed to be “reliable” and which meets the standard of containing “well-founded indications that torture is being systematically practised in the territory of the state” in the case of the CAT, or indicating “grave or systematic violations of rights” in the case of the CEDAW. The Treaty Body may make inquiries itself to determine whether the information is reliable and accurate if the submission does not meet the standard of “reliable information”.

**(v) Secondary stage of consideration**

The next stage in the process for information which meets the requirements of the preliminary stage is that the Treaty Body invites the state party to co-operate in the examination of the information, and to submit observations thereon. The Treaty Body may also seek and receive information from other sources, including NGOs and individuals. After completion of this stage, the Treaty Body may decide to establish an inquiry.

**(vi) Undertaking the investigation**

The Treaty Bodies designate some of their members to conduct the inquiry which includes seeking a mission to the state to conduct an on-site investigation. The Treaty Bodies may use that opportunity to conduct interviews with individuals, inspect particular sites, and consult with NGOs and government officials.

Once the inquiry has finished, the experts submit their findings to the whole Treaty Body, which considers them and transmits them to the state party. Under the Optional Protocol to the CEDAW, the state party must submit its observations in response to those findings within six months.

Before publishing a summary account of the results of its inquiry in its annual report to the General Assembly, the CAT must first consult with the state party concerned. In contrast, the CEDAW may publish a summary of its findings and recommendations without first consulting with the state party. Unlike the CAT, the CEDAW must also indicate inquiries which are on-going in its annual report.

**(vii) Follow-up to inquiry procedures**

The CEDAW is expressly charged with following-up on inquiries by requiring information from the state party on measures taken in response to its investigations. As it has only just completed its first inquiry, it remains to be seen how this Treaty Body will develop its follow-up mechanism. The lack of such a formal procedure with regard to the CAT does not preclude NGOs providing information on implementation of Article 20 recommendations at the time when the state's next periodic report is scheduled for consideration by the Treaty Body.

**g. Where to find further information about the Treaty Bodies**

A useful source of information is the website of the OHCHR: <http://www.ohchr.org/english/bodies/index.htm> for general information on the Treaty Bodies, including a history of recent reporting by states and links to the individual webpages of each Treaty Body.

These webpages provide specific information on the treaty (text, status of ratifications, declarations and reservations), the Treaty Body (list of its members, working methods, calendar of sessions) and its work (guidelines on reporting for states, general comments and recommendations, press releases).

Information regarding individual communications (guidelines on human rights complaints, model questionnaires for communications and contact information) can be found on the OHCHR website at the following address: <http://www.ohchr.org/english/bodies/question.htm>

Information relevant to the CEDAW is available from: <http://www.un.org/womenwatch/daw>

The UN Treaty Body database is an extensive compilation of all the official documents issued or received by treaty bodies (state reports, concluding observations, general comments, decisions in individual communications (referred to as jurisprudence), reports of inquiry procedures: <http://www.unhcr.ch/tbs/doc.nsf>

The Treaty Bodies' reports to the General Assembly summarize the activities of the Treaty Bodies and include all the concluding observations, views and general comments issued during the year, as well as their prospective schedule. The reports can be found on the

OHCHR website and on the main UN website at the time of the regular session of the General Assembly: <http://www.un.org>

Amnesty International maintains its own webpage on the Treaty Bodies, which includes information about status of ratification and schedules for the forthcoming consideration of states parties' reports: <http://www.amnesty.org/treatybodies>

Human Rights Watch has developed an electronic resource library for jurisprudence relevant to sexual orientation and gender identity, including regional bodies and national courts. See <http://www.hrw.org/lgbt/jurisprudence.htm>

The following publications provide further advice on how to work around the Treaty Bodies in general and/or LGBT rights and the Treaty Bodies specifically:

*Human Rights and the UN: Practice before the Treaty Bodies*, by Michael O'Flaherty, The Hague: M. Nijhoff Law Specials, (2002, 2<sup>nd</sup> ed), ISBN 90 411 1788 1

*The Torture Reporting Handbook*, by Camille Giffard, published by the Human Rights Centre at Essex University, (2000), ISBN 1 874635 28 5, available from the University of Essex, Wivenhoe Park, Colchester, CO4 3SQ, Tel: 00 44 1206 872558, Fax: 00 44 1206 873428, E-mail: [hrc@essex.ac.uk](mailto:hrc@essex.ac.uk), Website: [http://www2.essex.ac.uk/human\\_rights\\_centre](http://www2.essex.ac.uk/human_rights_centre)

