

**A Note by the Special Procedures' Coordination Committee in
Response to Discussions on a Code of Conduct
and Annex:
Possible Elements of a Code of Conduct**

Coordination Committee of Special Procedures
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A Note by the Special Procedures' Coordination Committee in Response to Discussions on a Code of Conduct

The present Note has been prepared by the members of the Coordination Committee of the Special Procedures as a contribution to the discussions currently taking place on a possible Code of Conduct within the framework of the Working Group on Review of Special Procedures established by the United Nations Human Rights Council.

This Note has been drafted on the basis of extensive consultations organized by members of the Coordination Committee, and especially its Chairperson, Mr. Vitit Muntarbhorn, as well as by other mandate-holders, with many of the principal stakeholders involved in the current round of discussions about the future directions of the Special Procedures system. The Note does not, however, necessarily reflect the position of every single mandate-holder.

The initial response of the mandate-holders was that there is no demonstrable need for a new Code of Conduct. This was based on the existence of several key official documents which already seem to address adequately the issues identified by those in favour of a new Code. The documents include the Manual, first adopted by the mandate-holders in 1999, subsequently revised to bring it up to date, and now under review on the basis of comments and suggestions being solicited from all stakeholders, including Governments.¹ The Manual itself builds upon a long series of discussions within the UN relating to appropriate procedures and safeguards.² In practice, the Manual reflects principles and procedures which have been applied by mandate-holders and accepted by Governments for some two decades. Our assumption is that it cannot be the intention of those proposing a Code of Conduct to undermine this *acquis* which has been widely acclaimed as the jewel in the crown of the UN's human rights system.

In addition to the Manual, the UN Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials are applicable, as are the Experts on Mission (UN Regulations, Document ST/SGB/2002/9). Taken together, we believe that there is no aspect of the issues raised in the draft Code of Conduct, prepared by the African Group, which is not already addressed.

Nevertheless, we acknowledge that some delegations feel that a Code of Conduct would contribute to the process of consolidating the place of the Special Procedures within the Council and enhancing their ability to successfully carry out the mandates entrusted to them. This concern might appropriately be expressed in relation to all of the independent experts reporting to the Human Rights Council. We would thus

¹ The stated purpose of the Manual is "to provide guidance to the mandate-holders appointed under the various United Nations human rights Special Procedures. It also seeks to facilitate a better understanding of their work by all other stakeholders in the process. The Manual endeavours to reflect best practice and to assist the mandate-holders in their efforts to promote and protect human rights. It does so in light of the relevant mandates by which the various Special Procedures have been established and of the overall mandate given to the Human Rights Council in General Assembly resolution 60/251."

² See for example the "Terms of reference" contained in E/CN.4/1998/45, Annex V, and the "Working Methods" reflected in E/CN.4/1435 (1981).

suggest that the Code of Conduct should apply to those experts who are advising the Council in any independent expert capacity, and not only those who are designated as Special Procedures mandate-holders.

Where codes of conduct are used by professional groups or persons performing a particular function, their objective is to encourage and facilitate self-regulation. In order to be effective, codes of conduct need to be internalized among those they are meant for. This requires a sense of ownership and a participatory process for adoption. Codes of conduct may be adopted, for instance, by national or international associations of professionals. Almost by definition, they are not adopted by the employer, or by the State. Within the United Nations human rights framework, a highly relevant example in this regard is the set of Guidelines adopted by the Human Rights Committee to regulate the conduct of its own members.³

In the case of the Special Procedures the assumption of self-regulation is both appropriate and essential as long as it does not prejudice the observations and the neutrality of the mandate holders. While the Council's role is to lay down broad principles to govern the system, an initiative which seeks to micro-manage the approach adopted by the mandate-holders would undermine the essential principles of independence, competence, objectivity, impartiality and good faith upon which the system has been constructed. The principle of self-regulation within these basic parameters is thus crucial to the coherence and viability of a system premised upon independence.

It follows from this that if a Code of Conduct or any similar instrument will be adopted by the Council, it should address a limited range of issues of general importance and leave the details to be regulated by the internal procedures of the mandate-holders, principally the Manual. The Code of Conduct will be an instrument for demonstrating the transparency of the mandate holders' actions and activities, in conjunction with the other UN system-wide standards mentioned above. In addition, it is essential, if a coherent system is to be established, that the various statements seeking to ensure the effectiveness of the system should be not only compatible with one another but mutually reinforcing. The Code should thus concentrate on the general principles, while the Manual should address the operational elements. And each of them should acknowledge the importance of the other.

