

A guide for engaging with UN Special Procedures mandate holders

Introduction

FLAC aims to achieve equal access to justice for all. As part of this, we promote the use of various legal instruments and mechanisms developed by regional and international human rights bodies to increase access to justice.

This document is intended as a practical guide for civil society actors seeking to engage with UN Special Procedures mandate holders. UN Special Procedures mandate holders are independent human rights experts who report on **thematic** or **country-specific** issues. They are appointed by the UN Human Rights Council, an inter-governmental body based in Geneva which is responsible for the promotion and protection of human rights around the world.

In the field of human rights, Ireland is internationally renowned for its dynamic and vibrant civil society. However, while much emphasis is placed on the Universal Periodic Review mechanism and periodic reporting to UN Treaty Bodies, considerably less focus is placed on engagement with UN Special Procedures mandate holders.

Mandate holders examine, monitor, advise and publicly report on human rights situations in specific countries or on certain thematic human rights issues. To this end, mandate holders are empowered to undertake country visits and send communications to states concerning alleged human rights violations.

While mandate holders are independent in the exercise of their functions, the Office of the UN High Commissioner for Human Rights (OHCHR) provides them with human resources, logistical and research support to assist in undertaking their functions.

There is much added value to engaging with mandate holders. For instance, economic, social and cultural (ESC) rights are not adequately protected in Irish domestic law. This lack of legal protection makes it difficult to enforce ESC rights at the national level. In addition, Ireland has failed to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which would provide individuals with a remedy at the international level if their ESC rights are violated at the domestic level. As a result, it can be difficult to access justice for ESC rights violations. But mandate holders working on ESC issues, such as the right to health, housing and education, provide an alternative avenue for civil society actors to shine a light on domestic human rights violations.

Types of UN Special Procedures mandate holders

At the time of writing, there are 41 thematic mandate holders and 14 country-specific mandate holders. Mandate holders have different titles, including “special rapporteurs”, “independent experts”, “special representatives” and “working groups”. Working Groups typically consist of five experts drawn from each regional group – Western European & Others Group (which includes Ireland), Eastern European Group, African Group, Asian & Pacific Group and Latin American & Caribbean Group.

It is worth noting that civil society actors can nominate candidates for appointment as mandate holders. More information on the nomination, selection and appointment of mandate holders is available on the website of the OHCHR at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Nominations.aspx>.

- **UN Special Procedures thematic mandate holders**

Working Group of Experts on People of African Descent	Working Group on the issue of human rights and transnational corporations and other business enterprises
Independent Expert on the enjoyment of human rights by persons with albinism	Special Rapporteur on the rights of persons with disabilities
Working Group on Arbitrary Detention	Special Rapporteur in the field of cultural rights
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights	Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
Special Rapporteur on the right to education	Special Rapporteur on the right to food
Special Rapporteur on extrajudicial, summary or arbitrary executions	Working Group on Enforced or Involuntary Disappearances
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Special Rapporteur on the rights to freedom of peaceful assembly and of association
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, and on the right to non-discrimination in this context
Special Rapporteur on the situation of human rights defenders	Special Rapporteur on the independence of judges and lawyers
Special Rapporteur on the rights of indigenous peoples	Special Rapporteur on the human rights of internally displaced persons
Independent Expert on the promotion of a democratic and equitable international order	Independent Expert on human rights and international solidarity
Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
Special Rapporteur on the human rights of migrants	Independent Expert on the enjoyment of all human rights by older persons
Special Rapporteur on minority issues	Special Rapporteur on the right to privacy
Special Rapporteur on extreme poverty and human rights	Special Rapporteur on freedom of religion or belief
Special Rapporteur on the sale of children, child prostitution and child pornography	Special Rapporteur on contemporary forms of slavery, including its causes and consequences
Special Rapporteur on the promotion and protection of human rights while countering terrorism	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Special Rapporteur on trafficking in persons, especially women and children	Special Rapporteur on violence against women, its causes and consequences
Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights	Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
Working Group on the issue of discrimination against women in law and in practice	Special Rapporteur on the human right to safe drinking water and sanitation
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes	