*Making the Mountain Move: an activist's guide to how international human rights mechanisms can work for you!* (2000), and *Fact Sheet on submitting individual complaints to the United Nations Human Rights Treaty Bodies*, both published by and available from the International Gay and Lesbian Human Rights Commission, (IGLHRC), 350 Fifth Avenue, 34<sup>th</sup> floor, New York, NY 10018, Tel: 00 1 212 216 1814, Fax: 00 1 212 216 1876, E-mail: [iglhrc@iglhrc.org](mailto:iglhrc@iglhrc.org), Website: <http://www.iglhrc.org>

*The Application of Human Rights to Reproductive and Sexual Health: a compilation of the work of international human rights treaty bodies*, (2<sup>nd</sup> ed) published by and available from Action Canada for Population Development/Action Canada pour la population et le développement, 260 Dalhousie Street, Suite 300, Ottawa, Ontario, Canada, K1N 7E4, Tel: 00 1 613 562 0880, Fax: 00 1 613 562 9502, E-mail: [info@acpd.ca](mailto:info@acpd.ca), Website: <http://www.acpd.ca>

*Bringing Rights to Bear: an analysis of the work of the UN treaty monitoring bodies on reproductive and sexual rights*, published by the Center for Reproductive Law and Policy and the University of Toronto International Programme on Reproductive and Sexual Health Law, (2002) available from The Center for Reproductive Rights, 120 Wall St., New York, NY 10005, Tel: 00 1 917 637 3600, Fax: 00 1 917 637 3666, E-mail: [info@reprorights.org](mailto:info@reprorights.org) Website: <http://www.reproductiverights.org>

*Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Development and Denial at the UN*, by Ignacio Saiz, published in *Health and Human Rights*, Vol. 7 No. 2, by Francois-Xavier Bagnoud Center for Health and Human Rights (2004)

**h. Contact information**

**Office of the High Commissioner for Human Rights**, United Nations Office at Geneva, 1211 Geneva 10, Switzerland, Fax: 00 41 22 917 9022, no e-mail  
Website: <http://www.unhchr.ch>

Correspondence relevant to **individual communications** can be sent to the Petitions Team at the above OHCHR postal address or via e-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

**Division for the Advancement of Women**, Department of Economic and Social Affairs, United Nations Secretariat, 2 United Nations Plaza, DC-2/12th Floor, New York, NY 10017, USA, Tel: 00 1 212 963 3162, Fax: 00 1 212 963 3463, E-mail: [daw@un.org](mailto:daw@un.org)  
Website: <http://www.un.org/womenwatch/daw>

As noted under Section (d)(ii), there are a number of organizations which provide support and advice to NGOs who wish to submit information to three of the Treaty Bodies. These are:

**NGO Group for the Convention on the Rights of the Child**, c/o Defence for Children International, 1 rue de Varembé, P.O. Box 88, CH-1211 Geneva 20, Switzerland  
Phone: 00 41 22 740 47 30, Fax: 00 41 22 740 1145, E-mail: [ngo-crc@tiscalinet.ch](mailto:ngo-crc@tiscalinet.ch)  
Website: [www.crin.org/NGOGroupforCRC](http://www.crin.org/NGOGroupforCRC)

**International Women's Rights Action Watch** (IWRAW, which coordinates NGO briefings on behalf of the CEDAW), Hubert Humphrey Institute of Public Affairs, University of Minnesota, 301-19th Avenue South, Minneapolis, MN 55455, USA  
Phone: 00 1 612 625 5557, Fax: 00 1 612 624 0068, E-mail: [iwraw@hhh.umn.edu](mailto:iwraw@hhh.umn.edu)  
Website: <http://iwraw.igc.org/>

**Anti-Racism Information Service** (ARIS, which coordinates NGO briefings on behalf of the CERD), 14, avenue Tremblay, 1209 Geneva, Switzerland  
Phone: 00 41 22 740 35 30, Fax: 00 41 22 740 35 65, E-mail: [centre-docs@antiracism-info.org](mailto:centre-docs@antiracism-info.org), Website: <http://www.antiracism-info.org/Prune/pageHome.php>

### III. Special Procedures

#### a. What are the Special Procedures?

The Special Procedures are the country and thematic experts appointed by the UN Commission on Human Rights (the Commission). They are also referred to as “mechanisms”: the “thematic mechanisms” are mandated to look at specific types of violations wherever they occur in the world, while the “country mechanisms” can consider any human rights violation within a specific state or territory. Individually, they may be called “special rapporteur”, “special representative of the Secretary-General”, “independent expert”, or be configured as a “working group”.

