

European Union – negotiation paper on the Code of Conduct

suggested changes in yellow

Draft Code of Conduct for the system of Special Procedures

Article 1- Purpose of the Code of Conduct

The purpose of this Code of Conduct is to improve the functioning of the system of Special Procedures with a view to strengthen the protection and promotion of human rights on the ground. It defines the guidelines of professional conduct that mandate-holders under the Special Procedures of the Human Rights Council (hereinafter referred to as “mandate-holders”) are called upon to observe whilst discharging their mandates and seeks to enhance the co-operation by Governments with the mandate-holders which is essential for the effective functioning of the system.

Article 2 – Complementary nature of the provisions of the Code of conduct

- a) This code complements the Regulations governing the Status, Basic Rights and Duties of non UN Secretariat Officials, and Experts on Mission, (hereinafter referred to as “UN Regulations governing the Status of Experts on Mission”). (In case of discrepancy, the UN Regulations governing the Status of Experts on Mission shall prevail.)
- b) The provisions of the Manual of UN Special Procedures on Human Rights and the Terms of Reference for Fact-Finding Missions by Special Procedures (E/CN.4/1998/45) complement those of the present Code.
- c) Mandate-holders shall be provided by the High Commissioner for Human Rights along with the documentation pertaining to their mission, with a copy of this Code of which they must acknowledge receipt^[15].

Article 3 – Status of mandate-holders

- a) Mandate-holders are independent experts. All stake-holders shall respect this independence. The notion of independence is inherent to the status of mandate-holders and to their freedom to assess the human rights questions that they are called upon to examine under their mandate.

They shall exercise their functions in accordance with their mandate, in a professional and objective manner and in observance of the rules of conduct entailed in the UN Regulations Governing the Status of Experts on Mission. They shall not be subjected to any (undue) outside influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, for any reason whatsoever^[16].

[suggested to put this para under conduct, Art. 6]

- b) Mandate-holders exercise their functions on a personal basis, their responsibilities are not national but exclusively international. *Reg. 1a*

- c) When exercising their functions, the mandate-holders enjoy the privileges and immunities provided for under section 22 of Article VI of the United Nations Convention on Privileges and Immunities. Without prejudice to their privileges and immunities it is the duty the mandate-holders to respect the laws and regulations of the receiving state which are in conformity with international human rights standards and which do not impinge the effective exercise of their mandate. *Text taken from Art. 41 Convention on Diplomatic Relations, element on HR-standards added*

Article 4 – Solemn declaration

Upon assuming their functions, mandate-holders shall make the following solemn written declaration^[18] :

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.” *same as in Regulations*

Article 5 – Prerogatives^[19] better Fact-finding

Without prejudice to prerogatives for which provision is made as part of their mandate, the mandate-holders shall:

- a) (always) seek to establish the facts, based on objective and reliable information emanating from all relevant and credible sources;
- b) Take into consideration information provided by state concerned which shall provide such information on situations of concern to the mandate-holder in a comprehensive and timely manner;
- c) Evaluate all information in light of human standards relevant to their mandate.

Article 6 – General principles of conduct

While discharging their mandate, mandate-holders:

- a) shall keep in mind the mandate of the Council as specified in General Assembly resolution 60/251.
- b) shall exercise their functions in accordance with their mandate, in a professional and objective manner and in observance of the rules of conduct, inter alia entailed in the UN Regulations Governing the Status of Experts on Mission.

- c) shall not be subjected to any (undue) outside influence or incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, for any reason whatsoever^[110].

Article 7 – Observance of the terms of the mandate

Mandate-holders must exercise their functions in strict observance of the terms of reference of their mandate, in case of doubt, they must seek guidance from the Council.

delete the whole Article

Article 8 – Sources of information^[111]

In their information-gathering activities, the mandate-holders shall:

- a) take into account all available and credible sources and be guided by the principles of discretion, transparency and even-handedness.; *see Manual para 23/24*
- b) bear in mind the need to protect victims of human rights violations and individuals, organizations, groups of persons who have provided information to the mandate-holders. Governments have the obligation not to subject such individuals, organizations, groups of persons to adverse treatment due to such action. *CHR 2004/76*
- c) (always) seek to verify, (to the extent possible), the veracity of the facts, inter alia contained in communications, along with the validity of the positions, on which they base their reports and conclusions.
- d) give Representatives of the concerned State the opportunity of commenting their assessment and of responding to the allegations made against this in a timely manner State^[112] which shall furnish the mandate-holders upon request with all information necessary for the fulfilment of their mandate. *Based on consensus CHR language*

Article 9 – Field visits

Mandate-holders must ensure:

- a) that their visit is conducted in compliance with the terms of reference of their mandate;
- b) that their visit is conducted with the consent or at the invitation of the State concerned which shall fully co-operate with the mandate-holders, inter alia by responding expeditiously and favorably to visit requests, and facilitate their visit according to the Terms of Reference for Fact-Finding missions by Special procedures including follow-up to field visits as appropriate in order to help to help to contribute to the effective implementation of recommendations by the mandate-holders concerned; *based on CHR 2004/76 2c*
- c) that they prepare their visit in close collaboration with the Permanent Mission of the concerned State to the UN Office in Geneva and that they take in account the views of other relevant stakeholders;

- d) seek to establish a dialogue with the relevant Government authorities and other relevant stakeholders during their visits as well as during the preparation of and the follow-up to them.
- e) That a debriefing is held at the end of the field mission, after consultation with the Government concerned, without undue restrictions on the obligation to call an attention to violations of human rights

Article 10 – The non political nature of the mandate

- a) The mandate-holders must bear in mind the non political nature of their mandate and ensure that their opinions, convictions and declarations are without prejudice to the execution of their mission, and have no influence on their conclusions and recommendations.
- b) To this effect, they shall show restraint moderation and discretion so as not to undermine the independent nature of their mandate or the environment necessary to properly discharge the said mandate.

delete whole Article at least change wording on “non-political nature” of mandate

[113] Article 11 – Relations with the media

Mandate-holders shall:

- a) make use of public statements and official press releases, after having informed the concerned state, without being subject to undue restrictions since this can contribute to the protection and promotion of human rights

[114]

- b) ensure that the concerned State (and the President of the Council) are the first recipients of their conclusions and recommendations;

Article 12 – Channel of communication with Governments

Mandate-holders must ensure that all their communications to the Government of a State concerned, including under an urgency procedure, are addressed, directly or in copy, to the Permanent Mission of the relevant State accredited to the Office of the United Nations in Geneva or other designated mission or embassy of that State, in compliance with the current regulations and practices within the Organization of the United Nations. The Permanent Mission will speedily forward all communications to the Government’s competent authorities. *cut out: exclusively*

Article 13 – Urgent appeals

Mandate-holders shall resort to urgent appeals after having received credible information about an alleged violation that is ongoing or imminent. Governments shall respond to urgent appeals and other communications transmitted to them by the mandate-holders without [undue] delay and take the appropriate steps to prevent violations in a timely manner; *based on consensus CHR language*

Article 14 – Recommendations

While formulating their recommendations, mandate-holders must:

- a) bear in mind their task to contribute to the protection and promotion of human rights in the field of their mandate;
- b) ensure that their recommendations do not exceed either their mandate or the mandate of the Human Rights Council

Article 15 – Relations with the Council

Mandate-holders, being experts on mission, are accountable to the Secretary-General of the United Nations for the proper discharge of their function. Mandate-holders shall be given the necessary support, including from the Council, for their mandates to be properly discharged.