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增进和保护人权：人权维护者

人权维护者情况秘书长特别代表希娜·吉拉尼女士提交的报告

增 编

对前南斯拉夫的马其顿共和国的访问 *

* 本访问报告的概要以所有正式语文分发。报告正文载于本概要的附件，
仅以原文分发。

概 要

人权维护者情况秘书长特别代表于 2003 年 1 月 27 日至 30 日访问了前南斯拉夫的马其顿共和国，她在访问期间会见了政府高级官员，并广泛会见了人权维护者以及国际政府间组织和国家的代表。这次访问的目标是评估该国人权维护者的作用和情况。

报告第一节介绍前南斯拉夫的马其顿共和国自 1993 年加入联合国以来的政治和经济背景，以及这个新成立的国家由于所在区域的武装冲突和该国国内的武装冲突而面临的不稳定状况，这些冲突在 2001 年 8 月签订《奥赫里德框架协定》之后已得到解决。特别代表研究了《协定》对人权维护者及其工作的影响。第一节继而介绍了当前的权力下放进程对人权维护者的影响、该国的地区环境的影响、区域组织的作用和具有人权职能的国家机构的存在情况。该节还介绍了该国的某些主要人权关注问题。

第二节研究人权维护者的作用和情况。特别代表介绍了人权维护者的主要工作环境及其处理的问题。第二节 B 小节和 C 小节分析人权维护者的能力，并提出了一些关注问题，涉及人权维护者对国际调查结果的依赖、相对缺乏国内经费来源、某些人权维护者组织的廉正问题、人权维护者活动的协调程度和战略，以及人权维护者的培训需要和人权行动方面的重大差距。最后是第二节 D 小节，其中分析了人权维护者工作所需的扶持环境，除其他外报告了一些关注问题，涉及人权维护者在立法方面可望得到的支助，以及腐败和政治化倾向对人权维护者的严重影响。特别代表还提出了一些关注问题，涉及警察的行为、司法部门的独立性以及人权维护者的安全。此外，该节还研究了国际捐助方与人权维护者的关系，促请捐助方提供更大的支助，以便加强人权维护界的能力。

报告指出了前南斯拉夫的马其顿共和国人权维护者的强大潜力，以及他们在该国未来政治、民主、社会和经济发展中要发挥的关键作用。第二节的最后部分表示担心人权维护界目前不具备克服这些挑战的能力，认为国家、国际社会和人权维护者自己的需要行动起来克服这种状况。报告最后分别向以上各方以及相关的联合国国家工作队提出了建议。

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE
SECRETARY-GENERAL ON THE SITUATION OF HUMAN
RIGHTS DEFENDERS, HINA JILANI, ON HER VISIT TO
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
(27-30 JANUARY 2003)**

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Introduction

1. The present report provides an account of the country visit to the former Yugoslav Republic of Macedonia by the Special Representative of the Secretary-General on the situation of human rights defenders, from 27 to 30 January 2003, pursuant to Commission on Human Rights resolution 2000/61. It presents and analyses information received by the Special Representative from the Government of the former Yugoslav Republic of Macedonia, human rights defenders, including non-governmental organizations (NGOs) and individuals, the international community and other sources. Conducted at the invitation of the Government, the visit's objective was to study and evaluate the implementation in the former Yugoslav Republic of Macedonia of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter the "Declaration on human rights defenders") and specifically to assess the role and situation of human rights defenders in the country.
2. The Special Representative met with the Vice-Prime Minister, Mr. Musa Xhaferi, the Ministers of Justice and Education, the President of Parliament, Mr. Nikola Popovski, as well as with numerous other officials, including parliamentarians, the President of the Constitutional Court, the Office of the Ombudsman and representatives of the police. She also met with a wide range of representatives of NGOs and individual human rights defenders, as well as representatives of the international community. Press conferences were held on the first and final days of the visit.
3. The Special Representative expresses her gratitude to the Government of the former Yugoslav Republic of Macedonia for its invitation to her, for facilitating the preparation of the visit and for its cooperation throughout the visit. She extends her gratitude to all those with whom she met, from governmental, non-governmental and intergovernmental spheres, and expresses her particular appreciation for the invaluable support provided to her by the Resident Representative of the United Nations system in the former Yugoslav Republic of Macedonia and his staff.
4. A list of persons and organizations with whom the Special Representative met within the governmental and intergovernmental spheres is attached as appendix I* to the present report.

I. THE CONTEXT OF THE WORK OF HUMAN RIGHTS DEFENDERS

5. The former Yugoslav Republic of Macedonia has experienced profound political changes in the last 12 years, and the current situation and role of human rights defenders must be assessed in the light of political, economic and social factors, as well as the prevailing human rights situation.

* Available for consultation in the files of the secretariat.

A. Political and economic background

6. The former Yugoslav Republic of Macedonia proclaimed independence from the former Socialist Federative Republic of Yugoslavia (hereafter “ex-Yugoslavia”) in September 1991, following the outbreak of war in two other former Yugoslav republics. The new State was accepted as a Member of the United Nations in 1993 under the temporary reference of “former Yugoslav Republic of Macedonia”. Armed conflicts and instability in neighbouring States affected the country’s early years, and the 1999 conflict in neighbouring Kosovo was marked by the movement of several hundred thousand people leaving Kosovo to seek refuge in the former Yugoslav Republic of Macedonia.

7. Regional instability contributed to the emergence of internal armed conflict in the former Yugoslav Republic of Macedonia in the spring of 2001 with government forces combating ethnic Albanian opposition groups. The conflict ended with the signing of the Framework Agreement in Ohrid in August 2001 (hereafter “Ohrid Agreement”). The Agreement was brokered by the international community, which also assisted in post-conflict verification and disarmament.

8. Since independence a succession of general elections have brought orderly changes of administration. The current Government, appointed in November 2002 following elections in September of the same year to a four-year term, is a multi-ethnic coalition led by the Social Democratic Union of Macedonia and the ethnic Albanian party of the Democratic Union for Integration.

