



大 会

Distr.
GENERAL

A/HRC/5/19
15 June 2007

CHINESE
Original: ENGLISH

人权理事会
第五届会议
议程项目 2

大会 2006 年 3 月 15 日题为“人权理事会”的
第 60/251 号决议的执行情况

2007 年 6 月 14 日特别程序协调委员会主席
致人权理事会主席的信

我谨以特别程序协调委员会主席的身份写信给你。协调委员会成员编写了一份说明* (见附件), 以对人权理事会框架内目前进行的关于可能的行为守则的讨论献言献策。

这份说明是在协调委员会成员与参加特别程序制度未来方向讨论的其他任务执行人进行磋商的基础上起草的(本说明不一定反映每个任务执行人的立场)。

我欢迎行为守则起草过程中的灵活精神。我期待着取得基于共识的成果, 以切实回应特别程序协调委员会与任务执行人磋商后提出的建议。

我代表特别程序协调委员会, 请求你将本说明及其附件一起作为理事会正式文件分发给人权理事会各成员国和其他任务执行人。

* 附件以原文照发。

Annex

Comments by the Coordination Committee on the Code of Conduct, Rev.2

The Coordination Committee, representing the Special Procedures mandate-holders, wishes to bring to the attention of members of the Human Rights Council a number of comments relating to the Draft Resolution on a Code of Conduct, Rev.2, of 13 June 2007.

The comments are divided into two parts. Part I consists of five amendments which are essential if the Code is to be consistent with the stated objective of assisting the mandate-holders in the performance of their mandates. Part II identifies several technical changes which should be made in order to ensure the accuracy and coherence of the draft text.

Part I – Essential Revisions

(i) Article 4 (c), as currently drafted, enables national law to simply override any or all of the arrangements established by the Council in relation to the Special Procedures. Its inclusion in its present form would thus negate the basic objectives of the Code. It should therefore be amended to read:

“c) Consistent with these privileges and immunities, the mandate-holders shall take full account in carrying out their mandate of the national law of the country in which they are conducting a mission and of the obligations and commitments of that country in relation to its cooperation with the United Nations and the Human Rights Council.”

(ii) Article 6 (c) identifies the standards to be applied by mandate-holders. They are “universally recognized human rights standards” and ratified treaties. The reference to “universally recognized” raises a factual issue as to whether a particular standard, such as the Declaration on Human Rights Defenders and a wide range of other comparable declarations adopted and reaffirmed by UN organs, have been universally recognizable. In order to avoid such debates the formulation should be changed to refer to “applicable human rights standards”.

(iii) Article 13 on modes of communication with Governments fails to take into account the demonstrated problems that have arisen where Permanent Missions in both Geneva and New York have proved to be uncontactable. In order to avoid creating a vacuum that would defeat the purposes of the procedures an additional provision should be added to the end of the existing text. It would read:

“Where communication through the Permanent Mission in Geneva or New York proves impossible or ineffective, the mandate-holder shall, as a last resort, adopt other appropriate channels of communication.”

(iv) Article 14 on Urgent Appeals, as currently drafted, privileges a limited range of civil and political rights violations, to the virtual exclusion of economic, social and cultural rights issues. It should accordingly be amended to read:

“Mandate-holders may resort to urgent appeals in cases of alleged violations of civil, cultural, economic, political or social rights where the alleged violations are

time-sensitive and involve loss of life, life-threatening situations, or imminent damage to victims that cannot be addressed in time by the procedure under Article 9.”

(v) Article 15 deals with accountability to the Council. This provision should address the responsibilities of the mandate-holders and facilitate the implementation of the code. An additional sentence should thus be added so that the revised Article would read:

“In the fulfillment of their mission, mandate-holders are accountable to the Council. The principal responsibility for the implementation of this Code lies with the mandate-holders themselves, including through an appropriate facilitative role that might be played by the Coordination Committee.”

(vi) While we note the amendment to the last preambular paragraph concerning State’s obligation to cooperate, we would strongly suggest that this language also appear in the operative paragraphs of the Code.

Part II – Technical Amendments

Article 3 (g) should read: “conduct themselves consistently with their status, at all times.”

Article 6 (d) should refer not to “the fulfillment of their prerogatives” but “to the fulfillment of their mandates”.

Article 9 (c) should use the accepted international law standard of “not be abusive” but should not introduce an entirely new and subjective notion of “derogatory”.

Article 9 (d): The final phrase should refer to “direct or reliable” rather than “direct and reliable”. It must be considered sufficient if the information is “reliable” even if it is not direct.

Article 12 (a) should indicate that a non-response or delayed response cannot be used to impede the expression of views by the mandate-holders. It should thus read “while reporting fairly on any available responses of the concerned State”.

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