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增进和保护所有人权、公民、政治、经济、  
社会和文化权利，包括发展权

人权维护者情况秘书长特别代表希娜·吉拉尼女士的报告

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。

\*\* 本文件迟交是为了列入最新资料。

## 内 容 提 要

本报告介绍了人权维护者情况秘书长特别代表就其 2007 年 9 月 23 日至 25 日对前南斯拉夫的马其顿共和国的访问所作的结论和建议。

后续访问的目的是评价在特别代表提交其第一次访问报告四年后在执行其建议方面的进展与挑战。

特别代表注意到自 2003 年以来许多方面有所改进，尤其是增强了人权维护者的能力和职业精神，通过了与维权者工作有关的立法，以及国际组织通过能力建设和提供资金在支持人权维护者方面起到了积极作用。

人权维护者情况在一些方面仍须得到改善，以遵守《关于个人、群体和社会机构在促进和保护普遍公认的人权和基本自由方面的权利和义务宣言》(简称《人权维护者宣言》)。特别代表敦促政府、人权维护者和国际社会为促进更好地执行《宣言》所提出的若干建议。

下列表对 2003 年第一次访问期间评价的人权维护者情况与 2007 年第二次访问期间所作的评价做出比较。它概述了四年中的发展情况，这是后续访问的主要关注点。该表未对本报告载述的所有结论作出总结，尤其是那些与第一次访问中提出的问题 and 关注没有直接联系的结论。

## 2003 和 2007 年人权维护者情况对比

第一次访问——2003 年 <sup>a</sup>	后续访问——2007 年
<b>维权者开展工作的背景</b>	
执行《奥赫里德协定》是政治优先事项(第 10-13 段 <sup>b</sup> )。	2007 年, 加入欧盟的努力在政治议程上占首要地位。突出欧盟议程对该国人权与民间社会的总体状况均有实际意义(第 11 段 <sup>c</sup> )。但是, 国家公共当局的政治意愿和切实承诺至关重要, 它可确保成果具有可持续性以及人权优先事项不是仅为加入欧盟而提出的空洞的纲领性目标(第 16 段)。
《奥赫里德协定》所倡议的权力下放进程, 对地方当局履行其保护人权责任的现有手段给予关注。斯科普里人权维护者的关注问题局限于其在地方一级监测人权情况的能力(第 15 段)。	目前这依然是一个关注问题, 但从某种角度看, 通过以加强当地民间社会组织和缩小地方一级监测差距为明确目标的能力建设方案, 这一问题已得到部分解决。另一个积极的事态发展是检察官办公室的结构, 它在全国设有六个地区办事处。不过, 还需要进一步提高认识, 解决地方当局与检察官办公室依然合作不力的问题。原则上讲, 市镇应为民间社会组织提供资金, 但实际上并未这样做(第 17-20 段)。
种族歧视是产生许多侵犯人权行为的一个根本原因(第 19 段)。	种族歧视依然是一个关注问题。作为积极的事态发展, 在阿族人获得高等教育机会以及少数群体公务员接受就业前培训方面取得了进步(第 21-22 段)。
政府打算进一步强调在学校课程中列入人权教育(第 22 段)。	为执行《人权教育世界方案》第一期行动计划, 开展了特别活动以及协调一致但范围有限的行动(第 23 段)。
<b>人权维护者</b>	
在制定人权战略方面, 大多数人权维护者需要进一步了解国际人权标准、方法技巧和的专门知识(第 41 段)。	取得进步的一个重要领域是, 除其他以外, 就人权方法、战略和规划框架、宣传和沟通技能方面的专门知识而言, 人权维护者的能力和技能得到了提高。总的说来, 经过多年的经验积累, 他们的话语更加浅显易懂, 重点突出(第 24 段)。