9. Political instability and armed conflict between the immediate neighbours and trading partners of the former Yugoslav Republic of Macedonia limited economic growth and development within the country. Even with peace now restored inside and outside the country’s borders, the country’s economy continues to face major challenges, including a decline in heavy industry and production, loss of markets for agricultural produce, limitations in transport infrastructure and limited investment in capital-intensive industries. The economic context is influencing the role and situation of human rights defenders in several ways - for example, employment and labour rights are increasing human rights concerns, while the poor economic situation also limits the capacity of defenders to obtain funding for their work from domestic sources, to name but two factors.

B. Beyond the Ohrid Agreement ?

10. The most recent elections were reported to have been well organized and in accordance with international standards. Although the visit of the Special Representative to the former Yugoslav Republic of Macedonia came just three months after the formation of the new Government, human rights defenders generally gave positive indications of their expectations of the Government’s potential for supporting defenders during its term in office. At the same time, the Ohrid Agreement has provided a political context for resolving the problems that prompted armed conflict and seeks to improve inter-ethnic relations, notably by assuring equal opportunity and non-discrimination for all nationals of the former Yugoslav Republic of Macedonia, regardless of their ethnicity.

11. The Special Representative asked those with whom she met about how the Agreement might support or otherwise affect human rights defenders and their role. Defenders and others responded that while the Ohrid Agreement provided a new point of departure it had not automatically changed past practices of institutions and individuals, which continued to remain in place and to obstruct human rights work. Defenders reported that corruption, for example, considered to be endemic under previous Governments, was still a major obstacle, preventing defenders from conducting their work effectively because of its reported effect on the functioning of State institutions.

12. Defenders were positive about the Agreement's general objectives, but expressed concern that while it did address important human rights issues it did so without sufficient reference to international human rights standards, thereby weakening its direct relevance to defenders. Numerous interlocutors reported a degree of public dissatisfaction with some of the Agreement's provisions and that, as a result, human rights organizations had preferred not to present their activities as complementing or contributing to the implementation of the Agreement, even where this was the case. Defenders indicated to the Special Representative that it was more useful for them to present their human rights work as supporting the aspirations of the former Yugoslav Republic of Macedonia for future membership of the European Union.

13. Nevertheless, the Special Representative considers that the Ohrid Agreement has provided positive momentum for the establishment and strengthening of democratic institutions and processes essential to human rights defenders, and facilitated the resolution of the internal armed conflict. The implementation of the Agreement has reportedly contributed to calming the political and social unrest, and all of the constitutional and legislative changes required by the Agreement have reportedly been implemented so far with, for example, the process of decentralization now under way.

C. Decentralization

14. Since independence in 1991, successive Governments increased the powers of the central government, notably with regard to social policy, finance and taxation. Defenders reported to the Special Representative that the trend of centralization had an extremely negative impact on ethnic minority communities and was reflected in a decline in the delivery of health, education and public services, especially in areas with a concentrated population of minorities, such as the Roma. Implementation of the Ohrid Agreement has sponsored a process of decentralization from central to local authorities with the intention of addressing these concerns, notably by improving the quality of local government and its representation of local interests, including the interests of ethnic populations concentrated in local areas.

15. However, defenders remain concerned that local authorities may not, in the future, receive sufficient resources from the central government to effectively fulfil their human rights responsibilities and that the delegation of greater independence to local authorities, including mayors and the police, may lead to increased human rights abuses at the local level. The Special Representative notes, in this context, that the bulk of the human rights defenders community in the former Yugoslav Republic of Macedonia is based in the capital Skopje and is not well placed to monitor human rights at the local level.

D. The regional and international perspective

16. The role and situation of human rights defenders in the former Yugoslav Republic of Macedonia is heavily influenced by the regional situation of the country and by the active presence of regional actors. The regional context is also important for defenders in terms of the applicable human rights standards, the proximity and availability of European human rights institutions and the political aims of the Government. The former Yugoslav Republic of Macedonia has ratified, for example, the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities.

17. With the backdrop of possible future membership of the European Union itself influencing the internal political process, the attention of the Special Representative was also drawn to the strong support being provided by the European Commission and the Organization for Security and Cooperation in Europe (OSCE) to the process of political transformation. Armed conflict in the region, refugee movements caused by those conflicts and the heavy international civilian and military presence in the region and in the former Yugoslav Republic of Macedonia during the internal conflict - represented by the United Nations, the North Atlantic Treaty Organization, OSCE, the European Union and the Council of Europe - have all had an impact on the situation of human rights defenders. The Special Representative recalls the reticence of a representative of the Ministry of Foreign Affairs with regard to the numerous international interventions, reports and recommendations, suggesting that there are limits to the extent to which the regional and international input can be usefully absorbed.

E. Trends in the overall human rights situation

18. An effective assessment of the role and situation of human rights defenders requires recognition of the most common human rights problems confronting them.

19. Defenders indicated to the Special Representative that discrimination on the basis of ethnicity was a fundamental characteristic of many human rights violations within the former Yugoslav Republic of Macedonia. Indeed, victims often suffer multiple violations with discrimination as the initial violation and the results of discrimination leading to secondary concerns. The population of the former Yugoslav Republic of Macedonia includes ethnic Macedonians, Albanians, Turks, Vlachs, Serbs, Roma and Bosniacs. Ethnic Macedonians are a numerical majority within the former Yugoslav Republic of Macedonia, with ethnic Albanians constituting the largest minority. Defenders emphasized that while ethnic discrimination was often the most visible aspect of a violation the causes of violations were also frequently more complex than ethnicity itself.

20. Following the conclusion of the Ohrid Agreement, numerous efforts have been made to address ethnic divisions including, for example, recruitment efforts by the State Agency for Civil Servants to ensure an ethnically diverse civil service (the State has adopted a body of recruitment principles accordingly). While in the past such efforts had focused on a quota system, the emphasis today is on equitable and just representation as well as on the professionalism and competence of candidates. However, to cite one example of the challenges lying ahead, access to the academic qualifications required for employment in State entities is extremely limited for some ethnic minorities.

