

COUNCIL MONITOR

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Human Rights Monitor Series

HUMAN RIGHTS COUNCIL OPEN-ENDED MEETING CONVENED BY THE AFRICAN GROUP ON THE CODE OF CONDUCT FOR SPECIAL PROCEDURES, MONDAY 11 JUNE 2007

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Background

At the resumed second session of the Working Group on review of mechanisms and mandates (27-29 November 2006), Algeria on behalf of the African Group tabled a Resolution¹ asking for the Working Group to draft a code of conduct for special procedures. As no other proposals on the code of conduct were forthcoming, Algeria, on behalf of the African Group, submitted a draft code of conduct for mandate holders on 5 March 2007. The African Group has since been holding only private bilateral consultations with regional groups on the original draft text. A revised draft was submitted on 5 June 2007.

The African Group convened the first open-ended meeting on their draft code of conduct (the Code) on 11 June 2007. The basis for the meeting was the draft text of 5 June. The meeting was very well attended by States and non-governmental organisations (NGOs).

Code of Conduct

The meeting was chaired by the Algerian and then the Moroccan Ambassadors. They reiterated the aim of the African Group to obtain consensus on the code of conduct by 18 June 2007.

The Algerian Ambassador introduced the revised draft by making several general comments on the new text. He stated that every article of the draft, with the exception of Articles 1 and 11, had been altered following requests made by States during the bilateral consultations. He explained that the ultimate rationale of the code of conduct was to enhance the moral authority and accountability of mandate holders.

The specific issues that the Algerian Ambassador drew attention to were as follows:

¹ Council Resolution 2/1.

- *Relationship between the Code and the UN Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (the Regulations)*

The Ambassador said that several States had expressed their concern that going beyond the Regulations would mean that the Code was in contradiction to it and that this would defeat the purpose of the Code. The Code as envisioned by the African Group was intended to expand upon the Regulations. He stated that when the Regulations were adopted in 2002, several mandate holders themselves had originally felt that they were too general and that a more detailed document was required. He therefore felt that there was no contradiction in having a code of conduct that would be more specific. He was also of the view that the Code and the Regulations would have the same legal standing. He suggested that if States continued to express concern about this issue, the Human Rights Council (the Council) should forward the draft code to the legal counsel of the UN in New York to check the internal consistency of the Code with the Regulations.

- *Obligations of States with respect to Special Procedures*

The Ambassador further stated that in order not to contradict the Regulations, the Code could not apply to the conduct of States. However, he referred to preambular paragraph 15, saying that strengthening the capacity of mandate holders to exercise their functions would require ‘supportive action by other stakeholders’ including States. Additionally, he referred to Article 10 (d) of the draft Code, which refers to cooperation ‘being a shared obligation’ of mandate holders, States and other stakeholders, with reference to country visits of mandate holders.

- *Independence of mandate holders*

The Ambassador stated that the new text had been revised to take into consideration the concerns of States with regard to the independence of mandate holders, by referring to independence in the text a total of nine times. He said that the purpose of the Code was to ‘spell out the consequences’ of the independence of mandate holders.

- *Respecting national legislation*

With respect to concerns expressed regarding the Code’s reference to mandate holders being required to carry out their mandates while respecting national legislation and regulations of the country in which they are conducting their missions, the Moroccan Ambassador said that the provision had been left general so as to be in conformity with the Regulations. The Ambassador of Algeria explained that the suggestion by some States that mandate holders should only be required to comply with national legislation when it is in accordance with international human rights principles could not be accepted as this would be too restrictive.

- *‘Scrupulously truthful’*

The Ambassador of Algeria referred to the concerns of several States regarding the language of the solemn declaration of mandate holders proposed by the African draft, which had originally stated that they must ‘scrupulously observe the truth’. The text has now been amended to state that mandate holders must be ‘scrupulously truthful’, which he hoped would address the concerns of delegations who felt that the ‘truth’ was a vague and subjective concept and was inappropriate for the text. He also stated that the Regulations referred to ‘truthfulness’.

- *Letters of Allegation*

The Ambassador said that the new text had been introduced at the request of some delegations to clarify the ‘admissibility criteria’ for submission of letters of allegation in the revised draft, in accordance with the President of the Council’s text regarding the proposed complaint procedure.²

- *Structuring operations of mandate holders for maximum efficiency*

The Ambassador stated that Article 10 (d) of the Code, which states that mandate holders must finalise their official programme of visits directly with representatives of the host country, had been drafted in order to take into consideration that the work of mandate holders primarily involves interactions with States, and that they should respect normal diplomatic channels.

- *Conclusions and recommendations*

The Ambassador noted that the section on ‘interaction with the media’ from the original draft, had been modified into a new section entitled ‘recommendations and conclusions’, in response to concerns expressed by some States in relation to the first draft, and that all references to the media had been deleted.

- *Urgent appeals*

Regarding the use of urgent appeals, the Ambassador stated that the new provision, Article 14, stipulates that mandate holders can only resort to urgent appeals when there has been a loss of human life or an imminently life-threatening situation. He stated that urgent appeals were not necessary to address massive violations of human rights that do not fulfil this criteria.

- *Accountability*

The Ambassador stated that the Regulations provide that mandate holders are accountable to the appointing authority and that this is now reflected in Article 15. He also explained that Article 16, pertaining to the creation of an ‘ethics committee’ was introduced to ‘give expression’ to the concept of accountability referred to in the Regulations.

Comments on the text

The following is a summary of States’ responses to the main issues of concern:

Interaction with the media (Article 12 (a)): Germany (on behalf of the EU) said that while the title of the article had changed, the provisions under this article were substantively the same as those in the original draft and were not acceptable to the EU. The main issue in this text was the clause stipulating that ‘adequate time for investigation’ had to be observed by mandate holders before making public statements regarding allegations of human rights violations which would limit their ability to take action.