- **UN Special Procedures country mandate holders**

Special Rapporteur on the situation of human rights in Belarus	Special Rapporteur on the situation of human rights in Cambodia
Independent Expert on the situation of human rights in the Central African Republic	Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights
Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea	Special Rapporteur on the situation of human rights in Eritrea
Independent Expert on the situation of human rights in Haiti	Special Rapporteur on the situation of human rights in the Islamic Republic of Iran
Independent Expert on the situation of human rights in Mali	Special Rapporteur on the situation of human rights in Myanmar
Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	Independent Expert on the situation of human rights in Somalia
Independent Expert on the situation of human rights in the Sudan	Special Rapporteur on the situation of human rights in the Syrian Arab Republic (mandate has yet to commence)

The role of Mandate Holders

Special procedures mandate-holders have a number of functions. These include:

- Receiving and analysing information on human rights situations provided by various sources on an ongoing basis;
- Networking and sharing information with partners, both governmental and non-governmental, within and outside the United Nations;
- Seeking—often urgently—clarification from states on alleged violations and, where required, requesting states to implement protection measures to guarantee or restore the enjoyment of human rights;
- Raising awareness about specific human rights situations and phenomena, and threats to and violations of human rights;
- When specific circumstances so warrant, communicating their concerns through the media and other public statements;
- Undertaking country visits to assess human rights situations pertaining to their respective mandates, and making recommendations to states with a view to improving those situations;
- Reporting and making recommendations to the Human Rights Council and, where relevant to their mandates, to the General Assembly (and in some cases to the Security Council) on: regular activities under their mandate; field visits; and specific thematic trends;
- Contributing thematic studies to the development of authoritative norms and standards for the subject area of the mandate, and providing legal expertise on specific issues.

Ireland and UN Special Procedures mandate holders

Ireland issued a Standing Invitation to all UN Special Procedures mandate holders in 2001. By extending a Standing Invitation, Ireland declared that it will accept requests to visit the State from all mandate holders.

To date, Ireland has received three official visits from UN Special Procedures mandate holders. The Special Rapporteur on the right to freedom of opinion and expression conducted a country visit to Ireland in 1999. The Independent Expert on human rights and extreme poverty visited Ireland in 2011. The Special Rapporteur on human rights defenders undertook a five-day official visit to Ireland in 2012.

Both the Special Rapporteur on the human right to safe drinking water and sanitation and the Special Rapporteur on the sale of children, child prostitution and child pornography have requested to visit Ireland. However further details on these visits are not available at the time of writing.

How can civil society contribute?

1. Submit a communication

Mandate holders are empowered to receive communications from alleged victims of human rights violations and from civil society actors with direct and reliable knowledge of human rights violations.

Communications cover a range of issues, including individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards. Interestingly, civil society actors can play a preventative role by providing mandate holders with information on new laws, policies and practices which, if passed or come into effect, may result in human rights violations.

- **What information is required by mandate holders?**

To facilitate the timely consideration of communications, some mandate holders have devised questionnaires to allow people to submit information. However, communications are also considered even when not in questionnaire format. Civil society actors considering the submission of a communication should check the individual communications criteria of each mandate holder on the OHCHR website.

In general, civil society actors must provide credible and detailed information concerning an alleged human rights violation. The information must be clear, outlining the human rights which are alleged to have been violated and elaborating on why the state is responsible for the violation. Civil society actors can also provide mandate holders with a draft letter of allegation or urgent appeal, which are discussed in more detail below. Most mandate holders are thinly resourced and they appreciate measures which save their time.

There are certain general rules governing communications. For instance, communications cannot be anonymous, manifestly unfounded, politically motivated, based solely on media reports or contain abusive language.