<p>重要的专题工作领域是妇女权利和罗姆人社会人权(第 26 和 28 段)。</p>	<p>人权维护者在这两个领域的工作确实成绩突出。残疾人权利得到重视，女同性恋者、男同性恋者、双性恋者、变性者和阴阳人权利现成为一个新领域(第 26 段)。</p>
<p>人权组织基本集中在斯科普里地区，在首都以外地区的组织为数不多(第 47 段)。</p>	<p>情况大体依然如此，虽然略有某些改善。国际组织为在首都以外地区的人权组织提供的培训，有助于改善这种状况(第 27 段)。</p>
<p>妇女人权维护者人数不少，尤其活跃在社区一级(第 28 段)。</p>	<p>妇女组织继续被视为最强大的民间社会运动，活跃于地方一级，公民参与比例最高(第 29 段)。</p>
<p>妇女人权维护者多从事提高认识和游说工作，而不是保护与监测。</p>	<p>情况大体依然如此，但加强了报告活动，向消除对妇女歧视委员会提交非正式报告(第 30 段)。</p>
<p>积极评价国际组织对人权维护者提供的培训(第 40 段)。</p>	<p>人权维护者对给予的培训做出积极评价，认为培训有助于认识到自己的作用，并具有更大的号召力。人权维护者表示还需要获得后续培训(第 35 段)。</p>
<p>人权维护者开展监测和保护工作的能力有限(第 43 段)。</p>	<p>监测活动有所改进，与区域和国际联盟联网水平得到提高，但人权维护者追查案件的能力依然有限(第 36-38 段)。</p>
<p>人权组织政治化损害了人权维护者的形象与工作(第 46 段)。</p>	<p>这个问题以及民间社会组织对公众缺乏适当的透明度和问责制，依然是一个关注问题。目前在民间社会组织中正在开展活动，努力增进透明度并改善其公众形象(第 40-42 段)。</p>
<p>对人权维护者相互间建立正式网络和协调活动范围十分有限表示关注(第 39 段)。</p>	<p>在建立伞型组织来协调专题领域工作和实现共同目标方面取得进展。马其顿公民平台就是为沟通和协调民间社会行动建立空间的一个尝试。尽管取得这些进展，但人权组织依然没有形成一股能够给维权者以保护的后盾力量(第 45-49 段)。</p>
<p>人权维护者面临诸多的安全问题，大多与他们所触及的问题类型有关，包括腐败、打击有组织犯罪、在以前受冲突影响地区尊重公民和政治权利、贩卖人口和收缴武器。还发生了若干袭击不同种族维权者的事件(第 72 段)。</p>	<p>总体来说，人权维护者的安全状况良好，影响到其安全的袭击和威胁不是有系统的行为。不过，从事某些专题领域工作的维权者更易遇到侵权行为。从事反腐败案件和少数群体问题比如种族和/或宗教工作的维权者就是这种情况(第 50 段)。</p>

<p>维权者几乎完全依赖国际捐助者提供资金，从其工作的长期可持续性来看，这种状况令人十分关注(第 32 段)。</p>	<p>对于该国大多数人权组织来说，依赖国际捐助者依然是个现实问题。国际资金的规模在不断缩小，国家一级可获资源数额不足(第 55 段)。</p>
<p>捐助者有自己关注的优先事项，因而不愿为维权者所确定的项目提供资金(第 68 段)。</p>	<p>除个别情况外，国际捐助者一般不对维权者所确定的优先问题的资金要求做出反应(第 56 段)。</p>
<p>一个主要关注是，维权者不免税(第 35 段)。</p>	<p>税收制度依然是公民社会发展的一大障碍。促进政府与公民社会部门合作战略设想对税收框架进行改革，以期为公民社会组织提供税收好处(第 57 段)。</p>
<p><b>有利环境</b></p>	
<p>特别代表建议该国批准《保护所有移徙工人及其家庭成员权利国际公约》(第 79(a)段)。</p>	<p>该国尚未批准《保护所有移徙工人及其家庭成员权利国际公约》。不过，该国现已批准《儿童权利公约关于儿童卷入武装冲突问题的任择议定书》和《儿童权利公约关于买卖儿童、儿童卖淫和儿童色情制品问题任择议定书》以及《消除对妇女一切形式歧视公约任择议定书》(第 58 段)。</p>
<p>言论自由状况普遍良好(第 35 段)。</p>	<p>对尊重言论自由状况总体上积极的评价得到证实，虽然从事反腐败或少数群体问题工作的维权者或对政府持批评态度的人处境略为困难(第 60 段)。</p>
<p>未制定有关获取信息的权利的法律，是一个关注问题(第 52 段)。</p>	<p>一项有关获取信息的权利的法律于 2006 年 9 月生效。这是立法方面的一个积极事态发展，但对该法执行不力，则是一个关注问题(第 61-62 段)。</p>
<p>结社自由权受到尊重(第 54 段)。</p>	<p>同样积极的评价得到证实，但对于私营部门有外国资本的公司，尤其是纺织部门中的此类公司，工会结社仍有一些限制和约束(第 63 段)。</p>
<p>与人权维护者举行磋商仅属特例，并须由有关当局来决定(第 51 段)。</p>	<p>磋商程序仍然属于特例。通过《2007-2011 年促进政府与民间社会部门合作战略》是一令人欢迎的发展势态，如果有执行该战略的政治意愿，就有可能使与民间社会的磋商形成一种制度。政府清楚地意识到必须使地方当局和议会采取同样的方针，才可使磋商程序作为一种制度逐级得到落实(第 65-70 段)。</p>