The Special Procedures are independent and impartial individuals coming from all regions of the world with expertise in the area of human rights relevant to their mandate. The Special Procedures are usually appointed by the Chair of the Commission, following consultations with the Bureau of the Commission (comprising representatives from each of the five UN regional groups of states). Generally, the thematic mandates are renewed every three years, whereas the country mandates are usually renewed on an annual basis. They are supported by staff at the OHCHR and their activities are funded from the OHCHR’s budget. As with the Treaty Body experts, they are not paid for carrying out their functions.

For the purposes of this document, the information provided below relates primarily to the thematic mandate-holders. Annex 3 contains a current list of both thematic and country Special Procedures. Practical advice, contact details and information about how and where to find out more about the Special Procedures is summarized at the end of this Section.

#### b. What are their functions?

The compliance by states with international human rights instruments is the main focus of the Special Procedures’ work, although increasingly some mandate-holders are addressing non-state actors such as the international financial institutions and armed groups. However, unlike the Treaty Bodies, the Special Procedures can consider the situation of human rights in a state *regardless* of whether or not it has ratified the international treaties.

While there are some differences in their working methods, the activities of the Special Procedures generally fall under three main categories.

Firstly, the Special Procedures receive and act upon **communications** alleging human rights violations in individual cases which are submitted to them by NGOs, individuals, governments, intergovernmental organizations and other UN institutions or offices. The mandate-holder decides on whether the information is credible and within their remit before transmitting it to the government concerned, either as an urgent appeal or by letter, depending on the case. The **urgent appeals procedure** is a preventive mechanism, which is used in

response to a current situation, and proceeds on the basis that, without being accusatory, the Special Procedure can request the government to take steps to ensure that the individual(s) concerned will not suffer harm to his/her physical or mental integrity. **General letters of allegation** are sent periodically and may contain individual cases which are not urgent, as well as information demonstrating patterns or trends of violations.

Replies from governments to communications, or the lack thereof, are recorded in reports which are submitted to the Commission on an annual basis.

The second area of activity relates to **fact-finding missions**. The Special Procedures undertake one or two missions a year to study the situation in a country or territory, provided that the government concerned has extended an invitation for him or her to do so. On occasion and through a resolution, the Commission calls on particular Special Procedures to visit a country which is of concern, but in most cases, visits by the Special Procedures take place after the mandate-holder has requested an invitation. Several states have issued a “standing invitation” to all of the thematic Special Procedures, signifying their willingness to host visits whenever the mandate-holders seek them.<sup>24</sup>

Country visits provide the Special Procedures with an opportunity to make a general assessment of the human rights situation in the country, as well as an analysis of the legal, judicial, administrative and institutional situation specifically relating to their mandate. They can collect information through contacts with government representatives, NGOs, victims and their relatives, parliamentarians, members of the judiciary and national human rights institutions.

The Special Procedures have developed standard terms of reference for visits which are agreed with the government in advance of the mission taking place. They include guarantees of freedom of movement in the whole country, access to places of detention, confidential and unsupervised meetings with witnesses, and assurances that no person will suffer reprisals as a result of being in contact with the Special Procedures.

Reports of visits are presented to the Commission each year, usually as a separate appendix to the mandate-holder’s main report and contain recommendations aimed at improving the situation on the ground. As part of their strategies to follow-up on country visits, several of the Special Procedures routinely seek and receive information from governments and NGOs regarding steps taken by the government to implement the recommendations. This information is also made public at the time of the Commission.

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<sup>24</sup> As of March 2005, these states are: Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Georgia, Greece, Guatemala, Hungary, Iceland, Ireland, Iran, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Mongolia, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and United Kingdom.

The third area of activity for Special Procedures is **undertaking studies**, through which the Special Procedures may determine which violations are relevant to their mandate, assess their occurrence, the causes and consequences of the violation, and make recommendations accordingly. The impetus for the topic of studies can arise from a Commission resolution or on the initiative of the mandate-holder. It may also result from information of a general nature submitted by NGOs where that information indicates patterns or trends and emerging issues. The results of the studies are contained in reports which are presented to the Commission and to the General Assembly.