21. Trafficking in women and children, equality before the law, the right to due process, the independence of the judiciary and the right to citizenship for long-term residents were all raised as other human rights concerns. Abuses by the police during arrests and in places of detention, involving torture at times, were repeatedly raised as a concern by a wide range of interlocutors, with particular criticism of a special forces group (the Lions) , a primarily mono-ethnic police unit which the Government reportedly disbanded after the visit of the Special Representative.

22. Poverty, declining standards of health, access to quality health care, social security, adequate housing, the situation of children of families living in poverty and employment are among the major concerns regarding economic and social rights. Limited access to quality education, including education in the mother tongue, was repeatedly described as an obstacle holding back generations of children and leading to successive human rights problems. The access of children from minority groups, such as the Roma, to quality and long-term education is particularly limited. The importance of access to quality education was recognized by government officials meeting with the Special Representative as a means of strengthening future opportunities for all population groups within the country to be able to participate and contribute, thereby fostering greater social cohesion. The new Government indicated that it was establishing a special division within the Ministry of Education to address the situation of those persons who were particularly excluded from education, including Roma, Turkish and Vlach minorities. The Government has also indicated its intention to give greater weight to human rights within the school curriculum.

F. Institutions with a human rights role

23. National human rights institutions can provide essential support to human rights defenders by raising concerns within the Government and Parliament and by securing long-term solutions, such as through legislative change. The Special Representative notes the important human rights responsibilities of the Constitutional Court, the State Electoral Commission and, most importantly, the Parliament - notably through its Parliamentary Human Rights Committee, which has existed for a number of years, but has only recently been more closely involved with examining concrete cases of violations. Some frustration was expressed by defenders at what they consider to be the limited action taken by the aforesaid Committee.

24. At the time of its creation in 1997, the institution of Ombudsman was not well known, received only a limited number of cases and was not perceived by defenders as an effective mechanism for responding to human rights concerns. According to the information provided to the Special Representative, in 2002 the Office of Ombudsman was confronted by reluctance on the part of different institutions to respond effectively to issues it raised with them. For example, the police were reportedly reluctant in the past to recognize the legal authority of the staff of the Office of Ombudsman to visit places of detention and the courts were reportedly not obliged to respond to the Ombudsman's requests. Defenders also expressed concern to the Special Representative with regard to the effective capacity of the Office's work on issues of children's rights.

25. This situation has gradually changed and the Office was assigned an important role through several specific recommendations in the Ohrid Agreement. Also, according to information provided to the Special Representative during her visit, the powers of the Office were to be strengthened by new legislation providing it with authority to inspect institutions

without prior permission, to seek and receive information from government bodies and to make binding recommendations. The Special Representative considers that the Office of Ombudsman requires consistent political support and needs to be more forceful in the application of its mandate vis-à-vis the authorities and more involved in the wider context of human rights defenders in the former Yugoslav Republic of Macedonia. In the view of the Special Representative, the Office also needs greater support from the international community.

II. THE ROLE AND SITUATION OF HUMAN RIGHTS DEFENDERS

A. Who are human rights defenders and what do they do ?

26. The majority of human rights defenders are active as a part of civil society, notably within non-governmental organizations (NGOs) whose numbers increased many times over in the period following independence from ex-Yugoslavia. Human rights defenders include human rights organizations and individual lawyers taking up human rights cases, teachers of human rights education programmes, leaders of workers' unions addressing labour rights concerns, academics and leaders of community development organizations, notably among the Roma. A number of journalists also serve as human rights defenders reporting, for example, on human rights abuses, the democratization process and corruption. A particularly positive development with regard to defender organizations has been the recent growth in the number and activities of Roma NGOs. These organizations provide such services as free legal advice and humanitarian assistance, and focus on women's rights and access to education for Roma children.

27. Defenders in the former Yugoslav Republic of Macedonia are active in addressing such issues as democratization ; development ; citizen participation ; organization and monitoring of elections ; human rights education and training ; investigation of allegations of torture and beatings, illegal arrest and detention ; monitoring and investigation of corruption ; identifying and addressing discrimination and its causes ; improving access to education ; increasing literacy, support to minority languages and culture ; trafficking in women and children ; violence against women ; promoting the rights of women, children and minorities ; disarmament, demining and demobilization ; corruption of public officials ; labour rights and employment ; and access to public services.

Women human rights defenders

28. Domestic violence and the low representation of women at the management and political levels have been two negative indicators of the situation of women's rights in general in the former Yugoslav Republic of Macedonia. Women defenders are numerous and especially active at the community level. Information received by the Special Representative indicates that most women defenders do not undertake protection activities but focus instead on activities such as awareness-raising, education and lobbying. The Special Representative notes that the inclusion in the new election law of a requirement that at least 30 per cent of the candidates presented by each political party be women is an important achievement made possible by the lobbying of women's rights groups. A number of women defenders have also focused on combating the practice whereby the use of all the voting rights held by members of a family, including those of women, are determined by one man in the family. The Special Representative regrets that,

according to information received by her, the ethnic divide within some human rights defender organizations is also present within women's rights NGOs.

A regional and international human rights defenders focus

29. Many NGOs have links with regional defender networks in south-east Europe and broader European networks, conducting shared research, human rights education, human rights campaigning programmes and other activities. Some have been granted a status with the Economic and Social Council. A small number of human rights defenders file cases with the European Court of Human Rights and refer to the Court's decisions at the domestic level, where such decisions have had a particular impact in cases involving compensation by the Government. One of these cases involved a complaint about the slowness of judicial proceedings, by the wife of a man who died while awaiting for seven years settlement of his case involving labour law. While the majority of defenders have an exclusively domestic focus, those that do have a strong international orientation indicated that this was in part because they felt unable to secure improvement at the domestic level alone, and their frustration at the limited change in the situation of human rights in the country encourages them to look abroad.