<p>警员被指控有施虐行为。缺乏有透明度的控诉程序，助长了有罪不罚现象。警察的种族和性别构成情况是一个关注问题(第 59 段)。</p>	<p>警察的作用可看到有所改进：(a) 制定了内部控诉程序；(b) 由较多不同族裔组成的警察；(c)为警察实施人权培训方案；(d) 正在配备社区警力；(e) 对公民的态度整体上有所改进，但罗姆人依然是警察施虐行为的受害者(第 72 段)。对警察行为的关注问题包括：(a) 警察 Alfi 部门的施虐行为和开展有关调查工作难度大；(b) 内部控制机制不完善；(c) 缺乏外部控制机制；(d) 人权维护者求助警察局的权利被否定(第 71-77 段)。</p>
<p>特别代表建议该国通过建立独立法院预算的法律(第 79(a)段)。司法机关未审案件积压数量过大，审判进程缓慢(第 64 段)。</p>	<p>关于独立法院预算的法律于 2004 年正式生效。据司法机关代表说，该法律需要加以修正，以进一步增强司法机关独立性。司法程序冗长依然是个问题，尽管可看到已取得某些进展(第 78-79 段)。</p>
<p>公共当局与检察官的合作范围有限且反应迟缓(第 24 段)。</p>	<p>与公共当局的合作，尤其是在介绍政府与检察官合作情况季度报告和内政部指示警察与检察官合作的通函方面的合作有所改进。不过，这方面还需要进一步改进(第 82-85 段)。</p>
<p>设想通过有关立法，加强检察官的监察职能(第 25 段)。</p>	<p>有关立法于 2003 年获得通过，但被视为与促进国家人权机构的巴黎原则不符(第 82 段)。</p>
<p>检察官办公室需要国际社会给予更大的支持(第 25 段)。</p>	<p>特别代表欢迎国际组织尤其是在能力建设领域中所提供的支持(第 86 段)。</p>

<sup>a</sup> E/CN.4/2004/94/Add.2。

<sup>b</sup> 本表左列中所有参照段落编码均涉及 E/CN.4/2004/94/Add.2。

<sup>c</sup> 本表右列中所有参照段落编码均涉及本报告。

Annexe

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL  
ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, HINA JILANI, ON HER  
MISSION TO THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA  
(23 to 25 September 2007)  
CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	8
I. THE CONTEXT IN WHICH HUMAN RIGHTS DEFENDERS WORK .....	5 - 23	8
A. Methodology .....	5 - 7	8
B. The pace of change .....	8 - 9	9
C. From the Ohrid Agreement to the European Union .....	10 - 16	9
D. Decentralization .....	17 - 20	10
E. Progress and setbacks in the overall human rights situation as identified in the 2004 report .....	21 - 23	11
II. HUMAN RIGHTS DEFENDERS .....	24 - 57	11
A. Women human rights defenders .....	29 - 32	12
B. Achievements in building the capacity of human rights defenders .....	33 - 38	13
C. The independence of civil society organizations and public perception of their role and performance .....	39 - 44	14
D. Networking .....	45 - 49	15
E. Defenders at risk .....	50 - 54	16
F. Funding .....	55 - 57	16
III. AN ENABLING ENVIRONMENT .....	58 - 90	17
A. International human rights instruments .....	58 - 59	17
B. Freedom of expression, access to information and freedom of association .....	60 - 64	17
C. Government's attitude and policies .....	65 - 70	18
D. The police .....	71 - 77	19
E. The judiciary .....	78 - 81	20
F. The Ombudsman .....	82 - 86	21
G. The international community .....	87 - 89	22
IV. CONCLUSIONS AND RECOMMENDATIONS .....	90 - 104	22

## **Introduction**

1. The Special Representative conducted a mission to The former Yugoslav Republic of Macedonia from 23 to 25 September 2007. The Special Representative would like to thank the Government for extending her the invitation to visit the country and for the collaboration provided to undertake a fruitful visit. The Special Representative expresses her gratitude to the United Nations Resident Coordinator and her office, particularly the human rights adviser, for the excellent support provided in the organization of the visit.
2. The mission to The former Yugoslav Republic of Macedonia concluded a visit to the region that included Serbia and Kosovo, visited from 17 to 21 September 2007. The findings and recommendations on the visit to the Republic of Serbia, including Kosovo, are presented in a separate report.<sup>1</sup>
3. The visit to the Former Yugoslav Republic of Macedonia is a follow-up mission aimed at identifying progress and challenges in the situation of human rights defenders 4 years after the visit undertaken by the Special Representative from 27 to 30 January 2003.<sup>2</sup>
4. The Special Representative had 25 meetings during her visit to the country. All meetings were held in Skopje. She met with Government representatives, members of the judiciary and the Parliament, the Ombudsperson, the international community, and human rights defenders. In particular, she met with the Speaker of the Macedonian Parliament and other Members of the Parliament, the Minister of Interior, the Minister of Justice, the Deputy Minister of Education, representatives of the Government in charge of integration with the European Union (EU), representatives of the General Secretariat of the Government in charge of cooperation with civil society, the President of the Constitutional Court, the President of the Judicial Council, the Ombudsman, the EU Special Representative and Head of Delegation of the European Commission, the Head of Mission and other representatives of the Organization for Security and Cooperation in Europe (OSCE), representatives of the Information Office of the Council of Europe, members of the United Nations country team and a group of international donors. She also met non-governmental organizations (NGOs), journalists, representatives of trade unions and the Macedonian Bar Association, and individual human rights defenders. A press conference was held at the end of the visit.