Finally, if a code of conduct or a similar instrument were to be adopted by the Council, it cannot be uni-directional, but must reflect the standards required on both sides to ensure the effectiveness of the procedures. For that reason it is indispensable that the Code of Conduct should also address itself to the responsibilities of Governments in terms of their co-operation with the Special Procedures system. This necessary balance would best be achieved through the addition of an extra section which identifies, again in broad-brush terms, the responsibilities of Governments.

In the light of these general observations we would like to make several more detailed comments on the draft of a Code of Conduct submitted by Algeria on behalf of the African Group.

³ Report of the Human Rights Committee, 1998, UN doc. A/53/40, p. 89, Annex III.

In our view a preamble is an appropriate characteristic of a general resolution, and might be reflected in any resolution which refers to the Code, but it is not desirable to include such a list of considerations as a part of the Code itself. On the other hand, if preambular provisions are to be retained they must be neither selective nor inaccurate. Thus, for example, the mandate-holders cannot be treated as UN staff members, as suggested by the reference to Articles 100, 104 and 105 of the UN Charter. Similarly, a reference to para. 6 of resolution 60/251 which created the Council is incomplete and potentially misleading without referring to the other relevant provisions of this foundational resolution. Para. 6 calls on the Council to "review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights". But this provides only part of the equation unless read in the context of, for example, the requirement in para. 5 (d) to "promote the full implementation of human rights obligations undertaken by States", and that in para 5 (f) to "contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies".

In our view, any Code of Conduct which fails to specify that the primary objective of the Special Procedures system is to promote the full implementation by States of their human rights obligations and to prevent and respond to human rights violations, would be incompatible with the terms of the resolution establishing the Council.

There are several specific provisions of the existing draft which we believe should be examined with particular care. The following are selected comments and do not attempt to address every provision of the current draft Code.

Certain aspects of Article 3 are internally contradictory. Para 3(b) acknowledges that the responsibilities of mandate-holders are "not of a national but exclusively of an international nature", while para 3 (c) contradicts this by suggesting that "the mandate holder must respect the national legislation and regulations of the country". If the latter phrase is to be retained, it should add "to the extent that these laws and regulations are consistent with human rights and the effective performance of the mandate holder's official functions".

In relation to Article 4 we believe that it is entirely appropriate for mandate-holders to be required to make a solemn declaration. The focus should, however, be to uphold respect for human rights, the principles of the United Nations, and the terms of their mandates. Achievement of these objectives would require a redrafting of the existing formulation. In addition, such solemn declarations are more appropriately required to be made in writing at the time when the mandate-holder accepts the office, rather than at the time when she or he is able to attend a session of the Council.

Article 5 would need to be amended if it is to be consistent with the mandate and the practice of the Council. The reference to "universally recognized human standards" has no clear meaning and should be amended to "internationally recognized human rights standards". The reference to verification of facts (in Articles 5(a) and 8(b)) by mandate-holders is inappropriate in various respects. First, the primary task of mandate-holders is to identify situations of concern, rather than to act as judges who are able to verify facts. The role of the mandate-holder is to ensure a dialogue with the Government in relation to alleged violations. The act of verification or denial is one for the Government or for the courts of the relevant State, or for regional or UN

human rights courts or treaty bodies. Second, the role of mandate-holders is generally described in the relevant resolutions as being humanitarian, rather than judicial, in nature. A requirement that every fact be 'verified' in any formal sense would ensure that almost no allegations, however well substantiated, could be relied upon by the mandate-holder. It would establish a higher standard of proof than applies even in criminal proceedings in the vast majority of countries. In essence, the use of the term 'verify' confuses the obligations of the Government with that of the mandate-holder. The provision should instead require mandate-holders to "establish the facts, based on information which they believe to be objective and reliable".

The key issues addressed in Articles 6 and 7 have, in our view, already been considered in earlier provisions of the Code. The remaining issues are more appropriately dealt with in the Manual of the Special Procedures, rather than in the Code of Conduct.

Paragraph 10 is partly redundant and partly unclear. It is, for example, difficult to understand how "mandate-holders must . . . ensure that their opinions, convictions and declarations . . . have no influence on their conclusions and recommendations". The intention is presumably to ensure that their prejudices and personal opinions are not relevant, but this is ensured by the requirements of objectivity and impartiality stated earlier.

The concerns reflected in Articles 11 and 12 are appropriately addressed in the Manual, and not in the Code of Conduct. Moreover, both provisions should be carefully reviewed by the Council. In regard to the first part of Article 11, all informations, evaluations, testimonies, comments of the activities held in the field and statements would be given with the objective of ensuring the enhancement of human rights protection beyond any kind of political, religious, cultural or social issues. Article 11 (b), which suggests that the Council should be the first recipient of the mandate-holders' conclusions and recommendations would, in many instances, require a delay of up to a full year before any outcome of a mission could be made known. This would make a mockery of the procedure. In particular, it would be incompatible with the objectives of the Council and of the United Nations in terms of according priority to respect for human rights.