30. The presence of regional organizations, such as the European Commission, the Council of Europe and OSCE, within the former Yugoslav Republic of Macedonia has provided defenders with useful partners. The high visibility and willingness of OSCE to consider human rights concerns in the country are one reason why this organization has, according to defenders, been positively perceived by them as a source of support in addressing specific instances of human rights abuse. The Office of the United Nations High Commissioner for Human Rights (OHCHR) , which in the past has had a protection and monitoring mandate, now maintains a technical cooperation programme based in Skopje focusing on capacity-building targeting civil society, government officials and the police.

B. Capacity of human rights defenders and implications for the future

31. Defenders indicated to the Special Representative that in the early 1990s, with the rapid establishment of a large number of organizations, there was little awareness of what civil society should be doing. While defenders report considerable progress over the intervening years, an analysis of the current capacity of defenders in terms of their coordination, funding, integrity, training and overall sustainability suggests that the human rights community in the former Yugoslav Republic of Macedonia is still an emergent one.

1. Funding of the activities of human rights defenders

32. The almost complete dependence of defenders on international donors for funding is a major concern in terms of the long-term sustainability of their work.

33. It is possible that international funding to defenders in the former Yugoslav Republic of Macedonia will be gradually reduced over the coming years and few defenders have any alternative source of funding. While this appears as a significant challenge, the Special Representative nevertheless considers that it also represents a potential opportunity for defenders to create a funding base from within their country. Defenders reported that current financial contributions from the public were negligible and reflected a lack of public interest in human

rights, the difficult economic situation, the absence of a tradition within the former Yugoslav Republic of Macedonia of giving money to civil society groups defending human rights and a lack of recognition of the contribution made by these groups. Defenders also reported that disinformation on human rights issues by past Governments had weakened public confidence in human rights defenders.

34. The Special Representative considers that finding alternative funding sources requires that defenders be far more effective in communicating with the public and informing people of human rights concerns and of what they are doing to address them. Civil society bears a responsibility for ensuring the sustainability of its own work. In addition, public participation is both the motor and basis for the accountability of the Government and State authorities and it is important that defenders take their human rights concerns to the general population, through reports and other forms of dissemination.

35. Numerous defenders indicated to the Special Representative their concern that NGOs did not have tax-exempt status. Defenders reported that in some instances an NGO conducting human rights work was taxed on money granted to it by a foreign donor and was taxed again on the same funds spent on implementing its human rights activities. The double layer of tax is a strong disincentive to donors who consider giving financial support to human rights organizations. The Special Representative was told by members of the Government that an initiative to address this issue must come from the Ministry of Finance, but that the granting of a tax exemption to NGOs may clash with the Government's agreement with the International Monetary Fund.

2. Concerns about the integrity of civil society

36. Some officials of the State authorities, some donors and a few defenders indicated to the Special Representative that there were some defender organizations that lacked professionalism in their approach to developing human rights strategies and projects, and others who focused their efforts primarily on raising funds. Some donors expressed to the Special Representative their concern that on occasions when they financed a human rights training workshop some of the staff from local human rights organizations, participating as trainees, insisted on being paid to participate. Donors argue that it should be sufficient for the donor to fund the training, and that participant trainees should contribute their time free of charge. Their reluctance to do so is perceived as an indication of a lack of integrity on the part of this small group of defenders.

37. Additional concerns were raised by defenders who complained about the competition and degree of animosity between some human rights organizations. Other defenders expressed concern that some organizations were only interested in human rights improvements favourable to one ethnic group, even if this was to the detriment of the rights of other groups. The Special Representative notes that genuine human rights defenders cannot support the rights of some persons while refuting the rights of others, a practice that is incompatible with the Declaration on human rights defenders.

3. Coordination and strategies

38. There are reportedly very few defenders operating outside human rights organizations. For example, defenders indicate that there are only a small number of lawyers who serve as

independent human rights defenders. The reasons for this are varied but appear to include limited access to human rights education, a greater ease of gaining access to funding and accounting for such funding from within an organizational structure, as well as a heightened sense of security and protection gained from being a member of an organization.

39. The Special Representative notes, positively, that from 2001 a number of NGOs began to form ad hoc coalitions to address human rights issues of common interest, such as corruption. She is nevertheless concerned at the very limited extent to which human rights defenders within the former Yugoslav Republic of Macedonia create formal networks between themselves and coordinate their activities, as evidenced by her discussions with individual defenders and with a representative group that gathered to meet her in Skopje during her visit. The absence of such networking and coordination leads to excessive duplication and gaps in the human rights work conducted, and organizations working individually will not be as effective in bringing about long-term improvements in the human rights situation.

4. Training of defenders and human rights education

40. The Special Representative notes, very positively, the training programme for human rights defenders conducted by international organizations, including, inter alia, OHCHR, OSCE, the Council of Europe, for persons from governmental and non-governmental sectors over the course of the last two to three years, as well as human rights training for recruits to the police force.

41. The Special Representative notes the considerable expertise and professionalism of defenders working with some organizations. However, in spite of the existence of a core group of experienced defenders and the training efforts referred to above, the discussions of the Special Representative with defenders, authorities and regional organizations have led her to conclude that a majority of defenders require a greater degree of knowledge of international human rights standards, methodological skills and expertise in developing and implementing human rights strategies. The Ministry of the Interior, for example, indicated to the Special Representative that there was a lack of professionalism among lawyers working with detainees and that they also needed human rights training, and not only the police.

C. Gaps in the work of human rights defenders

42. While the range of human rights concerns addressed by defenders in the former Yugoslav Republic of Macedonia has expanded significantly over the last decade, there remain stark gaps in terms of what and how human rights work is being accomplished, gaps which, in the view of the Special Representative, reflect fundamental weaknesses in the human rights defenders community that need to be addressed. The Special Representative was informed that while there were a considerable number of organizations addressing issues that supported human rights, there were relatively few that made use of a human rights discourse and methodology, such as seeking redress for violations before courts of law.