**c. How have the Special Procedures addressed LGBT rights?**

Some of the Special Procedures have given consistent attention to violations perpetrated on the basis of sexual orientation and gender identity. The work of the Special Rapporteur on violence against women, its causes and consequences has been pioneering in this area. The Special Rapporteur was the first of the mandate-holders to consider sexuality in terms of human rights, such as the regulation of women's sexuality, including non-heterosexuality, through violent acts. She identified the articulation of women's sexual rights as constituting "the final frontier for the women's movement".<sup>25</sup>

The Special Rapporteur on extrajudicial, summary or arbitrary executions gave prominence to violations of the right to life of members of sexual minorities by incorporating these violations as a separate category in her public reports to the Commission and the General Assembly. This Special Rapporteur has acted on cases where the state has failed to investigate violations of the right to life and to bring perpetrators to justice, as well as in cases concerning the sentencing to death of individuals because of their sexual orientation.<sup>26</sup>

The Special Rapporteur on torture has identified torture and ill-treatment of sexual minorities as an issue of "special concern, and considered how the status of sexual minorities could affect the consequences of their ill-treatment in terms of their access to complaints procedures or medical treatment. He found that discriminatory attitudes result in sexual minorities being perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-state actors. The Special Rapporteur highlighted cruel, inhuman or degrading treatment in non-penal institutions, such as the involuntary confinement in state medical institutions where individuals have been subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other "aversion therapy".<sup>27</sup>

In 2002, the Working Group on arbitrary detention adopted an opinion in regard to the detention of 55 individuals in Egypt on the grounds of their homosexuality (the "Queen Boat

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<sup>25</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences* (E/CN.4/2003/75), 31 January 2002.

<sup>26</sup> See *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2003/3), 13 January 2003.

<sup>27</sup> See *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (A/56/156), 3 July 2001.

case”), in which it found that the detention was in violation of articles 2(1) and 26 of the ICCPR.<sup>28</sup>

More recently, and in a significant advancement, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health examined sexual and reproductive rights through the lens of the right to health. He reaffirmed the obligation of states to ensure that health information and services are made available to vulnerable groups, and stated that sexual rights include the right of all persons to express their sexual orientation without fear of orientation, denial of liberty or social interference. He recommended that increased attention be given to a proper understanding of reproductive health, reproductive rights, sexual health and sexual rights.<sup>29</sup>

Other Special Procedures which have continued to examine LGBT rights include the Special Representative of the Secretary-General on human rights defenders, who identified groups active on issues of sexuality, including sexual orientation, as being vulnerable to prejudice, marginalization and public repudiation and has taken up several cases concerning human rights defenders working with sexual minorities.<sup>30</sup>

All of the above-mentioned reports are available from the OHCHR.

#### **d. How to submit information to the Special Procedures**

With the exception of two working groups, the Special Procedures require the following minimal information in order to consider communications:

##### **(i) Information about the author of the communication**

NGOs which have not submitted cases to the particular Special Procedure mandate-holder previously are advised to provide information about the objectives and working methods of their organization, in particular, how information is collected and verified. They should also provide contact details of the organization. Note that the source of information is not revealed to the government.

##### **(ii) Details about the alleged violation**

The communication should include the name of the victim, the date and place of the incident, the alleged perpetrator(s), and precise details about the violation (treatment involved, instruments used, parts of the body affected and injuries suffered, or if the treatment is psychological, what it consisted in, how the victim has been affected). As communications are shared with the government concerned, the name of the alleged victim will be transmitted to

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<sup>28</sup> Opinion no. 7/2002, contained in *Opinions adopted by the Working Group on arbitrary detention* (E/CN.4/2003/8/Add.1), 24 January 2003.

<sup>29</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* (E/CN.4/2004/49), 16 February 2004.

<sup>30</sup> *Reports of the Special Representative of the Secretary-General on the situation of human rights defenders* (E/CN.4/2001/94), 26 January 2001, and (E/CN.4/2005/101), 13 December 2004.

the authorities. However, it is possible to request that the victim's name be omitted from the public reports of the Special Procedures.

The communication should indicate which, if any, aspects are confidential and whether a case is urgent.

**(iii) Communications concerning general circumstances**

NGOs need to establish a context to general information and assume that the recipient knows little about the country concerned. Information about, for example, the legal framework and political situation could be relevant to setting the context. The communication can then provide an overall picture of (an aspect of) a human rights violation, including factors which facilitate its occurrence. In presenting the findings, it is advisable to show all of the patterns identified, with an explanation of each proposition in general terms, supported with as many examples as possible.

**(iv) Submitting information and providing updates**

In regards to both urgent appeals and communications of general circumstances, copies of supporting documentation should be provided.

It is important that the communication is addressed to the Special Procedure considered most relevant to the alleged violation described in the submission, even if in many cases, more than one mandate-holder can and will act.

NGOs should remember to inform the Special Procedure if there is any change in the situation following the submission of a communication (for example, a person who is arbitrarily detained is subsequently released).

