



H.E. Mr. Joachim Rucker
President of the UN Human Rights Council
Email: hrcpresidency3@ohchr.org

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Geneva, 2 March 2015

Excellency,

Re: Avoiding conflict of interest (real or perceived) in connection with Special Procedure appointments

Further to our earlier exchange, there were allegations in November 2014 that an expert appointed as Special Procedure mandate-holder might have been coached prior to the interview by the Consultative Group further to an intervention by a member of the Consultative Group. It would be difficult to establish with certainty whether those allegations were well-founded. It would be equally difficult to establish whether any other Consultative Group members, in 2014 or previously, have used their position on the Group to assist candidates to Special Procedure positions. However, if the fallout of allegations surrounding that candidacy is left unaddressed, it has the potential to undermine confidence in the mandate-holder appointment process and the Special Procedures system generally.

Forward-looking measures must be taken to address concerns arising from these allegations with a view to preventing analogous future situations that could undermine the integrity of the appointment process of Special Procedures mandate-holders. Such measures would be also important to preserve general confidence in the Special Procedures system.

Following the practice of other UN bodies, the Consultative Group should have rules about conflict of interest (real or perceived). For example, the methods of work of the Working Group on Arbitrary Detention include a specific provision on dealing with conflict of interest. The human rights treaty bodies have rules to address real or perceived conflict of interests, which have been consolidated in the "Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines)" adopted in June 2012 (Annex 1 to UN document: A/67/222). We understand that the Guidelines are followed by the Working Groups of the HRC Complaint Procedure. In particular, paragraph 8 of the Guidelines state that:

"8. A member shall not participate or influence in any way the consideration of a State party report by the treaty body, or by any of its subsidiary bodies, if he or she may be seen by a reasonable observer to have a conflict of interest with respect to that State party. The same principle shall apply to any other treaty body procedure, such as follow-up, early warning or urgent action, which is not specifically mentioned in these guidelines."

Paragraph 9 of the Guidelines provides implementation guidance for this rule when a real or perceived conflict of interest arises.

The conceptual basis for the development of rules on real or perceived conflict of interest for Consultative Group members can be found in the rule for Special Procedures mandate holders stating that:

46. "Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate-holders will act in their personal capacity."(paragraph 46 of the Annex to HRC resolution 5/1)

The rule in paragraph 49, which stipulates that each member of the Consultative Group serves in his/her personal capacity, is also relevant.

As a minimum, the following measures should be put in place with regard to the Consultative Group:

- Drawing on the practice of the human rights treaty monitoring bodies, members of the Consultative Group should be required to take an oath of independence and respect for the integrity the Special Procedures appointment process at the beginning of their Group membership;
- Members should also undertake to declare whether they have any personal connection with individual candidates (e.g. professional connection or friendship) irrespective of the candidate's nationality.

These measures could be adopted by the Consultative Group and do not require any change to the institution-building package.

While these measures would not by themselves prevent inappropriate behaviour, they would emphasise the ethical obligation of each member of the Consultative Group to ensure that Special Procedures mandate-holders are nominated on the basis of their personal qualifications in a fair and equal process.

To help ensure that applicants for Special Procedures mandates also respect the integrity of the appointment process, they might be asked to declare as part of their application that they will not seek favour or unfair advantage in the process, and that they will respect the integrity of the process and the independence of the members of Consultative Group and the President of the Human Rights Council.

Amnesty International has a long-standing policy of taking no position in support of, or against, individuals who seek appointment to Special Procedure positions. However, to contribute to a Special Procedures system that is "fit for purpose", Amnesty International, among other actions, publicises vacancies, draws up mandate-specific checklists, follows developments relating to the selection and appointment process (appointment process) and makes recommendations towards improving the process, including through letters to the HRC Presidency. This letter is sent in connection with this line of activity.

Thank you in advance for your attention to this important matter. I remain,

Yours sincerely,



Patrizia Scannella
Deputy Representative to the United Nations
in Geneva