## **I. THE CONTEXT IN WHICH HUMAN RIGHTS DEFENDERS WORK**

### **A. Methodology**

5. The visit to The former Yugoslav Republic of Macedonia was a follow-up mission. The purpose was therefore not to make a full assessment of the situation of human rights defenders but to rather evaluate progress and challenges in implementing the recommendations of the Special Representative four years after her last report.

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<sup>1</sup> A/HRC/7/028/Add.3.

<sup>2</sup> See E/CN.4/2004/94/Add.2.

6. The 2004 report was used as the basis to assess progress and gaps in the subsequent four years in the present report. To facilitate the assessment, a matrix was prepared containing a list of over 60 issues, findings and recommendations detailed in a schematic manner. For each item, information on developments that occurred between 2003 and 2007 was sought before and during the mission. This allowed immediate identification of areas in which progress has been more evident, versus other areas which have stagnated more.

7. The assessment undertaken during the visit, however, went beyond the issues raised in the 2004 report to allow new developments to be captured or concerns that were not covered in the first report to be taken into account, to provide an updated overview of the situation of human rights defenders.

### **B. The pace of change**

8. “After your report, nothing changed”, said a human rights defender to the Special Representative. The impatience of those in the front line for the promotion and protection of human rights to see the progress they are striving for is justified. It is in itself a motivating factor to continue defending human rights with renewed energy and commitment.

9. While the Special Representative understands the frustration of human rights defenders who have not seen the improvements expected and shares their disappointment in several areas that will be analysed in more detail, she nevertheless recognizes a number of positive developments since 2003. In particular, she is impressed by the progress made by defenders themselves in terms of their increased level of capacity, professionalism, expertise on human rights methodologies, as well as more clarity about their objectives and strategies for achieving them.

### **C. From the Ohrid Agreement to the European Union**

10. While the political context of the 2003 visit of the Special Representative was marked by the Ohrid Agreement, which provided a framework for addressing the problems that prompted the armed conflict of 2001, in 2007 the efforts to integrate into the EU dominate the political agenda. This is a major difference from the previous visit and the prominence of the EU agenda had had a tangible impact on the overall situation of both human rights and civil society in the country.

11. On 17 December 2005, the Council of the European Union decided to recognize The former Yugoslav Republic of Macedonia as a candidate for EU membership. Since 2004, European partnerships have been adopted with the countries of the Western Balkans as a means to realize progressive integration with the EU. These Accession Partnerships establish short- and medium-term priorities that the competent State authorities are requested to meet to advance towards EU accession. The European Commission regularly monitors progress in the implementation of these priorities.

12. The priorities set forth in the European and Accession Partnerships include human rights priorities, as well as priorities in areas that have direct influence on the environment in which human rights defenders operate.

13. Human rights priorities for EU accession include, inter alia: (a) full compliance with the European Convention on Human Rights and the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; (b) full implementation of the rules applicable to ethics, internal control, professional and human rights standards in law enforcement agencies, the judiciary and prison administration, including regular training; (c) establishment of effective mechanisms to identify, pursue and penalize all forms of discrimination by State and non-State bodies against individuals and groups; (d) upgrading and implementation of the strategy on equitable representation of non-majority communities; and (e) further implementation of the strategy on equitable representation of non-minority communities.<sup>3</sup>

14. The European and Accession Partnerships also include a priority on promoting the active participation of civil society. Compliance with this priority prompted the adoption of the 2007-2011 Strategy for Government Cooperation with the Civil Society Sector (see paragraphs 67-71 below).

15. The human rights priorities for accession to the EU, as well as other requirements that are instrumental to the work of defenders, such as the involvement of civil society in public administration, cooperation with the Ombudsman or collaboration with the International Criminal Tribunal for the former Yugoslavia (ICTY), are definitely a powerful engine to further the human rights agenda and progress can be registered in several areas as a consequence of EU requirements and their monitoring. “Whenever we want to move faster, we lobby the EU”, commented a human rights defender to underline the effectiveness of having the backing of the EU in pursuing human rights objectives.

16. While recognizing the benefits of the EU framework in making progress on human rights, the Special Representative warns that political will and the genuine commitment and participation of national public authorities are fundamental to ensuring that achievements in this area are sustainable and that human rights priorities are not empty programmatic objectives in the progress towards EU accession.

#### **D. Decentralization**

17. In the 2004 report, some concerns were expressed as to the possible negative consequences for human rights defenders triggered by the ongoing decentralization process

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<sup>3</sup> Commission of the European Communities, Proposal for a Council decision on the principles, priorities and conditions contained in the Accession Partnership with the Former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC, COM (2007) 659, 6 November 2007. See also Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with the Former Yugoslav Republic of Macedonia and repealing Decision 2004/518/EC, 2006/57/EC.

envisaged by the Ohrid Agreement and supported by the EU. With the local authorities assuming more functions and competencies, the potential for committing human rights abuses at the local level had increased, as had the need to monitor local institutions. As the bulk of human rights defenders were based in Skopje, their monitoring capacity at the local level was considered not to be strong enough to address the human rights challenges posed by decentralization.

