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Help

Because of their independence and the flexibility with which they fulfil their mandate, as well as their ability to react immediately in urgent situations, Special Rapporteurs have not always been popular with all States. Country-specific mandates in particular have created bitter feelings among States which have been subject to such monitoring.

When the Human Rights Council was established, certain governments considered that the work of special procedures should be better codified, particularly in order to ensure that they remain within the limits set by the terms of the mandate. On 18 June 2007, the Human Rights Council adopted Resolution 5/2, Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. The Code of Conduct purports to define ‘the standards of ethical behaviour and professional conduct that special procedures mandate-holders of the Human Rights Council ... shall observe whilst discharging their mandates’. It recalls the principles of independence, truthfulness, loyalty and impartiality inherent in their mandate.

Although the Code of Conduct confirms that the mandate-holders are entitled to privileges and immunities as provided for under relevant international instruments, it also stipulates that

‘the mandate-holders shall carry out their mandate while fully respecting the national legislation and regulations of the country wherein they are exercising their mission’ (Article 4, para. 3).

Under the Code of Conduct mandate-holders are also requested to ‘give representatives of the concerned State the opportunity of commenting on mandate-holders’ assessment and of responding to the allegations made against this State, and annex the State’s written summary responses to their reports’ (Article 8(d)); in addition, in presenting their views in public, they are expected to ‘indicate fairly what responses were given by the concerned State’. Under Article 12 of the Code of Conduct, mandate-holders shall

- (a) bear in mind the need to ensure that their personal political opinions are without prejudice to the execution of their mission, and base their conclusions and recommendations on objective assessments of human rights situations;
- (b) in implementing their mandate, therefore, show restraint, moderation and discretion so as not to undermine the recognition of the independent nature of their mandate or the environment necessary to properly discharge the said mandate.’

The Code of Conduct has sometimes been invoked by States, but though infringements occasionally alleged, it has not hitherto led to any sanctions being imposed on Special Rapporteurs. The debate on the Code of Conduct and its means of

enforcement re-emerged however when, between October 2009 and March 2011, a review of the Human Rights Council took place.

In October 2010, Algeria and Egypt proposed the establishment of a 'Human Rights Council Legal Committee' to ensure compliance with the Code of Conduct, a proposal that might have created a chilling effect on the work of the independent experts and limited their independence. The proposal was defeated after France proposed that a Code of Conduct should be drafted to impose on States certain duties in their relations to Special Procedures, in December of that year.

Would the creation of a Legal Committee dealing with both the duties of Special Procedures and those of States strengthen the system? Consider the views expressed by Philip Alston, then the Special Rapporteur on extrajudicial, summary or arbitrary executions, writing here in his academic capacity (P. Alston, 'Hobbling the Monitors; Should U.N. Human Rights Monitors be Accountable?', *Harvard International Law Journal*, 52(2) (2011), 561, at 645-646):

[The] Code of Conduct has so far been implemented in an uneven, haphazard, and somewhat dysfunctional way. In the absence of a mechanism designed to sort, structure, and address complaints, ill-founded accusations will continue to proliferate, the [Special Rapporteurs] will feel increasingly intimidated, and civil society will see the Code as nothing more than a ploy for intimidating the SRs. For their part, governments will be frustrated at the lack of any outcome in relation to what they regard as genuine violations of the Code and at their perceived inability to limit the actions of their own agents. ... [The] committee's principal task would be to deliberate on complaints lodged by governments. But if the committee is to reflect an even-handed approach, motivated by a concern to improve the overall functioning of the system rather than to hobble the monitors, it should also be mandated to consider complaints directed against governments for breaches of their commitments to the individual SRs or to the system as a whole.

Do you think the establishment of such a mechanism would help? Or would it have a chilling effect on Special Rapporteurs, who might fear that the mechanism will be seized for any infringement of the Code of Conduct?

INSTRUCTIONS: In responding to the above questions, **DO NOT click on 'New Post'**. Click on '**Show discussion**', and then, in the first discussion thread, called '**[8.2.8] Hobbling the Monitors? The proposed Legal Committee and Special Procedure Independence - Debate!**', click on '**View discussion**' and then on '**Add a response**' to propose your views to the community. If you want to comment on a peer's opinions in that thread then click on '**Add a comment**' in his response. You can also watch the tutorial (<http://youtu.be/SINSJKdez6g>) (see also, the updated (<http://youtu.be/7NoOB8q19kQ>) version) in order to make the best use of the interface.

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