### [8.2.8] Hobbling the Monitors? The proposed Legal Committee and Special Procedure Independence - Debate!

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[MatthiasMS](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1917784) 13 days ago

What do you think about the creation of a mechanism -- such as the 'Human Rights Council Legal Committee' -- that would monitor the compliance by Special Procedure mandate-holders with the Code of Conduct? If you believe that it would be detrimental to the functioning of the Special Procedures, do you believe that any kind of scrutiny ought to be established? If so, what features do you think would allow for adequate scrutiny without a 'chilling effect'? If you think that it could be good for the Special Procedures and for human rights promotion to have such a mechanism, how do you think such an organ should be structured, and how should it function? What risks would be involved? \*\*Please respond to this post, rather than starting new posts.\*\* As usual, don't forget to 'upvote' the opinions and thoughts of your colleagues that you find most interesting, innovative or well-argued!

77 responses

1. [24 votes (click to vote)](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/courseware/606de32afd7e4d1f9b47701b70142078/a343bc54c2564396b620c9f7d478e367/) [TomJu](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3363854)

12 days ago

In accordance with the view of France (during the October 2010 debates on the proposition of the establishment of a HRC Legal Committee) and P. Alston on the accountability of special rapporteurs, I believe such a system would only meet the requirement of equality if it were also able to monitor compliance of the state with the Code of Conduct. Practically, the Legal Committee should be able to consider complaints of Special Rapporteurs against governments for the failure to comply with the Code of Conduct. This system would allow 'the chilling effect' of governmental interference with the work of the HR monitors to be tempered as states would be held accountable for their misconduct. The existence of a reciprocal mechanism of compliance with the Code of Conduct would likely be a bulwark against governmental 'hobbling' in the work of the SR.

Furthermore, states would be more likely to accept investigations of the UN Special Rapporteurs as the Code of Conduct sets out clear rules for their action. This might reassure any state on the practical scope of investigation it will be subjected to.

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* + interesting statement.

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-posted 6 days ago by [lifeforresearch](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1757363)

* + Certainly the establishment of a HRC Legal Committee would be convenient and acceptable if it could work on a reciprocal mechanism of controlling code of conduct by Special Raporteurs and also States involved . In absence of a two way system it could only serve the purpose of intimidating or obstructing in some ways the work of Special Raporteurs .

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-posted 6 days ago by [Alepalms](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2835840)

* + TOTAL AGREEMENT

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-posted 6 days ago by [RemHab](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2429253)

* + I too must completely agree

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-posted 6 days ago by [Loralyn](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2004964)

* + I'm totally on the same page

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-posted 5 days ago by [ElphabaThropp](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3256324)

* + I agree with you

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-posted 5 days ago by [Mohamed1960](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1609075)

* + I agree too.

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-posted 5 days ago by [Anestis24](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1151309)

* + Agree

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-posted 5 days ago by [Graphinya](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2531828)

* + I agree that an independent body like that could through dealing with the complaints help interpret the exact limits and rules of conduct on both sides.

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-posted 5 days ago by [terlieslie](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3466343)

* + I agree completely.

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-posted 5 days ago by [abelbro](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1202898)

* + I have to agree with Alepalms, that unless the system monitored both special rapporteurs and states, it would only be used to intimidate the rapporteurs.

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-posted 5 days ago by [Kasiayar](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2542486)

* + i completely agreed too.

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-posted 4 days ago by [workeye](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/912632)

* + I consider the code should be in the tao ways, countries and special rappourters

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-posted 4 days ago by [johalf](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2474407)

* + I agree with above statements, in that, to succeed it must be reciprocal.

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-posted 4 days ago by [blunder](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3005567)

* + I totally support all your arguments...

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-posted 4 days ago by [papattah](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/410193)

* + Agree

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-posted 4 days ago by [Aleks63](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2124506)

* + i don't think formation of new committee named 'Human Rights Council Legal Committee' will bring something new if there will not be the real independence.