18. While this remains a concern, the Special Representative welcomes the capacity-building programmes specifically aimed at strengthening local civil society organizations and reducing the monitoring gap at the local level.

19. Another positive development is the structure of the Office of the Ombudsman, who has six regional offices in the country. Regional offices facilitate access to the Ombudsman at the local level. However, more awareness-raising and training on the role and functions of the Ombudsman is needed among local authorities, whose collaboration with the Office of the Ombudsman is still deficient.

20. With the decentralization process, municipalities should in principle also fund civil society organizations but this is not actually happening yet.

#### **E. Progress and setbacks in the overall human rights situation as identified in the 2004 report**

21. In the 2004 report, concerns over the overall human rights situation mainly referred to discrimination on the basis of ethnicity. Non-discrimination and equitable representation of non-majority communities remain among the outstanding human rights priorities established by the EU.

22. Progress can be registered in the availability of higher education opportunities for ethnic Albanians as well as pre-employment training programmes for minority public servants. This should give better employment opportunities for minority communities.

23. Despite some efforts to improve education opportunities for Roma, Turkish and Vlach minorities, there has been no tangible progress in this area. It is regrettable that the Ministry of Education has taken ad hoc but not concerted action to implement the Plan of Action for the first phase of the World Programme for Human Rights Education (2005-2009). Human rights education is not only about introducing human rights in school curricula. It is also about inclusion as opposed to exclusion and marginalization, it is about equality as opposed to discrimination and stigmatization. The Plan of Action is a policy framework that would be instrumental in addressing and redressing discrimination practices in the country.

## **II. HUMAN RIGHTS DEFENDERS**

24. The major area of progress identified by the Special Representative is the improved capacity and expertise of human rights defenders on human rights methodologies, strategies and planning frameworks, advocacy and communication skills, among others. Overall their discourse is more articulate and focused, as it is backed by more years of experience.

25. Human rights defenders had frank discussions with the Special Representative on their strengths and weaknesses. The Special Representative considers the openness to self-criticism showed by defenders in her discussions with them as an indication of maturity and self-confidence that was not there four years ago.

26. In terms of thematic areas of work, some trends identified in the 2004 report were confirmed, such as the strength of the women's movement, the steady growth of capacity and activities carried out by defenders working on the rights of Roma. New thematic areas are now on the agenda of human rights defenders. Work on the human rights of persons with disabilities has become prominent in the country. Another emerging area is the rights of lesbians, gays, bisexual, transgender and inter-sexual persons (LGBTI). While the difficult access to public authorities for NGOs working on LGBTI rights is a concern, the Special Representative notes as a positive development the solid work of defenders on LGBTI rights, who are well-integrated among human rights organizations, formed a coalition to pursue improvements in the legislation, and achieved changes in media ethics banning homophobic positions.

27. In terms of geographic distribution, human rights organizations continue to be mainly concentrated in Skopje, as was noted at the time of the 2003 visit, although there have been some improvements thanks to the training provided by international organizations to human rights organizations working outside the capital.

28. In 2003, there were 5,289 civil society organizations registered in Macedonia, 43 per cent of which were registered in Skopje. According to the Directory of Civic Organizations, the number of active organizations is far smaller and amounts to 1,512, of which 23 per cent are active in Skopje.<sup>4</sup>

#### **A. Women human rights defenders**

29. "The women's movement has such a large social capital that it does not need the support of the international community to operate", commented a defender. Women's organizations are considered the strongest sector of civil society. The empowerment of women is perceived as one of the areas in which civil society organizations have achieved the most. While there is overall a relatively low percentage of citizen participation in civil society activities, the highest rate of participation is in women's organizations. Women's organizations have a relatively large presence throughout the country, as compared to other organizations, which tend to be concentrated in towns and in Skopje in particular.

30. Women's organizations have several examples of networks, mutual cooperation and lobbying. For example, the Macedonian Women Lobby (MZL), established as an informal movement in 2000, is a coalition of leading women from civil society organizations and unions, political parties, the media, public authorities, as well as women who are experts in different

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<sup>4</sup> Macedonian Center for International Cooperation, *An Assessment of Macedonian Civil Society: 15 Years of Transition – A Country Moving towards Citizen Participation*, Skopje, 2006, p. 34.

fields. MZL played a role in the inclusion of gender quotas in elections, commended by the Committee on the Elimination of Discrimination against Women (CEDAW).<sup>5</sup>

31. The Union of Women Organizations of Macedonia (UWOM) is a network of 64 independent women organizations throughout the country with members of different ethnic, national, and religious affiliation.

32. Women's organizations also participated in the review undertaken by the CEDAW Committee of The former Yugoslav Republic of Macedonia and submitted two shadow reports to the Committee, one on the overall situation of women's rights and another on Roma women.