**(v) Cases concerning “disappearances”**

If the case concerns a “**disappearance**”, the information must meet some basic criteria in order for the Working Group on enforced or involuntary disappearances (WGEID) to act on it. Communications must contain the following:

- Full name of the missing person and relevant identification data (for example, national identity document number or photograph);
- Date of “disappearance” – day, month and year of arrest, abduction or when last seen. If the missing person was last seen in a place of detention, an approximate indication is sufficient;
- Place of arrest or abduction or where the missing person was last seen. At least an indication of the location is required;
- Parties presumed to have carried out the arrest or abduction or to hold the missing person in unacknowledged detention;

- Steps taken to determine the fate or whereabouts of the missing person or at least an indication that efforts to resort to domestic remedies were frustrated or have otherwise been inconclusive (for example, inquiries have been made with the police or at the nearest hospital);
- Identity of the person or organization submitting the case.

The WGEID transmits the case to the government concerned, requesting the authorities to carry out investigations and to inform the WGEID of the results. Responses from the government containing information on the fate and whereabouts of a “disappeared” person are transmitted to the source of the communication. If the source does not respond within six months, or if it contests the government’s information on grounds which are considered unreasonable by the WGEID, the case is considered clarified and is closed. If the source contests the government’s information on reasonable grounds, the government is so informed and asked to comment and the case remains open. The WGEID reminds every government concerned at least once a year of the cases which have not yet been clarified. Twice a year, governments are reminded about urgent action cases transmitted during the preceding six months for which no clarification has been received.

**(vi) Cases concerning arbitrary detention**

Similarly, cases of **arbitrary detention** must also contain some basic information before the Working Group on arbitrary detention (WGAD) will act, as follows:

- The identity of the person arrested or detained;
- The date and place of arrest or detention;
- The forces presumed responsible for the arrest or detention;
- The reasons given by the authorities for the arrest or detention or the offences;
- The legislation relevant to the case;
- The steps taken at the national level to verify the detention, especially approaches to the administrative and legal authorities; the results or reasons why such steps were ineffective or were not taken;
- A short account of the reasons for regarding this case as one of arbitrary detention;
- Full particulars of the person(s) submitting the information.

The WGAD will transmit the case to the government concerned, and ask the authorities to respond within 90 days. The government's response is then sent to the source of the complaint for any final comments or observations. The WGAD then considers all of the information in private session and decides whether the detention is arbitrary or not according to three categories.<sup>31</sup> Its decision is called an "opinion" and it is transmitted to the government, together with a recommendation, and to the source. Opinions are recorded in a separate annex to the WGAD's main report to the Commission.

The WGAD also adopts "deliberations" on matters of a general nature in order to develop a consistent set of principles and assist states, for purposes of prevention, to guard against the practice of arbitrary detention.

**(vii) Follow-up to communications with the Special Procedures**

With the exception of the WGEID and the WGAD, the source of the information will not receive confirmation from the Special Procedures that a case has been acted upon. This will only become apparent once the annual reports of the Special Procedures are available and the case is recorded therein.

As the Special Procedures have no enforcement mechanism, NGOs and others can play an important role in holding governments to account for their implementation of the recommendations of the Special Procedures, which may relate to an individual case, a country mission or a generic set of recommendations arising from a study.

The reports of the Special Procedures record which states have not responded to their communications, or have provided an inadequate response. NGOs should ensure that governments which fail to co-operate with the Special Procedures in this way are exposed as such, in particular at the domestic level, as well as those governments which have repeatedly failed to respond positively to a request to visit by a Special Procedure.

NGOs which follow the work of the Special Procedures can play a role in disseminating their recommendations as widely as possible. In particular, NGOs can alert their media contacts to the recommendations of a Special Procedure, particularly following a country visit, and encourage them to highlight the resultant recommendations with a view to raising awareness of the Special Procedure's findings amongst legislators, politicians and the judiciary and the general public.

As indicated previously, the Special Procedures welcome information from NGOs indicating the extent to which their recommendations have been implemented by the government

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<sup>31</sup> Category I: cases in which the deprivation of liberty is arbitrary as it cannot be linked to any legal basis, e.g. continued detention after the completion of a sentence or despite an amnesty law applicable to the prisoner; Category II: cases of deprivation of freedom resulting from the exercise of fundamental rights or freedoms guaranteed by the Universal Declaration of Human Rights, and the ICCPR for states which are party to that treaty. Category III: cases in which non-observance of all or part of the international provisions relating to the right to fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary nature.

concerned, which is summarized in a public report. Some NGOs have taken the initiative to produce their own publications which track the progress made by governments, but otherwise, NGO reports on follow-up by governments may be presented as a regular submission to the relevant mandate-holder.

