

Note by the Secretariat
Summary of Comments to the Draft Manual of the United Nations
Human Rights Special Procedures
(as received at 20 May 2007)

I. Introduction

The Manual of Special Procedures was originally adopted at the 6th Annual Meeting of Special Procedures mandate-holders, in 1999. Since that time it has been revised to reflect the changing structure of the United Nations human rights machinery, new developments in relation to mandates, and the evolving working methods of the mandate-holders. It is subject to periodic review and updating by the mandate-holders.

At their 13th Annual Meeting, in June 2006, mandate-holders agreed to invite comments on the draft from Governments, civil society organizations, independent experts and other stakeholders. The deadline for submitting comments was initially established at 31 December and later extended to 10 April and to 18 June 2007. The Coordination Committee agreed to revise the Manual in light of the comments received and further consultations with mandate holders, present a report to the 14th annual meeting.

As of 20 May 2007, contributions have been received from the Governments of Burkina Faso, Cuba and Switzerland and from the NGO Asylum Aid. All comments, including those received after the preparation of the present note are attached as Annex I.

II. Observations on the revised draft manual of the special procedures

1. Terminology

Switzerland considered desirable the harmonization of terms relating to special procedures and proposed to retain only three titles: Special Rapporteur, [Special] Representative of the Secretary-General and Working Group. (It was noted that such harmonization should be undertaken by States). (Paragraph. 6)

The following definitions were proposed by Burkina Faso:

a) The mandate: is the investigation mission entrusted by the United Nations Secretary-General or the Commission on Human Rights to one or more persons to verify and/or remedy the violation or alleged violation of human rights as a whole or in part, or to promote human rights in relation to specific themes or issues.

b) The term mandate-holders: refers to individuals variously denominated as “Special Rapporteur”, “Special Representative of the Secretary-General”, “Representative of the Secretary-General”, “Representative of the Commission on Human Rights” or “Independent Expert” individually or as part of a group. They may be appointed by the Secretary-General, the President of the Commission on Human Rights or the High Commissioner. (Paragraph. 6)

2. Functions of Special Procedures

Cuba sustained that the findings and recommendations of the special procedures must be validated by States through the Human Rights Council. They can not can not act as “early warning” mechanisms or suggest the adoption of “preventive measures”. (Paragraph 5)

Switzerland suggested including in the list of the principal functions of special procedures reference to follow-up, particularly follow-up to recommendations of special procedures by States. (Paragraph 5)

3. Appointment of mandate-holders

Burkina Faso suggested reducing to one year the period to elapse before becoming eligible for appointment to a different thematic mandate after their previous mandate has expired. (Paragraph 10)

4. Invitations and requests for visits

Burkina Faso mentioned the need to indicate which measures could be taken when an invitation is not forthcoming. (Paragraph 57)

Cuba highlighted that States do not have an obligation to receive visits from the special procedures, and that mandate holders need the express consent of the State concerned to carry out country visits. (Paragraph 57)

Cuba stated that standing invitations should not be considered as an element to assess States’ commitment to international human rights cooperation. (Paragraph 59)

5. Country visits

Cuba disagreed with the preparation of a “country-assessment” by OHCHR for mandate-holders prior to country -visits. (Paragraph 62)

Cuba did not recognize the validity of the Annex 3 of the draft Manual: Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights. (Paragraph 69)

Cuba did not support the suggestion that one or more NGOs be requested to provide support for the coordination of activities of country visits. (Paragraph 71)

Cuba stressed that initial organizational meetings between the visiting special procedure mandate holders and the State authorities are vital and should be carried out whenever possible. (Paragraph 72)

Cuba questioned the mandate given to United Nations Country Teams (UNCTs) regarding the organization of press conferences for visiting special procedures as this was not compatible with the recognized functions of United Nations officials in Cuba. (Paragraph 73)

Cuba considered that country-specific recommendations should be formulated exclusively by the mandate holder. (Paragraph 99)

Cuba did not support the submission by special procedures of follow-up reports subsequent to the main report and recommendations submitted to the Council regarding a visit to a particular country. (Paragraph 100)