43. Very few organizations, for example, undertake “protection” activities with the large majority of organizations reportedly focusing on human rights promotion and awareness-raising. A small group of organizations raises protection concerns internationally at the European Court of Human Rights or before the United Nations Human Rights Committee and the Committee

against Torture. The Special Representative was also informed of a relative absence of systematic monitoring of and reporting on the human rights situation in the former Yugoslav Republic of Macedonia by local human rights organizations. The Special Representative considers it particularly important that human rights defenders with relevant expertise undertake protection, monitoring and regular reporting activities. Without these essential components of human rights work, other capacity-building and related activities are weakened.

44. Ethnic discrimination poses major challenges for human rights defenders in the former Yugoslav Republic of Macedonia in terms of the breadth of human rights problems they should be addressing, the categories of persons in need of protection from violations, dealing with perpetrators and putting an end to impunity. Given the prominence of ethnicity as a factor in the overall human rights situation, the Special Representative regrets that, according to the information provided to her, many defender organizations are established along ethnic, political or geographical lines, and only address human rights concerns that are specific to one ethnic group or which are also of concern to a particular political or regional group. While there can be good reasons for an NGO to focus on one set of rights or one particular group of the population, in the context of the former Yugoslav Republic of Macedonia, the Special Representative is concerned that these sorts of divisions sometimes perpetuate the human rights problems they are seeking to address.

45. For example, members of the Vlach ethnic minority indicated to the Special Representative that discrimination affecting the access of Vlach children to education in their own language and to other economic, social and cultural rights was largely unaddressed by human rights defender activities. Some defenders also expressed concern at the extent to which many defender organizations only focused on violations committed against persons from their own ethnic group.

46. Similarly, the Special Representative received reports about the politicization of human rights activity which has a damaging impact on the human rights work conducted. Reports indicate that some human rights organizations systematically take positions close to those taken by political parties they support and that some organizations present broad proclamations as human rights objectives while they are in fact political manifestos.

47. Lastly, some defenders expressed concern that the human rights community was largely concentrated in Skopje, with a reduced presence in smaller cities and almost no presence in many local communities. There is concern that human rights issues in these communities may not be sufficiently addressed, particularly in the current context of Government decentralization.

D. An enabling environment ?

48. A determining factor in the role and situation of human rights defenders is the extent to which the environment in which they work is an enabling one, including the legislative context, perceptions of human rights defenders, the opportunities to present concerns to State authorities and the subsequent responsiveness of those authorities, and the personal security of defenders themselves.

1. The legislative context

49. The existence of legislation giving life to the rights defined in the Declaration on human rights defenders is a fundamental basis for the work of defenders. Following independence, the former Yugoslav Republic of Macedonia began a process of developing new legislation, including on the founding of political parties, trade unions and NGOs. In 1994, the former Yugoslav Republic of Macedonia acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. The ratification process is currently under way in Parliament for the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography, as well as the Optional Protocol to the Convention on the Elimination of All forms of Discrimination against Women. Efforts are ongoing to reform the criminal justice law and the law on criminal procedure and to adopt legislation with regard to juvenile justice, in accordance with international standards. Regulations on trafficking, among others, have also been adopted. However, in many areas of relevance to human rights defenders the process of adopting new legislation has been slow and remains incomplete. For example, there is no law on access to information.

50. Based on her meetings with State authorities, human rights defenders and others, the Special Representative notes two broad areas requiring review or adoption of legislation, the first of which is legislation that affects the functioning of human rights defenders. In this regard, according to information received by the Special Representative, in the months following her visit, the Parliament proceeded with the adoption of a law strengthening the Office of Ombudsman and a law refining the framework for the establishment, registration, financial status and other requirements of NGOs. Secondly, based on the information provided to her, the Special Representative considers that legislative action is required in several areas that are key to supporting defenders in their efforts to address existing human rights problems. Laws and administrative rules governing the work of the police and the secret services need to be revised and should include establishment of procedures for the prosecution of members of the police guilty of committing human rights abuses. Similarly, legislative action is needed to ensure the financial independence of the judiciary, including by providing a budget that is protected from inappropriate government control. Finally, the Special Representative joins defenders in urging that the anti-corruption law needs to be strengthened further.

51. The Special Representative notes that while civil society has been involved in the drafting of legislation of direct relevance to defenders and to human rights this involvement appears to have been largely ad hoc and at the discretion of the authorities concerned. In some instances, efforts by human rights organizations to provide input into the drafting of legislation have reportedly been ignored, as with reform of the code of criminal procedure.

2. Freedom of expression, access to information and freedom of assembly

52. A particular legislative concern affecting human rights defenders, and one which has translated clearly into practical obstruction of the work of defenders, is the absence of a law on

the right to access to information. While initiatives are ongoing to draft an instrument, according to information provided to the Special Representative, it remains extremely difficult for defenders to gain access to information that should be freely available. The prime tool used by defenders to collect the information needed for their work is that of personal contacts with officials, police officers and others. The Special Representative considers that obstacles preventing defenders' access to information, including for example the limited access of lawyers to detainees, are due to numerous factors, and a law on access to information will not immediately address all of these. However, such legislation would at least provide defenders with a stronger legal basis on which to formulate their requests for access to information.

53. Since independence from ex-Yugoslavia, respect for freedom of expression in the former Yugoslav Republic of Macedonia is perceived generally as very good. The press, in particular, is able to publish criticism, including with regard to human rights abuses. However, according to defenders, the publication of reports by defenders or in the press has not prompted a significant response to the human rights concerns raised. Defenders argue that a lack of public interest in human rights concerns and only very limited judicial action against abuses are such that it is primarily party political allegiances that determine the protection or punishment of those guilty of violations. The lack of accountability to the public for acts, even where these are widely publicized in the media, is a strong indicator both of the limits on the work of human rights defenders and the absence of effective institutions or mechanisms for ensuring the accountability of State authorities and for ending impunity.

