

Codes of Conduct

Codes of Conduct are rules that apply to members of a constitution-making body (CMB) and prescribe their behaviour throughout the process. They are intended to protect the integrity and, by extension, the legitimacy of the constitution-making process.

This paper discusses the following topics:

- 1. Purposes of Codes of Conduct**
- 2. Who is Bound by a Code of Conduct**
- 3. Adoption**
- 4. Aspects of Codes of Conduct**
- 5. Procedure for Dealing with Violations**

1. PURPOSES OF CODES OF CONDUCT

Codes of Conduct can:

- serve notice to those conducting the process of their obligation to behave in an upright and appropriate manner;
- provide an opportunity for those conducting the process to reflect on the importance of integrity in the tasks they are to undertake;
- create a potential legal basis for sanction or removal of officials in the event of violations of the code; and
- increase public confidence in the integrity of the process through its public dissemination.

There may also be symbolic value in the Code – in some post-conflict or transitional states, a public vow to adhere to a Code of integrity and accountability may be the first instance of such a commitment by a public official, setting a precedent for accountability, open government, and the rule of law.

While fairly common practice, it should be noted that some successful constitution-making processes have not used Codes of Conduct (eg, South Africa and East Timor, although in the former case the [rules of procedure](#) of the Constituent Assembly covered some of the same subject-matter).

See sample code of conduct from [International IDEA](#) and various samples contained in the [Interpeace handbook](#), pages 362-366.

2. WHO IS BOUND BY A CODE OF CONDUCT

A Code of Conduct will usually bind members of the CMB itself. But, if there is not appropriate existing law that applies to members of the staff of public bodies, it may also apply to the CMB [secretariat](#). Codes of Conduct may also be applied to actors conducting parts of the constitutional process on behalf of the CMB, for example, civil society organizations which are

undertaking [civic education](#) and [public consultation](#) activities (eg, see [Zimbabwe's Code of Conduct for outreach team members](#)).

3. ADOPTION

Codes of Conduct can be part of [enabling statutes](#) of the CMB (eg, [Kenya](#)), or promulgated through decrees establishing the CMB (eg, [Fiji](#), South Sudan). In Colombia, the presidential decree which convened the Constituent Assembly contained the requirements to be elected to the Assembly as well as a code of conduct and list of incompatible activities for those elected. In such cases, Codes of Conduct presumably would have the force of law and can be used in courts to sanction those bound by them.

Codes of Conduct may also be adopted by the CMB itself, either as part of rules of procedure, terms of reference, or as a separate document. In the cases of Colombia (1991) and Venezuela (1999) the code of conduct was part and parcel of the rules of procedure approved by the popularly elected constituent assemblies. The legal status of codes adopted in these manners will vary. As internally agreed upon rules, they may still be able to lead to suspension or removal or offending officials. In all cases, Codes of Conduct serve as important symbolic gestures that apply political and social pressure on officials.

4. ASPECTS OF CODES OF CONDUCT

Codes of conduct seek to protect the efficiency and integrity of the process. They can vary greatly depending on the nature of the process and the body to which they apply. For example, a Code of Conduct for an independent constitutional review commission may stress non-partisanship, while a code of conduct for a CMB which is comprised of members representing political parties and other partisan groups may not. Most Codes, however, typically require acting with integrity and without a conflict of interest, and mandate behaviour that is impartial, respectful, in the national interest, and will not bring disrepute to the CMB or process as a whole. Under certain conditions, Codes of Conduct may also require confidentiality, though at the same time, it is essential to maintain the transparency of the process.

Similarly, codes of conduct may forbid members of the CMB to take on other jobs or appointments, to receive remuneration or other financial benefits or advantage as a result of their involvement in the constitution making process, or to engage in other conduct that might create a real or perceived conflict of interest.

Attendance requirements are also common for CMBs and may be included either in the law setting up the body, the rules of procedure, or in a Code of Conduct.

In most cases, Codes of Conduct are made public. This can enhance accountability for following the rules and the credibility and transparency of the process.

A Code of Conduct may also be accompanied by an oath of office, another tool frequently used in constitution-making processes. This oath could specifically require those involved to uphold the Code (see, eg, [Nepal Constituent Assembly Rules of Procedure](#), at pp. 43, 46, 47; [Fiji Constitutional Process Decree](#), at p. 9).

5. PROCEDURE FOR DEALING WITH VIOLATIONS

Codes of Conduct, depending on how they are adopted, will have varying degrees of legal enforceability – creating the possibility of a Code of Conduct that, when broken, leads to no

repercussions, which undermines the appearance of the rule of law. Sanctions for violations will vary depending on the substance of the Code and other CMB procedural rules, as well as the nature of the violation. In cases of corruption (such as diverting assets of the CMB for personal use or accepting bribes for taking particular positions), removal is the likely sanction. Where the violation is less serious, such as disrupting proceedings, temporary suspension from proceedings may be appropriate. More serious issues may also be covered by the operation of requirements for membership in the body — for example, if one such requirement were that a member not be convicted of a crime within the previous five years and, during service on the body a person is convicted of a crime, they may face removal under this requirement.

When the CMB adopts its own Code, challenges may arise in applying sanctions. It may be difficult for the CMB to sanction 'one of its own', and the act of sanctioning may be divisive for remaining members, undermining the ability of the CMB to work effectively together. Codes are susceptible to use as weapons by political opponents, even where little or no misconduct has occurred.

Principles of natural justice and the rule of law should apply to any process under which a member of a CMB is sanctioned for failure to adhere to a Code of Conduct or fails to fulfil any other obligations imposed on him or her as a member of the body. At the least, this means that there should be a hearing, the person accused of the breach should hear the allegations and be given an opportunity to speak, and reasons should be given for the decision. Although in certain circumstances a hearing may be behind closed doors, in most cases, to comply with the rule of law and the principle of transparency, it should be open.

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