**d. Where to find further information about the Special Procedures**

The website of the OHCHR provides information about the Special Procedures in general, and both country and thematic mechanisms in particular:

<http://www.ohchr.org/english/bodies/chr/special/index.htm>

The OHCHR site provides a table of missions which have been requested, are pending or have taken place, with links to the reports. It also provides a current list of states which have extended a standing invitation to the Special Procedures.

Each Special Procedure has a dedicated webpage which can be accessed from this page, and which provides information about their mandates, public reports, studies, and press releases, as well as details of how to submit urgent and non-urgent information.

AI has published a document jointly with the Law Society of England and Wales entitled “*The United Nations Thematic Mechanisms 2002: an overview of their work and mandates*”, AI Index: IOR 40/009/2002, which gives more details about submitting information to the thematic mechanism and contains information about missions of the Special Procedures from their establishment until 2002.

The NGO Human Rights Internet runs a website containing compilations of reports of the Special Procedures by mandate as well as by country, so that it is possible to view the recommendations of all mandate-holders on different countries. See “For the Record” at [www.http://www.hri.ca](http://www.hri.ca)

Several NGOs produce public reports of the annual Commission meetings, including debates around the reports of the Special Procedures. These include the International Service for Human Rights, PO Box 16, CH-1211 Geneva 20, Switzerland, Tel: 00 41 22 733 5123, Fax: 00 41 22 733 0826, Website: <http://www.ishr.ch> and the Friends World Committee for Consultation, Quaker UN office, 13 Avenue du Mervelat, 1209 Geneva, Switzerland, Tel: 00 41 22 748 48 00, Fax: 00 41 22 748 48 19, Website: <http://www.quno.ch>.

AI also produces a news service item at the end of each Commission session which summarizes developments. AI’s news service items and other Commission-related documents are available from <http://www.amnesty.org>.

The following publications also provide further advice on submitting cases to the Special Procedures generally as well as in relation to LGBT rights specifically.

*The Torture Reporting Handbook*, by Camille Giffard, published by the Human Rights Centre at Essex University, (2000), ISBN 1 874635 28 5, available from the University of Essex, Wivenhoe Park, Colchester, CO4 3SQ, Tel: 00 44 1206 872558, Fax: 00 44 1206 873428, E-mail: [hrc@essex.ac.uk](mailto:hrc@essex.ac.uk)  
Website: [http://www2.essex.ac.uk/human\\_rights\\_centre](http://www2.essex.ac.uk/human_rights_centre)

*Making the Mountain Move: an activist's guide to how international human rights mechanisms can work for you!* (2000), published by and available from the International Gay and Lesbian Human Rights Commission, (IGLHRC), 350 Fifth Avenue, 34<sup>th</sup> floor, New York, NY 10018, Tel: 00 1 212 216 1814, Fax: 00 1 212 216 1876, E-mail: [iglhrc@iglhrc.org](mailto:iglhrc@iglhrc.org)

An article entitled *Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Development and Denial at the UN*, by Ignacio Saiz, published in *Health and Human Rights*, Vol. 7 No. 2, by Francois-Xavier Bagnoud Center for Health and Human Rights (2004), analyzes the body of work done by the Special Procedures to develop international standards and to hold states to account for a range of violations based on sexual orientation.

**e. Contact information**

The Special Procedures are supported in their work by the OHCHR in Geneva.

Submissions to the Special Procedures can be e-mailed to: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org) and mailed to the relevant mandate-holder at:

Office of the High Commissioner for Human Rights, United Nations Office at Geneva,  
1211 Geneva 10, Switzerland, Fax: 00 41 22 917 9022