For a complaint to be assessed, the OHCHR states that the following information is required:

- (1) identification of the alleged victim(s)
- (2) identification of the alleged perpetrators of the violation (if known)
- (3) identification of the person(s) or organization(s) submitting the communication, if different from the victim
- (4) date, place & detailed description of the circumstances of the incident(s) or violation.

Communications can be sent by either email or post as below:

<p><u>Email:</u> urgent-action@ohchr.org</p>	<p><u>Postal address:</u> OHCHR-UNOG 8-14 Avenue de la Paix 1211 Geneva 10 Switzerland</p>
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- **What will a mandate holder do with this information?**

Having received a communication from a civil society actor, a mandate holder can choose whether or not to take action. The decision to intervene is at the discretion of the mandate holder, having regard to their mandate and the Code of Conduct for Special Procedures mandate holders (this Code defines the standards of ethical behaviour and professional conduct that mandate holders are to observe while discharging their duties).

Action generally takes one of two forms: **urgent action letters** (for matters requiring urgent response), or **letters of allegation** (for other matters). However, the mandate holder may also choose to make a public statement or to issue a press release on the matter.

Urgent appeals to states are sent when the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims. Action can be taken based on relevant and credible information provided by civil society actors. A response is usually requested within 30 days.

When the urgent appeal procedure does not apply, letters of allegation are sent to communicate information and request clarification about alleged human rights violations. States are usually given 60 days to provide a response.

Through these letters, mandate-holders may ask states to explain allegations, clarify the law, seek information on new developments, submit observations, or follow up on previous recommendations. Where a complaint falls within the scope of more than one mandate, mandate holders can issue joint communications. Communications sent and state replies received remain confidential until they are published in the Communications Reports compiled by each of the mandate holders, which are submitted to each regular session of the Human Rights Council (in March, June and September).

The names of alleged victims are usually included in the communication sent to the state and in the public communications report. In exceptional circumstances, mandate holders may not provide the name of an alleged victim in such communications. If an individual does not wish to be named, they should make an explicit request to that effect. The identity of the source of information is always kept confidential and neither included in the communication sent to the state, nor in the public communications report.

Depending on the response received, a mandate holder can seek additional information or can make recommendations regarding an alleged human rights violation.

Letters of allegation, urgent appeals, country visit requests, requests for contributions to thematic reports and other forms of information are communicated to the Permanent Mission of Ireland to the United Nations in Geneva. These communications are then forwarded to the Department of Foreign Affairs & Trade which directs them to the relevant governmental department or representative.

- **Communications to Ireland**

In recent years, Ireland has been called on to respond to a number of joint communications issued by mandate holders. Examples of such communications are:

- The Working Group on discrimination against women in law and in practice, the Special Rapporteur on violence against women and the Special Rapporteur on health concerning Ireland's abortion laws (February 2013);
- The Special Rapporteur on extreme poverty, the Special Rapporteur on the right to health and the Special Rapporteur on minority issues concerning the alleged deteriorating health condition of Irish Travellers (May 2013);
- The Special Rapporteur on adequate housing and the Special Rapporteur on the human right to safe drinking water (jointly) regarding the alleged increase in homelessness and lack of access for those who are homeless to emergency shelters and safe drinking water in Cork (September 2015).

Case Study – Letter of Allegation concerning the Gender Recognition Bill

In April 2015, the Working Group on the issue of discrimination against women in law and in practice and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health transmitted a joint communication to the Irish Government concerning the potential discriminatory effects of certain provisions of the Gender Recognition Bill. In particular, the mandate holders expressed concerns with regard to mandatory medical certification and disproportionate safeguards applied to children which, in their view, discriminated against transgender people and their rights to privacy, equality and education and could affect physical and mental health.

The mandate holders requested information on the analysis carried out by the Government with regard to the compatibility of the requirement of certification by medical practitioners with international human rights standards, the impact of the proposed legislation on the human rights of young transgender people and how the rights of intersex people would be protected through the proposed legislation.

In June 2015, the Government announced that it would no longer require a medical assessment as a requirement for gender recognition and would drop the “forced divorce” clause which required applicants for gender recognition to be single.