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-posted 4 days ago by [mahmudrashed](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/940283)

* + Agree - it would definitely be a good idea but would this ever be possible to achieve.

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-posted 4 days ago by [JasonJude](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3552493)

* + I find it hard to believe that Special Rapporteurs are the kind of people who particularly need ethical guidelines. Really? It just seems like a means for states to divert attention if they don't like the report. I would think if they weren't doing their jobs in an ethical manner, the state could complain to the HRC and they could check their job description without creating a whole extra apparatus.

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-posted 4 days ago by [LindsayW](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3440458)

* + I totally agree with your point. Special Rapporteurs could be under scutiny by a Code of Conduct, only if States are also being monitored under the same procedure. Otherwise, the independence and freedom of special rappotreurs as international human righrs monitors, would be in question and it will result to undermining their role.

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-posted 3 days ago by [VirginiaKoub](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/341640)

* + Think in principle a two-way system is a grwat idea and may indeed serve to avoid th "chilling effect" mentioned above. This system,too, would probably not be completely free from abuse, though, and legal battles of suing and counter-suing might immobilize the whole SR system and bring with t considerable costs. neverheless, I do believe the benefits would outweigh the risks.

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-posted 3 days ago by [Chris247](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3452417)

* + There is no doubt that this would be detrimental to the actions of SR's and would infringe upon their independence thereby affecting the effectiveness of results.

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-posted 3 days ago by [Alufa](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3519603)

* + agree

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-posted 3 days ago by [UgoDG](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1933322)

* + I agree that an HRC Committee could work on a reciprocal code of conduct by Special Rapporteurs and also States involved.

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-posted 3 days ago by [Plamim](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3395191)

* + There should be a mechanism to sort and adjudicate complaints. This will only add to the creditability of the process and the office of the special rapporteaurs. I agree that in order to be fair, states should also be subject to this mechanism for allegations of noncooperation and noncompliance. As to the level or standard of scrutiny of the special reapporteaurs, it should only be for gross misconduct and must be established by at least a clear and convincing evidence standard. This is to ensure that states will not use this mechanism to harass special reapporteaurs.

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-posted 3 days ago by [DominicK65](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/935881)

* + As for me, Code of conduct is a very good thing but its main aim should be seen not like tool for punishment but like instruction or guide for SP in their activity. And some violations, etc. should be foreseen by principles of appointing of the SP. I don’t think that establishing Human Rights Council Legal Committee and making Code of conduct obligatory according to the principles of reciprocal not only for SP but for states too will not lead to greater effect. Cooperation between SP and states gives better result

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-posted 3 days ago by [Gulyai](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3499323)

* + Agree

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-posted 3 days ago by [PDNP](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2603514)

* + I agree.

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-posted 3 days ago by [ismailk](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1388953)

* + i agree. I am afraid that querrels about the conduct of the special rapporteurs could undermine their work. It should be avoided to enter in discussion about who did not respect it more, the special rapporteur or the country

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-posted 3 days ago by [MarieLisbonne](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3178831)

* + well said.. i completely agree

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-posted 3 days ago by [dennismsechu](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3503547)

* + So true

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-posted 2 days ago by [TammyKarchava](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2774812)

* + It sounds to me as if, even if the legal committee would work both to monitor the SR and the States per se, would mostly create another layer of bureaucracy with little actual effective enforcement mechanisms, apart from condemnations, comments and recommendations. This to me looks like just another version of the same Human Rights Council and other UN bodies and agencies. Of course some of the States are not going to be happy about the work of the SRs, but I would think that the recourses they have would be to report the misconduct directly to the Human Rights Council or to the OHCHR.

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-posted 2 days ago by [KarinAndersson](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2804373)

* + Agree with KarinAnderesson above and with Lindsay W

find it hard to believe that Special Rapporteurs are the kind of people who particularly need ethical guidelines. Really? It just seems like a means for states to divert attention if they don't like the report. I would think if they weren't doing their jobs in an ethical manner, the state could complain to the HRC and they could check their job description without creating a whole extra apparatus.