54. There is general freedom of assembly, in terms of the possibility to form associations and to conduct public protests. However, in practice exercise of these rights is obstructed to some degree. Establishment of associations or organizations is severely hampered by the lack of sustainable funding.

3. Corruption and politicization

55. The problem of corruption is closely linked to that of politicization and both have a direct and powerful negative impact on the environment in which human rights defenders work. They interfere with the application of the rule of law and weaken the checks and balances that should serve to protect human rights standards applied by defenders, and which should serve to protect defenders themselves. According to the information available to the Special Representative, corruption emerged as a major problem following independence and, with the tacit agreement and participation of senior government officials and absence of adequate controls, gradually became systemic.

56. Those mechanisms that could contribute to the monitoring of corruption were staffed by persons who themselves had been caught up in the politicization context. Party political patronage filled the gap left by a weak State. Subsequent efforts to address corruption were reportedly stalled for several years - for example, the law on anti-corruption was before Parliament for seven years. Access to jobs, housing and schools is reportedly affected by party political affiliations, which in the past partially filled the gap left by weak State institutions and services.

57. The Special Representative notes that, ironically, the high level of politicization and corruption appears to be a main reason why many people left the civil service and joined civil society, leading in turn to the growth and strengthening of the latter. The current Government came to power citing corruption as one of its prime concerns and has created an independent body, the National Commission against Corruption, to address it. In January 2003, the Government ordered all government officials to declare their assets to the Commission and indicated that any official who did not do so would be removed from office. Civil society has now also formed its own coalition of organizations to address corruption. Anti-corruption legislation has been drafted and amendments continue to be made toward its eventual adoption. The understanding of the term “corruption” has been developed to include conflicts of interest, transparency and access to information issues, as well as financial matters.

4. The police

58. In the context of an “enabling environment” the role of the police was described to the Special Representative by many defenders as, at times, severely limiting defenders’ capacity to address human rights concerns effectively. The Special Representative received information indicating that a heavy police presence has been used to intimidate witnesses, lawyers, judges and others involved in the judicial process with the intention of preventing them from taking action on human rights violations. In one instance, a State prosecutor was reportedly intimidated into withholding information from a judge that a detainee had been tortured. Defenders reported difficulties in gaining access to alleged victims of violations held in detention. A reportedly common practice of not registering detainees poses significant problems for human rights lawyers seeking to find a client who has been arrested. Where a detainee is tortured and then released the lack of any record of detention makes it difficult for defenders subsequently to prove police responsibility.

59. Police officers have been accused of committing abuses that defenders take up. Defenders say that they have particular concern regarding the conduct of police outside of Skopje. Allegations of torture by the police were made in two reports by Amnesty International published in January and June 2003, and similar allegations were reported by defenders to the Special Representative during her visit. The absence of a transparent complaint procedure encourages impunity. Information received by the Special Representative suggests that the police force is extremely politicized and that, for example, the allegiance of individual police officers to political parties competes with respect for the rules of police conduct of the Ministry of the Interior. The ethnic and gender composition of the police force reflects a country with the majority of its population being ethnic Macedonians and male. Figures provided by the Ministry of the Interior indicate that ethnic Albanians account for 6.5 per cent of the police force, itself an improvement on past years.

60. The Ministry of the Interior reports numerous efforts at improvement, including more ethnically diverse recruitment, the strengthening of human rights training for recruits, the establishment of a department to investigate and address complaints against the police and the publication of a report detailing the Ministry’s response to complaints. A memorandum of understanding was reportedly signed between lawyers and the Ministry of the Interior defining the access that defenders should have to detainees, although defenders indicated to the Special Representative that few police officers appeared to be aware of its existence.

5. Perceptions of defenders

61. Perceptions of human rights defenders are a useful indicator of the support that is extended to these human rights actors in their daily work. According to information received by the Special Representative, up until 2002 government officials and State-influenced media outlets frequently described human rights defender organizations as a sort of “fifth column” working against the Government and the State, a description which gave rise to negative perceptions of defenders among the public and impacted negatively on their work.

62. The large majority of actors with whom the Special Representative met during her visit considered that the new Government was more open than its predecessors to a partnership with an independent community of human rights defenders and that the relationship was much better. The appointment of a widely respected defender from the NGO community as chairperson of the Government’s anti-corruption body is an indicator of this positive trend. The Special Representative notes that some defenders equate the improved relationship with improvement in the professionalism and efficiency of human rights defenders themselves. Some human rights organizations have made a concerted effort in the last four to five years to encourage and support the media in taking a different approach to human rights defenders. These efforts have included attempts to provide the general public with information on human rights concerns, including through the use of press releases.

63. However, the Special Representative notes with regret the apparent reluctance within the Government to improve the legal and fiscal situation of NGOs and that, with few exceptions, the Government is not actively soliciting NGO contributions on human rights concerns. The Special Representative hopes that the early signs of openness on the part of the Government will in fact translate into systematic, positive collaboration. She considers, also, that civil society groups in the former Yugoslav Republic of Macedonia that are concerned with human rights need urgently to strengthen their basis of support among the general public.

6. Independence of the judiciary

64. Human rights defenders and members of the international community indicated to the Special Representative that the judiciary was facing a significant backlog of cases and that justice was slow. A large majority of cases are reportedly decided on the basis of a deal in which the applicable law is only one of several criteria considered. Defenders also reported that plaintiffs were reluctant to take human rights cases to court as they believed they would lose unless they had the support of a political party. The Special Representative was also informed that there were occasionally instances of corruption within sectors of the judiciary. She was very concerned to learn that judges sometimes faced severe pressures, including political pressure and blackmail, to decide a case in favour of one party rather than the other. In one instance, politically powerful individuals implicated in a case brought before a judge reportedly made it clear to him that his child would not be admitted to the best local State school unless he followed a course of action with regard to the case that they had identified. Defenders report to the Special Representative that it is difficult to find lawyers who will take human rights cases to national courts, for fear of being blacklisted by some judges, after which they would reportedly have difficulty winning future cases before these judges. More generally, information received by the Special Representative suggests that the institution of the judiciary is vulnerable, like

almost all sectors of society in the former Yugoslav Republic of Macedonia, to politicization instituted by political parties in the past. Numerous defenders also expressed concern that there was sometimes bias on the basis of ethnicity within the judicial process.