Website: <http://www.unhchr.ch>

**Annex 1: Overview of the main functions of the Treaty Bodies**

	<b>HRC</b> (18 members)	<b>CAT</b> (10 members)	<b>CRC</b> (18 members)	<b>CERD</b> (18 members)	<b>CEDAW</b> (23 members)	<b>CESCR</b> (18 members)	<b>CMW</b> (10 members)
<b>Sessions</b>	3 sessions per year for 3 weeks: March (New York); July; October (Geneva)	2 sessions per year for 2 to 3 weeks: May; November (Geneva)	3 sessions per year for 3 weeks: January; May-June; September (Geneva)	2 sessions per year for 3 weeks: February; August (Geneva)	2 sessions per year for 3 weeks: January; July (New York)	2 sessions per year for 3 weeks: May; November-December (Geneva)	1 session per year for 1 week (Geneva)
<b>State reporting</b>	Initial report: within a year after the treaty's entry into force Periodic reports: every 5 years Supplementary reports	Initial report: within a year after the treaty's entry into force Periodic reports: every 4 years Supplementary reports	Initial report: within 2 years after the treaty's entry into force Periodic reports: every 5 years	Initial report: within a year after the treaty's entry into force Periodic reports: every 2 years <sup>32</sup>	Initial report: within 1 year after the treaty's entry into force Periodic reports: every 4 years Supplementary reports	Initial report: within 2 years after the treaty's entry into force Periodic reports: every 5 years	Initial report: within 1 year after the treaty's entry into force Periodic reports: every 5 years
<b>Exceptional procedure</b>	Emergency procedure <sup>33</sup>	Can ask for exceptional report		Early warning and urgent procedure	Exceptional reports procedure		
<b>Individual communications</b>	Yes – if the state party also ratified the First Optional Protocol to the ICCPR.	Yes – if state party made the declaration of competence under art. 22 of the Convention.	No	Yes – if state party made the declaration of competence under art. 14 of the Convention.	Yes – if the state party also ratified the Optional Protocol to the Convention.	No <sup>34</sup>	Not yet in force <sup>35</sup>

<sup>32</sup> In a new emerging practice, the CERD now accepts the submission by states parties of a comprehensive report every 4 years and a brief updating report in the 2 year interim.

<sup>33</sup> Although rarely invoked, some Committees have set up exceptional or urgent procedures under which they may request an urgent report from the state party concerned and refer a particular situation to the competent UN organ.

<sup>34</sup> The Commission on Human Rights has established a Working Group to consider options regarding the elaboration of an optional protocol to the ICESCR.

<sup>35</sup> Ten state parties must make a declaration of competence under art. 77 for the mechanism to enter into force.

	<b>HRC</b> (18 members)	<b>CAT</b> (10 members)	<b>CRC</b> (18 members)	<b>CERD</b> (18 members)	<b>CEDAW</b> (23 members)	<b>CESCR</b> (18 members)	<b>CMW</b> (10 members)
<b>Inquiry procedure</b>		Yes, under art. 20 of the Convention (unless the state party made a declaration to “opt-out” under art. 28).			Yes, under art. 8-9 of the Optional Protocol (unless the state party made a declaration to “opt-out” under art. 10).		
<b>Thematic discussions</b>			“Days of General Discussions”	“Thematic discussions”		“Days of General Discussions”	

**Appendix 2: Overview of rights contained within the core international human rights treaties**

	ICCPR	ICESCR	CERD	CEDAW	CRC	CAT	CMW
<b>Non-discrimination, equality before the law</b>	Art. 2.1, 3, 26	Art. 2.2, 3	Art. 2.1, 5.a	Art. 1, 2, 5.a, 15.1, 9-16	Art. 2		Art. 7, 18, 25, 27
<b>Procedural guarantees</b>	Art. 14, 15, 16		Art. 5.a, 6	Art. 15.2, 15.3	Art. 12.2, 37.d, 40	Art. 12, 13, 14, 15	Art. 16.5, 16.6, 16.7, 16.8, 16.9, 18, 19, 24
<b>Right to life, to physical and moral integrity</b>	Art. 6, 7		Art. 5.b		Art. 6, 19, 37.a	Art. 1, 2 16	Art. 9, 10, 16.2
<b>Slavery, forced labour, trafficking</b>	Art. 8			Art. 6	Art. 11, 32, 33, 34, 35, 36, 39		Art. 11
<b>Liberty and security of person</b>	Art. 9, 10, 11		Art. 5.b		Art. 37		Art. 16, 20.1
<b>Freedom of movement; expulsion and extradition</b>	Art. 12, 13		Art. 5.d.i, 5.d.ii, 5.f	Art. 15.4	Art. 10	Art. 3	Art. 8, 20.2, 22, 39, 56
<b>Freedom of opinion and expression</b>	Art. 19, 20		Art. 5.d.viii, 4.a, 4.c		Art. 12.1, 13		Art. 13
<b>Freedom of association and assembly</b>	Art. 21, 22	Art. 8	Art. 5.d.ix, 5.e.ii, 4.b		Art. 15		Art. 26, 40
<b>Freedom of thought, conscience and religion; right to privacy</b>	Art. 17, 18		Art. 5.d.vii		Art. 14, 16, 40.2.vii		Art. 12, 14
<b>Right to marry and found a family; protection of family, mother and children</b>	Art. 23, 24	Art. 10	Art. 5.d.iv	Art. 4.2, 5.b, 11.2, 12, 16	Art. 16, 19, 20, 22, 23, 33, 34, 36, 38		Art. 44
<b>Political rights</b>	Art. 25		Art. 5.c	Art. 7, 8	Art. 3		Art. 41, 42
<b>Right to own property, inherit</b>			Art. 5.d.v, 5.d.vi	Art. 13.b, 15.2, 16.1.h			Art. 15, 32, 47
<b>Rights of vulnerable groups</b>	Art. 27	Art. 2.3	Art. 1.4, 2.2	Art. 4, 14	Art. 22, 23, 30		