I guess, as has been found with commerical companies and eg FIFA representatives, there will be a case of a Special Rapporteur taking bribe money for a favourable report.. the world being what it is.. but mechanisms, including the law, already exist for that.

UK government has been very rude about the Special Rapporteur on housing, accusing her of being a Marxist!! This was an absurd response, based on a very right wing interpretation of the right to housing. I would rather these kind of comments appeared in the media, while the government will still have to respond to the Special Rapporteur's report fully, than long battles in some new body, testing the political backgrounds of rapporteurs, which of course will vary by the political leanings of the various governments and parties. Would not only be chilling, but would hold back the important work of the Special Rapporteurs, who appear to be a part of the UN process that is functional and operating.

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-posted a day ago by [ChristineHerbert](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2970117)

* + I agree with KarinAndersson.

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-posted a day ago by [Fredrika](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3362459)

* + I find it hard to believe that Special Rapporteurs are the kind of people who particularly need ethical guidelines. Really? It just seems like a means for states to divert attention if they don't like the report. I would think if they weren't doing their jobs in an ethical manner, the state could complain to the HRC and they could check their job description without creating a whole extra apparatus. Report Misuse -posted 2 days ago by LindsayW

I fully agree with this point of view.

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-posted a day ago by [cristianfassone82](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3634312)

* + Special rapporteurs must be independent and not bound to any constraint. No organ of control over the person of the rapportteur is needed since any unethical procedure by the agent would reflect in the credibillity of the report and constitute a defense thesis for the country at issue. Reparation for unethical behavior of the rapporteur should be assessed by other instances.

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-posted about 22 hours ago by [danypark](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1893376)

* + Totally agree

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-posted about 11 hours ago by [IreneBecerra](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2678513)

* + I would tend to agree with the first point...

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-posted about 7 hours ago by [CaroleReid](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2874611)

* + Agree. If in all the years of operation of the (fairly numerous) Special Procedures there have been only occasioanl allegations of misconduct, which on investigation did not lead to any sanctions--presumably because there was insufficient evidence that any misconduct took place--then there would appear to be no need to establish a new formal committee, whose only apparent purpose would be for representatives of governments to call into question the propriety of conduct of the invididual mandate holders. Adequate procedures already exist for States that feel unfairly treated to make that clear. They can, among others, raise an objection publicly during a meeting of the HRC, and they can submit written responses to reports of a Special Procedure mandate holder. It's a good thing this proposal didn't attract enough support to be adopted.

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-posted about 7 hours ago by [Mary3](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2160158)

* + I agree that if such a committee were to be created, it would have to monitor BOTH the special rapporteur AND the state. However, I think that granting both parties the opportunity that their side of the story be heard (as specified in the Code of Conduct) may be sufficient to guarantee fair proceedings to both sides.

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-posted about 7 hours ago by [Almagro](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/398597)

* + Well said! I agree that such a mechanism should bind both states and SRs to the code of conduct. Even so, is there a disproportionate amount of power still resting the nations in such a scenario, such that SRs could still be discouraged or hindered by measures like this?

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-posted about 6 hours ago by [SusiH](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/1220511)

* + Reciprocity also seems important to me. Also, I do not think the code of conduct should become too restrictive. Communication and good will between the two parties should always be the main focus. Too many rules and do's and don'ts could undermine that focus.

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-posted about an hour ago by [GlennaSue](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/2592729)

* + I agree

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-posted 36 minutes ago by [JorgecNegrete](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/3387845)

* + I thought the explanation provided above by TomJu and the other statements that followed it cover my thoughts here.

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-posted less than a minute ago by [KarenWest](https://courses.edx.org/courses/LouvainX/Louv2.01x/1T2014/discussion/forum/users/341562)