The Government provided its official response to the communication in September 2015. It highlighted amendments made to the Bill since the joint communication had issued, including provision in the Bill for the review of the operation of the legislation after a two year period, and the rationale for not extending legal gender recognition to young people under the age of 16.

2. Assisting with a country visit

Before undertaking a country visit, a mandate holder must request permission from the state in question to do so. If accepted, the state will extend an official invite to the mandate holder.

Where a state is experiencing difficulties in protecting a specific human right, civil society actors can encourage the state to invite a relevant mandate holder to undertake a country visit to assist in addressing the issue. Civil society actors can also directly encourage mandate holders to carry out a country visit or provide them with information which may prompt a request for a visit.

Country visits allow mandate-holders to assess the general human rights situation and/or the specific institutional, legal, judicial and administrative situation in a given state, under their respective mandates.

Mandate holders must be permitted to move freely throughout a country during a field visit. Often mandate holders will speak with alleged human rights victims and witnesses, interview government officials, academics, experts, and civil society, and conduct investigations in order to assess the situation on the ground. After the visit, a mandate-holder issues a press statement and, later, a mission report containing their findings and recommendations. It is relevant to note that the recommendations of the mandate holders are not binding but are persuasive.

- **How can civil society engage?**

Once confirmed, civil society actors can undertake a range of activities both before, during and after the country visit. In advance, civil society actors can raise awareness of the visit through media and social media channels. Organisations can also provide the mandate holder with briefings in order to raise specific issues ahead of a country visit. This will help to inform the mandate holder of the situation on the ground and may influence their decisions as to specific issues to concentrate on or places to visit. Mandate holders finalise their agenda prior to undertaking a visit. While there may be some flexibility, civil society representatives should signal their interest in meeting with the mandate holder well in advance.

During the visit, civil society organisations may seek a meeting with the mandate holder or organise an event with her. Civil society actors can also facilitate opportunities for direct interaction with organisations working on the ground and affected communities. Oftentimes, civil society organisations will work collaboratively to determine how best they can contribute to a country visit.

Case Study – Country visit to Ireland by the former Independent Expert on extreme poverty and human rights

In January 2011, then Independent Expert on extreme poverty and human rights, Magdalena Sepúlveda Carmona, undertook a country visit to Ireland. Her visit focused on the impact of the economic crisis in Ireland and the effect of austerity measures on the enjoyment of human rights. She looked in particular at how vulnerable groups were impacted by recovery measures.

As part of this field visit, Ms Sepúlveda Carmona met with the Minister for Equality, Human Rights and Integration, representatives from a wide range of governmental departments, the Irish Human Rights Commission, the Equality Authority and civil society representatives. Furthermore, she travelled to a number of locations throughout the country, including a direct provision centre and halting site, to assess the situation on the ground.

Representatives of FLAC met with the Independent Expert during her visit. FLAC also provided the mandate holder with a briefing which highlighted a range of issues relevant to the extreme poverty mandate including homelessness resulting from housing repossessions, the application of the Habitual Residence Condition for social welfare payments, the system of direct provision and the restrictive nature of the civil legal aid scheme.

In May 2011, Ms Sepúlveda Carmona published her mission report on Ireland. She made a range of recommendations including to reverse austerity measures which had disproportionately impacted on the most vulnerable and to strengthen the social protection system, infrastructure and social services. She also made recommendations on issues which FLAC had raised in its briefing such as direct provision and the civil legal aid scheme.

- **Follow up to a country visit**

In combination with other strategies, civil society organisations play a vital role in ensuring that states effectively implement recommendations issued by mandate holders following their country visit. Civil society organisations can apply pressure in a number of ways, such as:

- Bringing the recommendations to the attention of politicians in one-to-one discussions;
- Raising awareness of the recommendations through media work, such as articles in newspapers;
- Submitting parliamentary questions requesting updates on progress made in implementing the recommendations;
- Drawing on the recommendations to support advocacy work;
- Including the recommendations in research reports and submissions;
- Disseminating the recommendations widely among networks;
- Seeking a meeting with government officials responsible for the implementation of the recommendations;
- Organising a follow-up conference to a country visit involving all relevant stakeholders;
- Follow-up with the relevant mandate holder on the progress achieved, or lack of, in implementing the recommendations.