	<b>ICCPR</b>	<b>ICESCR</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CRC</b>	<b>CAT</b>	<b>CMW</b>
<b>Right to work; just, favourable conditions of work</b>		Art. 6.1, 7	Art. 5.e.i	Art. 11.1.a, 11.1.b, 11.1.c, 11.1.d, 11.1.f, 11.2, 11.3			Art. 25, 40, 52, 54
<b>Adequate food and clothing, housing</b>		Art. 11	Art. 5.e.iii	Art. 14.2.h	Art. 27.3		
<b>Physical and mental health, social security</b>		Art. 9, 12	Art. 5.e.iv	Art. 11.1.e, 12, 13.a, 14.2.b, 14.2.c	Art. 18.3, 24, 26		Art. 27, 28, 43.e, 45.1.c
<b>Education and cultural rights</b>	Art. 27	Art. 13, 14, 15	Art. 5.e.v, 5.e.vi	Art. 10, 13.c, 14.2.d	Art. 28, 31		Art. 30, 31, 43.a, 43.c, 43.g, 45.1.a, 45.1.d

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

CERD: International Convention on the Elimination of All Forms of Racial Discrimination

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CRC: Convention on the Rights of the Child

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

### **Annex 3: Alphabetical list of current thematic Special Procedures**

Working group on people of **African descent**  
Working group on **arbitrary detention**  
Special Rapporteur on the sale of **children, child prostitution and child pornography**  
Working Group on Enforced or Involuntary **Disappearances**  
Special Rapporteur on the right to **education**  
Special Rapporteur on extrajudicial, summary or arbitrary **executions**  
Special Rapporteur on the right to **food**  
Special Rapporteur on the promotion and protection of the right to **freedom of opinion and expression**  
Special Rapporteur on **freedom of religion or belief**  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health**  
Special Rapporteur on adequate **housing** as a component of the right to an adequate standard of living  
Special Representative of the Secretary-General on the situation of **human rights defenders**  
Special Rapporteur on the situation of human rights and fundamental freedoms of **indigenous people**  
Representative of the Secretary-General on **internally displaced persons**  
Special Rapporteur on the independence of **judges and lawyers**  
Special Rapporteur on the use of **mercenaries** as a means of impeding the exercise of the right of peoples to self-determination  
Special Rapporteur on the human rights of **migrants**  
Independent Expert on the question of human rights and extreme **poverty**  
Special Rapporteur on contemporary forms of **racism, racial discrimination, xenophobia and related intolerance**  
Independent Expert on the effects of **structural adjustment policies** and foreign debt  
Independent Expert to assist the High Commissioner in the fulfilment of the mandate described in Commission on Human Rights resolution 2004/87 entitled “Protection of human rights and fundamental freedoms while countering **terrorism**”  
Special Rapporteur on **torture** and other cruel, inhuman or degrading treatment or punishment  
Special Rapporteur on the adverse effects of the illicit movement and dumping of **toxic and dangerous products and wastes** on the enjoyment of human rights  
Special Rapporteur on **trafficking** in persons, especially in women and children  
Special Rapporteur on **violence against women**, its causes and consequences

## **Alphabetical list of current country Special Procedures**

Independent Expert appointed by the Secretary-General on the situation of human rights in

**Afghanistan**

Special Rapporteur on the situation of human rights in **Belarus**

Independent Expert on the situation of human rights in **Burundi**

Special Representative of the Secretary-General for human rights in **Cambodia**

Independent Expert on the situation of human rights in **Chad**

Personal Representative of the High Commissioner for Human Rights in **Cuba**

Special Rapporteur on the situation of human rights in the **Democratic People's Republic of**

**Korea**

Independent Expert on the situation of human rights in the **Democratic Republic of Congo**

Independent Expert appointed by the Secretary-General on the situation of human rights in **Haiti**

Independent Expert on technical cooperation and advisory services in **Liberia**

Special Rapporteur on the situation of human rights in **Myanmar**

Special Rapporteur on the situation of human rights in the **Palestinian territories occupied in 1967**

Independent Expert appointed by the Secretary-General on the situation of human rights in **Somalia**

Independent Expert on the situation of human rights in the **Sudan**

Independent Expert on the situation of human rights in **Uzbekistan**