### **B. Achievement in building the capacity of human rights defenders**

33. In 2003, the Special Representative made a positive assessment of the training programmes for human rights defenders conducted by international organizations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), OSCE and the Council of Europe.<sup>6</sup>

34. OSCE and the Council of Europe continue to provide training to defenders, while the OHCHR project ended in 2006. Assistance is provided through a national human rights adviser in the office of the Resident Coordinator but without a direct engagement in project activities. Support to human rights defenders provided in this framework includes, inter alia, the establishment of a civil society focal point within the United Nations Country Team in 2006 aimed at facilitating relationships between the Team and civil society organizations, the dissemination of information on and facilitation of access to funds for human rights activities implemented by grass-roots civil society organizations, such as the United Nations Voluntary Fund for Victims of Torture and the United Nations Voluntary Fund on Contemporary Forms of Slavery.

35. Defenders evaluated positively the training provided to them by international organizations. They deemed the training useful in giving them recognition and in encouraging them to be vocal. They also considered it an important opportunity to get to know each other and build contacts. They pointed to the need for follow-up training.

36. The Special Representative noted some improvement in the capacity of human rights organizations to work on monitoring and protection, including by using international and regional human rights mechanisms. The shadow reports submitted to CEDAW are an example.

37. There is also a better level of networking through international and regional coalitions, which facilitate participation in international settings and give them access to capacity-building programmes available outside the country.

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<sup>5</sup> CEDAW/C/MKD/CO/3, para. 25.

<sup>6</sup> E/CN.4/2004/94/Add.2, para. 40.

38. However, most NGOs do not have the capacity to pursue cases until the end among those they take up in their protection activities. This requires resources, including legal expertise, which most NGOs still do not have. The inability of defenders to seek remedies and redress is also due to the insufficient mechanisms that they have at their disposal for their protection activities. For instance, access to information is not granted in many crucial areas, including on violations committed by the police. The absence of an external oversight mechanism is another obstacle in the activities of defenders that report on alleged violations committed by the police (see paragraph 75 below).

### **C. The independence of civil society organizations and public perception of their role and performance**

39. A survey among communities' samples showed a relatively low level of public trust in the institutions, including civil society organizations.<sup>7</sup> However, when it comes to concrete services to the people, they are considered more helpful in resolving the problems of communities than Government institutions.<sup>8</sup>

40. Concerns about the independence of civil society organizations from political parties were expressed both by some defenders as well as public authorities. Subjective

politicization of civil society organizations is considered a problem that affects the credibility of civil society and contributes to a negative image in the media and public opinion.

41. Some organizations were aware of their own responsibility in creating the negative image they have in media and in public opinion, and pointed to the need to develop media strategies to improve the quality of media coverage of human rights and of the work of defenders.

42. Other organizations identified a lack of or limited transparency of civil society organizations as a problem of Macedonian civil society that weakens their image in public opinion. Only a small number of organizations provide public access to their sources of funding. While most of civil society's funding relations are with foreign donors and therefore primary accountability is towards them, transparency towards the general public is an important element of integrity and credibility. Gaining the trust of citizens can also have financial benefits in the medium and long term, as sources of funding will have to be more and more sought at the local level to ensure financial sustainability.

43. Under the motto "Together for Transparency" some organizations decided to voluntarily publish their annual reports, financial reports and independent audit reports.

44. The Special Representative acknowledges that issues of transparency and credibility must be addressed by civil society, in particular the community of human rights organizations.

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<sup>7</sup> Civil society organizations rank second in public trust, after the armed forces and before business, media and Government and political parties. Macedonian Center for International Cooperation, *An Assessment of Macedonian Civil Society...* (see footnote 4 above), p. 105.

<sup>8</sup> *Ibid.*, p. 106.

However, she has observed that in many transitional societies a growing civil society with relatively more resources at its command and a focus on the promotion of rights that may not yet be fully understood or respected, may encounter a level of resistance from social and State institutions. This can lead to misperceptions which may arise because of the nature of the State and society rather than as a consequence solely of the shortcomings of the groups striving for rights. She, therefore, believes that removal of misperceptions as well as building a more positive image of human rights organizations and defenders is a collective responsibility, requiring contributions from State institutions, social actors and defenders themselves. This is a crucial undertaking. Support for the work and activities of defenders has a direct relation to the level of respect for human rights in any country.

#### **D. Networking**

45. In her 2004 report, the Special Representative expressed her concern about the limited level of networking and coordination among defenders.

46. Some improvements can be registered in this area. Umbrella organizations on the basis of thematic area or target group (women, Roma, disability) coordinate the work of several organizations. As mentioned, the women's movement is the best organized and with a large presence on the ground.

47. Other initiatives are aimed at combining efforts on common human rights objectives. This is the case of the coalition "All for Fair Trials" established in 2003 with the support of OSCE. The coalition represents a network of 22 independent NGOs engaged in promoting respect for international standards on fair trials.<sup>9</sup> A more recent initiative was the establishment in 2007 of a coalition of NGOs working on a proposal for an anti-discrimination law.

48. Another coordinating entity is the Civic Platform of Macedonia established in March 2004. It is composed of 36 organizations that wanted to create an open space to improve communication, coordination and cooperation of civil society and facilitate the establishment of partner relations with the Government, the business sector and international organizations.