3. Contribute to thematic reports / development of guidelines

Mandate holders provide annual reports to the Human Rights Council detailing the activities they have undertaken in the previous year. Additionally, mandate holders are sometimes requested to provide thematic reports to the UN General Assembly or the Human Rights Council. They can also initiate such studies on their own accord.

For example, the UN Special Rapporteur on the right to adequate housing presented a report on homelessness to the Human Rights Council in March 2016. The report notes that, in Ireland, families with children have become the fastest growing group within the homeless population.

- **How can civil society engage?**

Thematic reports can take the form of guidance to UN Member States on how to implement and improve compliance with human rights obligations and standards, as well as detailed studies on specific human rights violations or situations affecting a certain vulnerable group. To inform these reports, mandate holders frequently circulate questionnaires seeking the input of civil society actors. Information provided by civil society actors for inclusion in these reports must be well-evidenced, clear and reliable.

4. Other ways to engage with mandate holders

In addition to the avenues of engagement mentioned above, civil society organisations can engage with mandate holders and their work in other informal ways:

- Mandate holders regularly organise seminars and consultations on topics relevant to their mandate. Civil society organisations are often asked to contribute or to attend such events.
- Invite a mandate holder to participate in one of your initiatives or events. This can be a very good way to draw attention to a human rights issue.

Case Study – Christian Aid conference on the human rights impact of tax and fiscal policies

In February 2015, Christian Aid organised a conference on the human rights impact of tax and fiscal policies within Ireland and around the world. The conference brought together a range of speakers including tax justice activists, officials from Irish Aid, the Department of Finance, the OECD, journalists, universities and the private sector.

Professor Philip Alston, the current UN Special Rapporteur on Extreme Poverty and Human Rights, attended the event and delivered the keynote address. In his speech, “Tax policy is human rights policy”, Professor Alston challenged the Irish Government over some of its tax arrangements.

The event garnered a significant amount of media attention, particularly in the print media.

Benefits of engaging with UN Special Procedures mandate holders

Engagement with UN Special Procedures mandate holders can have several useful benefits. These include:

- Raising public awareness of an issue;
- Opening channels of communication with public officials and governmental departments;
- Compelling the state to justify its actions on a certain issue by reference to international human rights law;
- Contributing to domestic and international pressure on a certain issue;
- Providing an opportunity to contribute to discussions on the implementation of human rights standards;
- Assisting in mobilisation around a certain issue.

What’s different about UN Special Procedures mandate holders?

- Mandate holders provide an avenue for civil society organisations to raise alleged human rights violations even where the state has not ratified the relevant UN treaty. For example, while Ireland

has yet to ratify the UN Convention on the Rights of Persons with Disabilities, or its Optional Protocol, organisations can submit communications to the UN Special Rapporteur on the Rights of Persons with Disabilities concerning alleged human rights violations affecting persons with disabilities.

- Civil society organisations can raise an individual case with a mandate holder without exhausting domestic remedies. UN Treaty Bodies demand, save in exceptional circumstances, that domestic remedies be exhausted before deeming a complaint to be admissible.
- Mandate holders can respond quickly to alleged or potential human rights violations. By contrast, examinations by UN Treaty Bodies only take place every few years. Similarly, it can take a considerable length of time for an individual complaint to be heard by a UN Treaty Body and for its findings to be released.

Sources

- *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, Office of the UN High Commissioner for Human Rights, Geneva & New York, 2008.
- *Engaging UN Special Procedures to Advance Human Rights at Home: A Guide for U.S. Advocates*, The Colombia Law School Human Rights Institute, Columbia, 2015.
- Website of the Office of the UN High Commissioner for Human Rights www.ohchr.org

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