65. An independent judiciary open to human rights concerns and protective of the right to defend human rights is a determining factor in ensuring an enabling environment for defenders. The Special Representative is concerned that the circumstances described above suggest serious weaknesses in the independence of the judicial process and that without full independence justice cannot be an effective ally and actor in the defence of human rights.

7. International donors and human rights defenders

66. The role of the international community of donor organizations and mechanisms that contribute financially to the work of human rights defenders in the former Yugoslav Republic of Macedonia is an issue that was repeatedly raised with the Special Representative by both donors themselves and defenders. Although this issue has been examined in the context of the enabling environment in which defenders operate, the Special Representative notes that her concerns in this regard mirror many of her concerns about the situation of human rights defenders as a whole, including with regard to their priorities, strategies, sustainability, efficiency, integrity and independence.

67. The funding of the work carried out by non-governmental human rights defenders in the former Yugoslav Republic of Macedonia is almost entirely from international sources, including from other States, from intergovernmental agencies and from international non-governmental sources. Defenders themselves agree that, without this international assistance, the level of work carried out by human rights defenders would drop drastically and, indeed, would never have attained anywhere approaching its current levels. However, the Special Representative was repeatedly confronted by comments from defenders that the donor community exercised too great an influence on the activities conducted by the defender organizations to which they provided funds.

68. Some defenders argued that international donors only showed interest in funding human rights activities very late, from 2000 onwards, and that donors were the driving force behind the establishment of large NGOs, irrespective of any coherent overall strategy geared to the needs of the former Yugoslav Republic of Macedonia. Defenders indicated to the Special Representative that the priority of major donors, in their dealings with the human rights community, has been to support “democracy” in its limited sense of elections and that funding has been granted accordingly. There has, until very recently, been much less apparent interest in funding human rights activities that go beyond this priority, or even those which would fall within the wider concept of democracy, such as transparency with regard to State activities. Defenders also complained that donors did not always give due consideration to the priorities set by the defenders themselves who, as right-holders in their own country, were best placed to determine such priorities. One NGO reported that its efforts in 2000 to seek funding to address corruption received little response from donors until it had reviewed its priorities to include a focus on the rule of law, after which it was able to obtain funding. In sharp contrast, some donors indicated to the Special Representative that they were concerned that many human rights organizations had no priorities at all, that their prime objective was to secure funding and that they would therefore adopt any priorities that they felt were of interest to donors.

69. Defenders indicated to the Special Representative their frustration that international donors were rarely willing to fund programmes designed to build the capacity of the defender organizations themselves, with donors preferring to fund projects. For their part, some donors indicated that they had no confidence in a number of defender organizations and were, therefore, reluctant to provide funding for capacity-building programmes. The Special Representative regrets that reluctance on the part of donors to fund the core costs of a defender organization suggests a lack of interest in or commitment to the organization itself and its long-term objectives. If donors are reluctant to finance core costs because of a lack of confidence in the organization itself then, arguably, the donor should for this very reason consider capacity-building support or choosing not to support the organization.

70. The Special Representative is aware that donors themselves are often under a constraint as to how their funding can be used and that by the time funds reach the former Yugoslav Republic of Macedonia they may have already been earmarked for a specific category of activity, and the international donor's only remaining leeway is to decide which local human rights organization is to receive the funding and conduct the pre-determined activity. While recognizing the constraints upon donors, the Special Representative suggests that if a genuinely, independent, effective and sustainable human rights defenders community is ever to develop in the former Yugoslav Republic of Macedonia then funding must be provided to empower defenders to select their own priorities based on accurate research on the human rights situation and pragmatic strategies to address these problems. She urges that the initiative for change should come from international donors and that their representatives in Skopje should make clear to the original sources of their funding the actual needs in the former Yugoslav Republic of Macedonia.

71. The Special Representative recognizes that international donors have played, and continue to fulfil, a vital role through their support of human rights defenders in the former Yugoslav Republic of Macedonia. The continuing weaknesses in the defender community require some major changes to the way that defenders function. The ultimate responsibility for this lies with defenders themselves ; however international donors can be supportive of these changes by taking a longer-term perspective of the future capacity needs of the human rights defender community, and by helping defenders to take actions that would lead them in this direction.

8. The security of human rights defenders

72. Human rights defenders in the former Yugoslav Republic of Macedonia face security concerns most commonly linked to the types of issues being addressed by the defenders in question, including corruption, combating organized crime (such as the smuggling of tobacco) , respect for civil and political rights in areas formerly affected by conflict, trafficking in persons and the collection of weapons. The monitoring of certain civil and political rights and efforts to provide protection from violations or following violations are also activities that have been considered particularly risky for defenders to undertake. According to information available to the Special Representative, there have also been a number of attacks on defenders because of their ethnicity and/or because they were perceived as advocating in favour of the human rights of a particular ethnic group, although many of these attacks are apparently not reported.

73. The vulnerability of defenders to personal security risks can also be viewed from a geographical perspective. According to information provided to the Special Representative, defenders face greater risks in the provinces than in Skopje. It is partly for this reason that defenders working outside Skopje are reported to focus more on activities related to the promotion of human rights than on monitoring and protection.

74. The security problems actually faced by defenders include attacks, death threats and defamation in statements made by public officials or in the media. Mr. Zoran Bozinovski, a journalist from Kumanovo, was reportedly attacked twice in 2002 for investigating cases of corruption. The assailant was arrested and tried, but a custodial sentence was reportedly not enforced. While this may be an isolated case, defenders indicated to the Special Representative that journalists were frequently too scared to report on corruption cases. Impunity for acts committed against defenders is seen as one factor in their continuing vulnerability.