Similarly the requirement in Article 12 that all communications must be addressed exclusively to the Permanent Mission in Geneva of the country concerned is a procedural matter that does not belong in the Code. The provision should in any event be modified to reflect two vital considerations. The first is that there is still a considerable number of States which have no Mission in Geneva, and those States should not be discriminated against in this way. The second is that the overriding objective is to secure a response from the State in question in relation to alleged violations of human rights. It is thus not consistent to insist on a single procedure which might well place States at a disadvantage in the event that their Permanent Mission is for any reason not able to react rapidly. An appropriate rule would be that, at a minimum, a copy of all communications relating to a given State should be provided to the relevant Permanent Mission or designated Embassy, which is already current practice with all communications, and to provide for the use of additional means of communication when that is considered essential by the mandate-holder.

Finally, the most critical omission from the present draft Code concerns the responsibilities of Governments. A Code of Conduct cannot, if it is to be meaningful, be a one-way street. The overall objective of the system must be to ensure compliance with the responsibilities of the Council as stated in particular in para. 5 of General Assembly 60/251.

ANNEX

Possible Elements of a Code of Conduct*

1. Purpose of the code

This Code elaborates basic principles of cooperation between Special Procedures mandate-holders and of States in the promotion and protection of human rights.⁴

It is complemented by the Manual of the United Nations Human Rights Special Procedures and the Terms of Reference for Fact-Finding Missions by Special Procedures.

2. Solemn declaration

Upon assuming their position, mandate-holders shall make the following solemn declaration:

“ I solemnly declare that I will perform my duties and exercise my powers as an independent expert of the United Nations honourably, faithfully, impartially and with the sole motivation of the protection of victims from violations of their human rights.”

3. Principles concerning the exercise of the functions of mandate-holders

Mandate-holders shall uphold the highest standards of integrity, independence, competence and impartiality in fulfilling their responsibilities.

Mandate-holders are selected on the basis of their expertise, experience and independence, and act as independent experts in the performance of their duties. They shall enjoy the privileges and immunities inherent in their functions under the United Nations.

The requisite independence and impartiality are not compatible with the selection of mandate-holders simultaneously holding decision-making positions within the executive or legislative branches of their Governments.

Mandate-holders shall be courteous in their relations with States, civil society and other actors with whom they are in contact during the exercise of their functions.

* If a Code is to be prepared, the Coordination Committee of Special Procedures submits that the text should follow the Possible Elements of a Code attached in this Annex. It should be adopted with the full participation of mandate-holders.

⁴ It is based on the Charter of the United Nations, the Universal Declaration of Human Rights and other relevant instruments, including the United Nations Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission. It shall be interpreted in light of applicable international law, including the jurisprudence of the International Court of Justice.

Mandate-holders shall exercise appropriate caution in taking any action that may place victims and their interlocutors at risk.

4. Principles concerning State relationship with Special Procedures

States shall respect the independence and integrity of mandate-holders and shall facilitate their work.

States shall be courteous to mandate-holders in their interactions with them and refrain from making personal attacks or threats.

States shall not interfere in the relations between mandate-holders and organizations or individuals of civil society.

States shall guarantee that individuals and groups providing information to the mandate-holders will not be subjected to intimidation or attacks as a result of such cooperation.

States shall respect the confidentiality of the sources of information which the mandate-holders use in their communications with States and in other aspects of their work.

5. Cooperation: Mandate-holders and States

Mandate-holders and States shall cooperate in the promotion and protection of human rights, with paramount importance placed on those whose human rights have been violated or are at risk of such violations.

Mandate-holders shall prepare reports under their mandates efficaciously and seek information from all relevant sources, including States, civil society and inter-governmental organizations and those human rights are affected by the situations in question. States shall cooperate in providing such information and facilitating access to the relevant sources transparently and expeditiously.

Mandate-holders shall communicate with States to seek assistance and justice on behalf of those affected negatively by human rights situations. States shall cooperate by responding effectively and in a timely manner.

Mandate-holders shall seek to visit countries in the exercise of their mandates so as to be apprised of the situation on the ground and to re-visit them where appropriate. States shall cooperate by responding expeditiously and positively to requests from mandate-holders by inviting them to visit and shall ensure that they have full access to all those with whom they wish to meet.

Mandate-holders shall make recommendations to States to improve the human rights situation in relation to issues arising under their mandate. States shall

respond to such recommendations constructively and with a view to ensuring the effective implementation of the required measures.

6. Coordination and facilitation

The cooperation between the mandate-holders and States shall be facilitated and supported efficaciously by the Human Rights Council, the United Nations, including the Office of the United Nations High Commissioner for Human Rights, and the Coordination Committee of the Special Procedures.