49. Despite these efforts in improving coordination among civil society organizations, the Special Representative notes that human rights organizations still do not form a real human rights community that can voice the positions of human rights defenders more forcefully and protect defenders. Human rights organizations still do not see it as part of their role as defenders to systematically protect defenders at risk, those who are marginalized or are facing difficult battles. The Special Representative is encouraged by some examples of solidarity expressed by human rights organizations when defenders had been unfairly attacked by the media or politicians. She hopes that these examples will gain consistency and pave the way for a solid human rights community in Macedonia.

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<sup>9</sup> <http://www.all4fairtrials.org.mk>.

### **E. Defenders at risk**

50. Overall, human rights defenders enjoy a good level of security and attacks and threats to their security are not systematic. However, defenders working on some thematic areas are more exposed to violations. This is the case for defenders working on anti-corruption cases and on minority issues, be they ethnic, religious or both.

51. The Special Representative was informed of a recent case of a human rights defender assaulted and insulted with racist comments because of his mixed marriage and his position on the law of religious communities. Fifteen NGOs intervened to condemn the attack and expressed their solidarity with the defender. These fifteen NGOs were in turn discredited by the media and some political parties, which labelled them as “*wahabists*”.

52. On anti-corruption work, the Special Representative followed up the case of Mr Zoran Bozinovski, an investigative journalist working on anti-corruption cases. The attacks against Mr Bozinovski were already taken up in her 2004 report<sup>10</sup> and his situation was then followed by communications sent on three occasions in the following years.<sup>11</sup>

53. Over the last few years, Mr Bozinovski has faced numerous defamation legal suits, reportedly orchestrated by those whose supposed corruption he was investigating. He reported that the intervention of the Special Representative through the communications on his situation that she sent to the Macedonian Government contributed to saving him from serving a three-month prison sentence. Mr Bozinovski explained how the legal suits against him are meant to impede him in investigating corruption and are reactivated as soon as he touches sensitive issues in his investigative work. The journalists’ association has not been able to defend him and the only support he has received came essentially from international organizations.

54. While the relentless judicial prosecution of Mr Bozinovski might be an isolated example and not a systematic targeting of a journalist, the fact that the support he received came from the international community and not from national organizations illustrates how human rights organizations are still not able to assess facts and to act as a community of defenders that systematically protects and expresses solidarity to defenders under attack or facing difficulties. The Special Representative welcomes the subsequent information provided by the Government on this point, i.e. the recent adoption of the Code of Best Practices for financial support of citizens’ associations and foundations.<sup>12</sup>

### **F. Funding**

55. Funding of human rights organizations continues to come mostly from international donors. This was already a concern in 2003 in terms of the medium and long-term sustainability of the work of defenders when international funding would significantly reduce. The shrinking

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<sup>10</sup> E/CN.4/2004/94/Add.2, para. 74.

<sup>11</sup> In 2004 (E/CN.4/2005/101/Add.1, paras. 530-532) and in 2006 (A/HRC/4/37/Add.1, paras. 410-412).

<sup>12</sup> Published in the Official Gazette No. 130/2007.

of international funding is even more real in 2007. This is happening at a time when alternative funding at the national level is still not available in sufficient quantities. The Special Representative is also concerned that the Government has not established transparent criteria and procedures for granting Government funding to civil society organizations.

56. With few exceptions, international donors continue to be less than responsive to funding requests for programmes and activities on the basis of the priorities identified by defenders themselves. Donors tend rather to support what they consider priorities.

57. As already observed in 2003<sup>13</sup> the tax regime is a major obstacle to the development of civil society. The Strategy for Government Cooperation with the Civil Society Sector (see paragraph 67 below) recognizes the need to reconsider the present tax framework and envisages reforming it to extend exemption from tax to civil society organizations in line with EU regulations and to foster the development of such organizations.<sup>14</sup>

### **III. AN ENABLING ENVIRONMENT**

#### **A. International human rights instruments**

58. Since 2003, there has been progress in the ratification of international human rights instruments. In particular, The former Yugoslav Republic of Macedonia has ratified the following instruments: 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 and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

59. The Special Representative recommended the ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which did not occur. The former Yugoslav Republic of Macedonia has signed and is taking steps to ratify the other core international human rights standards, namely the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for whose ratification a law is being drafted; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance, for which a pre-ratification analysis is under way.

#### **B. Freedom of expression, access to information and freedom of association**

60. The Special Representative confirms the overall positive assessment of the respect of freedom of expression that she already expressed in 2003, although she noted a more difficult environment for defenders working on anti-corruption, minority issues, both ethnic and religious, and for those taking positions critical of the Government.

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<sup>13</sup> E/CN.4/2004/94/Add.2, para. 35.

<sup>14</sup> Government of the Republic of Macedonia, *Strategy for Government Cooperation with the Civil Society Sector, 2007-2011*, Skopje, January 2007, pp.22 and 23.

61. The Special Representative welcomes the adoption of a law on access to information, which responded to one of her earlier recommendations.<sup>15</sup> The law has been in force since 1 September 2006. It established an independent five-member Commission to oversee the implementation of the law.