III. CONCLUSIONS AND RECOMMENDATIONS

75. The Special Representative notes that the former Yugoslav Republic of Macedonia continue to go through a process of significant political and social transformation, creating opportunities for improvement in the situation of human rights, but also raising new challenges. Respect for human rights standards is fundamental to the success of this transformation, and human rights defenders will play an essential role in this regard.

76. The Special Representative was encouraged by the oral commitments made to her by members of the Government, and by legislative, institutional and other measures to address long-standing human rights problems. However, many of these measures had been only partially implemented at the time of the visit of the Special Representative and some problems remained wholly unaddressed. It is the perception of the Special Representative that the Government is not taking any policy actions against defenders, but it is also not being fully proactive in supporting them. She is also concerned that political commitments at the ministerial level may not be translated into action at the level of the civil service as a whole which, defenders argue, remains entrenched in its past practices. The concerns of the Special Representative focus also on the capacity of defenders themselves, including with regard to the quality and consistency of their work, their strategies and cooperation between each other and their choice of priorities. Insofar as the international community continues to support the former Yugoslav Republic of Macedonia in its democratization process, the Special Representative urges this community also to consider carefully its own input into the work of defenders.

77. The success of the September 2002 elections, perceived as fair both nationally and internationally, has been credited in large part to the wide participation of human rights defenders in monitoring the elections. The monitoring was conducted by over 3,000 domestic monitors, and NGOs were also active in supporting the participation of minority groups in the elections. The Special Representative considers this successful monitoring role as evidence of the space that was provided to defenders to contribute actively to the democratic process and of the fact that defenders themselves were sufficiently well organized, trained and equipped to meet the challenge facing them. However, she is concerned that this level of contribution may not be sustained by defenders in the long term and for other activities, without the extensive political and economic

support provided by the international community in the context of the elections. The Special Representative considers the 2002 elections to be illustrative of the excellent potential of defenders in the former Yugoslav Republic of Macedonia to contribute to human rights and democracy and the fundamental role they can play in this regard when given the space and resources. However, this example is also illustrative of the fact that political space, resources and defenders' capacity are not currently sustainable.

78. In conclusion, the Special Representative considers that the current capacity of human rights defenders is insufficient to meet the human rights challenges lying ahead, that the opportunities available for them to influence human rights are limited and that the "enabling environment" is not fully developed. Defenders need improved action from the State, from the international community and from themselves to address these weaknesses. The Special Representative urges that the recommendations below, as well as the more detailed concerns and possible solutions described in the body of the present report, be considered individually by the actors to which they are addressed and that consideration also be given by the Government to convening a multilateral forum in which all actors would be represented and a coordinated approach defined.

A. Recommendations to the Government

79. The Special Representative recommends that the Government :

(a) Consider adopting legislation enacting the Declaration on human rights defenders as domestic law ; ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ; completing and speedily presenting to Parliament legislation on the right of access to information and on establishment of an independent court budget ; and greater dissemination of information on the drafting of new laws and giving the public and civil society greater opportunities to contribute to this process ;

(b) Consider adopting, in consultation with defenders, a government policy and strategy, with specific objectives, for implementation of the Declaration on human rights defenders by all relevant authorities at the national and local levels ; and creating regular opportunities for interaction between human rights defenders and the State ;

(c) Consider improved regularity in reporting to United Nations treaty bodies and the involvement of civil society in the preparation and follow-up of these reports ;

(d) Consider according tax-exempt status to human rights organizations ; means of guaranteeing access for defenders to all information they require to conduct their human rights work ; and setting up a mechanism through which the Government would rapidly respond to any human rights concerns raised by human rights defenders within the country ;

(e) Consider taking action to secure the independence of the judiciary ; strengthening the police forces to ensure their respect for human rights and their support in upholding respect for human rights standards ; and encouraging action by the Ombudsman's Office to take up concerns raised by defenders, and ensure that the Office's recommendations receive an early response.

B. Recommendations to human rights defenders

80. The Special Representative recommends that human rights defenders :

(a) Take careful note of defenders' responsibilities under the Declaration on human rights defenders ; define clear, short- and long-term strategies ; ensure transparency ; improve coordination with other defenders' organizations within the former Yugoslav Republic of Macedonia, including through networks ; and strengthen monitoring, reporting and protection activities ;

(b) Increase opportunities for training, including in cooperation with OHCHR, on : human rights standards ; developing strategies and defender networks ; report writing ; national, regional and international human rights mechanisms ; and managing a human rights organization ;

(c) Develop domestic fund-raising strategies, including, for example, seeking "matching funds" or "in kind" donations (such as free Internet and telephone use or office space) including from local businesses and municipalities ;

(d) Make particular efforts to inform the public of human rights issues and to strengthen public participation in the work of human rights organizations ; and consider means of obtaining greater support in the media for human rights defenders and human rights concerns ;

(e) Strengthen cooperation with United Nations and regional human rights bodies, disseminating and supporting the implementation of their human rights recommendations.

C. Recommendations to international donors

81. The Special Representative recommends that international donors :

(a) Consider means by which donors can collectively verify the capacity and legitimacy of particular civil society organizations ; and endeavour to define a collective common and long-term strategy, in consultation with defenders and with relevant State authorities ;

(b) Where possible, provide core funding to organizations, in preference to providing only direct support to projects ; strengthen support for human rights NGOs addressing concerns not yet adequately addressed and for organizations based in

geographical areas where there is a low human rights defender presence, notably western, north-eastern and southern regions.

D. Recommendations to the United Nations Country Team

82. The Special Representative recommends that the United Nations Country Team :

(a) Consider programmes through which the Country Team can, within its existing mandate, contribute to the implementation of the Declaration on human rights defenders ;

(b) When implementing activities through civil society organizations, consider means by which the contacts of the Country Team with these organizations can be strengthened, in accordance with the concerns and recommendations raised in the present report.

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