Cuba rejected the proposal that mandate holders could follow up on the recommendations formulated by a previous mandate holder during their country visits. Cuba disagreed with the possibility for special procedures to recommend in their country –visits reports that other special procedures visit the same country. (Paragraph 101)

Cuba did not recognize the mandate of field representatives of United Nations agencies to implement recommendations resulting from country visits by special procedures, except in cases where this is expressly agreed by the parties concerned. (Paragraph 104)

In the list of collaborative activities proposed for national-level follow-up to country-specific recommendations, paragraph 105, subparagraph (e) refers to “encouraging UNCTs to monitor the situation of individuals and organizations which have cooperated with the mission in order to avoid retaliation and to report on any such problems”. Cuba understands that it would be impossible to allow international officials who have been sent to the country to assist with development operations to take on a law-enforcement role.

6. Communications

Burkina Faso underlined the need to specify in which cases mandate-holders may decide to make urgent appeals public by issuing press releases or public statements. (Paragraph 49)

Cuba did not recognize the power of the special procedures to receive communications and to make value judgments on national legislation. (Paragraph 29)

Cuba rejected the view that communications by thematic mandate holders in relation to a State for which a country rapporteur exists must be prepared in consultation with the latter. (Paragraph 32)

Cuba sustained that, as a general rule, special procedures should always be required to act after exhaustion of domestic remedies. (Paragraph 43)

The NGO Asylum Aid suggested that mandate holders should include more detailed information on each communication in their annual reports.

Summaries of communications and replies from Government are compiled in reports submitted to the Council. In addition mandate holders provide an assessment based on the exchange of correspondence with concerned governments. “The main principle is that of effectiveness, and this will often call for going beyond a straightforward

exchange of correspondence”. Switzerland underlined that this provision should be more precise, with examples provided. (Paragraph 91)

7. Reporting on activities and interaction with Governments

Switzerland sustained that the practice of interactive dialogue should be spelled out and a statement of support should be made for the holding of such dialogue and the positive consequences of the practice in terms of transparency, communication between States and the special procedures and a better understanding of the latter’s work. (Paragraph 86)

The NGO Asylum Aid suggested that mandate holders should include an analysis of major trends in their annual reports.

8. Interaction with other international and regional human rights mechanisms

Cuba does not agree with the suggestion of interaction between treaty bodies and special procedures. (Paragraph 109 and 110)

Cuba rejected any link between the special procedures system and bodies of the Inter-American human rights system. (Paragraph 111)

9. Cooperation with partners

Cuba does not accept that representatives of United Nations agencies, funds and programmes in Cuba have any role in encouraging “the Government to invite and cooperate with mandate holders and to implement the recommendations which result from the visit”. (Paragraph 127)

Cuba opposed any measures to encourage closer cooperation between the special rapporteurs and the various United Nations specialized agencies and other bodies. (Paragraph 128)

10. OHCHR Support

Concerning the support provided to the special procedures by OHCHR, Switzerland highlighted the importance for mandate-holders to have qualified and experienced assistants in the medium and long term. (Paragraph 21)

Cuba sustained that the involvement of the OHCHR Capacity-Building and Field Operations Branch (CBB) to support the work of country special procedures will require the consent of the State in question, particularly for mandates established on the basis of politicized and confrontational activities. (Paragraph 22)

The NGO Asylum Aid suggested the following measures to be implemented by OHCHR: a) OHCHR staff to improve record keeping, particularly to maintain information on sources consistently; b) OHCHR staff to analyse sources and extend outreach particularly targeting women’s NGOs; c) The OHCHR staff to explain the process (and its limitations) more clearly to sources/potential sources alerting them to the Special Rapporteur’s next annual report and the timing of this; d) The OHCHR

staff to keep sources informed of what action they have taken in relation to their case, relay the substance of government responses to sources and obtain their comments to initiate a dialogue with governments; e) OHCHR staff to ensure consistency in annual reports in referring to all communications and all responses by governments; f) OHCHR staff to evaluate the impact of communications and g) to made public “Good news stories”.