Urgent appeals (Article 14): It was the view of the EU that urgent appeals could not be limited to cases where the loss of human life had already occurred or was about to occur. This provision also received heavy opposition also from Argentina, Australia, Canada, Japan, New Zealand, Norway, International League of Human Rights (FIDH), and the International Commission of Jurists (ICJ).

² Please refer to the President’s paper on institution-building released on 4 June 2007, available at: <http://www.ishr.ch/hrm/council/index.html>.

Non-political nature of the mandate (Article 11): Germany stated that it was not clear what this article meant. In any event, it would be appropriate to address cooperation of States with special procedures in this context. The United States of America (USA) stated that human rights and their protection were inherently political endeavours and so the section on the non-political nature of mandates was inappropriate. USA also stated that victims of human rights violations should not be required to apply human rights standards before being able to communicate with the special procedures.

Cooperation of States with special procedures: The cooperation of States with special procedures was of concern to several States, namely Canada, Germany, New Zealand and Norway. Germany said that State cooperation could be addressed in article 10 (e), and consensus language from previous Commission on Human Rights (CHR) resolutions could be used. This was also suggested by Norway.

Ethics committee (Article 16): Germany stated that they could see no convincing argument for the creation of such an entity, or how it would fit into the overall administrative structure of the UN. The ethics committee also received opposition from Ghana, who said if this was to be a consensus document and was going to be presented on behalf of the African Group, then this provision should not be reflected in the revised text. The idea of an ethics committee was also opposed by Argentina, Australia, Canada, Japan, Switzerland and USA. The Philippines welcomed the formation of an ethics committee. Brazil said they were open to the idea of an ethics committee if mandate holders and civil society could be a part of it. Argentina said that if an ethics committee were to be created, then it would have to include mandate holders. Canada were in favour of an enlarged role for the Secretary General in monitoring the conduct of special procedures, and they proposed that instead of an ethics committee, provision must be made for the resolution of any conflict between States and mandate holders via the Secretary General, as provided for in the Regulations. They also stated that only the Secretary General should be allowed to waive the privileges and immunities of mandate holders.

Care of host country during country visits (Article 10 (f)): Germany objected to this provision, stating that its language could 'mean anything and nothing' and that it went too far in constraining the work of the special procedures. They asked that the African Group clearly explain what exactly this provision was trying to address. FIDH stated that the visits of mandate holders should be conducted with a certain flexibility and explained that for example, when mandate holders have visited detention facilities, the announcement of a visit has frequently been accompanied by the transferral of prisoners to a different facility. Brazil stated their concern that mandate holders must be allowed to have private meetings and opposed the proposal that they should remain in the care of a host country while on mission. FIDH also stated that allowing the host country to closely monitor the visit of a mandate holder might compromise the security of sources of information. New Zealand asked the African group to clarify if the proposal for mandate holders to remain in the care of host countries for security reasons referred only to visits to conflict zones, as had been suggested by the Russian Federation.

Letters of allegation (Article 9): Germany clarified that they had not requested that admissibility criteria for letters of allegation be introduced in the current text. They also said that the criteria listed in the draft were adapted from the 1503 procedure for receiving complaints regarding the massive violations of human rights and were not applicable here. They said that applying these criteria to communications sent by victims to special procedures was inappropriate as victims were not human rights experts and could thus not be asked to identify which rights had been violated before sending communications to mandate holders. Additionally, Germany stated that the process of sending letters of allegation to States was not a quasi-judicial procedure and thus the same criteria as the complaint procedure could not be applied to it. Amnesty International and the ICJ supported this view and drew attention to the inappropriateness of exhaustion of domestic remedies as a criterion for admissibility, and also emphasised that special procedures were not judicial bodies.³

India said that the idea for admissibility criteria was not new, and had been discussed in consultations between the Asian and African groups, and was also present in the Manual of special procedures. The Asian

³ Australia, Canada, Japan, USA, and FIDH, were also opposed to the admissibility criteria for letters of allegation.

Group paper of 2005 on strengthening the special procedures also contained information on admissibility criteria. He noted that while the special procedures are different from the complaint procedures, admissibility criteria were required to screen out frivolous complaints. He suggested that special procedures themselves could screen out communications and that the specific provisions could be further discussed.

Information gathering (Article 8). The USA noted that mandate holders should not be asked to verify information, and that cross-checking (Article 6 (a)) was too high a standard for the work of mandate holders and that it is a standard more appropriately applicable to courts. New Zealand also expressed their opposition to the evidentiary standards described in Article 8 (b), pertaining to the gathering of information by mandate holders, and stated that if this proposal were to be implemented then a checklist for all the criteria for submitting information would have to be made publicly available so that the access of victims to mandate holders would not be compromised.

International humanitarian law (Article 3). The USA noted that the introduction of international humanitarian law into the new text (Article 3(a)) was outside the mandate of the Council and the expertise of mandate holders.⁴

Refer to legal counsel. Germany supported sending the text to the Office of Legal Affairs of the UN for checking the consistency of the Code with the Regulations. The USA noted that the Regulations had been adopted by the General Assembly, and would thus also like to seek legal counsel regarding the complementarity of the Code and the Regulations.⁵ Canada stated that in case of any conflict between the Code and the Regulations, the Regulations should prevail.

Respecting national legislation while on mission (Article 4). FIDH opposed the proposal for mandate holders to abide by national legislation while on mission. However, the Russian Federation endorsed it, as they felt that special procedures must not be ‘outlaws’ and work within the domestic system.

⁴ This was supported by Turkey.

⁵ Supported by New Zealand, the Russian Federation, Switzerland.

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