62. A more effective implementation of the law has, however, yet to be achieved. A monitoring project on the implementation of the law reported that only 35 per cent of requests are answered. When information is not provided, it does not happen on the basis of the established procedures. In 65 per cent of cases the information is provided as soon as the refusal to provide information is appealed before the Commission. This indicates a widespread lack of responsiveness of the public authorities that is redressed only when accountability mechanisms are activated. The role of the Commission was not considered to be proactive enough to counter the problems in the implementation of the law and it is perceived as accepting passively the excuses given by public authorities for failing to provide the information requested.

63. Freedom of association is guaranteed in article 20 of the Constitution and it is generally respected. Problems in respecting freedom of association affect trade unions in the private sector in companies with foreign capital, particularly in the textile industry.

64. The Government envisages amending the Law on Citizen Associations and Foundations adopted in 1998 to improve the conditions for the establishment and functioning of civil society organizations and to be in line with EU practices and regulations. In particular, amendments are aimed, on the one hand, at enabling associations to engage directly in economic activities, thus facilitating their ability to generate income for the delivery of their activities and the coverage of their expenses. On the other hand, the role of civil society organizations working on activities of public interest will be strengthened with the introduction of tax benefits.<sup>16</sup>

### **C. Government's attitude and policies**

65. The Special Representative notes that there has not been much progress on consultation processes with civil society, which still take place on an ad hoc rather than systematic basis and mainly because of the efforts made by civil society organizations or because of the pressure of international organizations.

66. The Special Representative is encouraged by and welcomes the adoption of the Strategy for Government Cooperation with the Civil Society Sector for 2007-2011, which is meant to provide a framework to institutionalize cooperation between the Government and civil society. If implemented properly, the Strategy has the potential to redress the present situation of ad hoc, insufficient and in some cases non-existent consultation processes with civil society.

67. The Strategy outlines action in seven areas: (a) upgrading of the legal framework for the development of the civil sector; (b) participation of the civil sector in decision-making processes,

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<sup>15</sup> E/CN.4/2004/94/Add.2, para. 79 (a).

<sup>16</sup> Government of the Republic of Macedonia, Strategy for Government Cooperation with the Civil Society Sector, 2007-2011, Skopje, January 2007, p. 27.

which includes the participation of civil society organizations in drafting, implementing and monitoring public policies and national laws; (c) maintaining inter-institutional cooperation; (d) maintaining inter-sector cooperation; (e) involvement of the civil sector in the process of EU integration; (f) provision of more favourable conditions for the civil society sector; and (g) continuous development of the civil society sector.

68. The Unit for Cooperation with Non-governmental Organizations within the General Secretariat of the Government holds the primary role for coordinating, monitoring and reporting on the implementation of the Strategy. In the second year of implementation, an assessment of how the Strategy is being implemented will be conducted by means of a broad consultation process.

69. The Strategy concerns collaboration between Governmental authorities and the civil society sector and does not extend to local authorities. Measures to institutionalize collaboration between civil society organizations and all public authorities, in particular local authorities and the Parliament, are needed to overcome the present trend of ad hoc consultation processes.

70. As mentioned above, the Strategy was adopted to comply with the requirements of EU accession. While EU accession is definitely a priority for the Government, the human rights requirements that are to be met to achieve it are perceived more as part of the EU package than as a priority per se, for which there is political commitment. This might be an obstacle for the sustainability of human rights achievements, particularly when the attitude of the Government towards civil society organizations is not actively supportive. For instance, the Special Representative sees as an indication of such an attitude the lack of responsiveness or reaction of the Government at information, reports, cases, complaints of human rights violations and abuses documented by defenders and brought to the attention of the concerned authorities, without a consequent action being taken by the Government to investigate, respond, or even refute the alleged facts.

#### **D. The police**

71. Compared to the assessment of 2003, some improvements can be registered in the role of the police: (a) the establishment of an internal complaint procedure in 2003; (b) a more ethnically diverse police force; (c) implementation of human rights training programmes for the police with the support of international donors; (d) the ongoing programme supported by OSCE on the establishment of community policing aimed at bringing the police closer to citizens; (e) an overall improved attitude towards citizens, with the exception of Roma who continue to be victims of abusive behaviour by the police.

72. Most of the abuses allegedly committed by the police relate to a police unit called “Alfi Unit”. The Alfi unit aims to counter urban crime and works in plain clothes. Access to their files is very limited and it is therefore difficult to investigate complaints of abuse committed by them. Even the Ombudsman does not have adequate powers or the instruments to fully investigate complaints against members of the Alfi unit.

73. The Internal Control and Professional Standards Department within the Ministry of Interior is the internal oversight mechanism to investigate complaints of abuse by the police. In his 2006 annual report, the Ombudsman reported that the Department “continued to conceal the relevant factual situation in some cases and to withhold information regarding the exceeding of the official authority and the excessive use of force requested by the Ombudsman. The Internal Control and Professional Standards Department during the reporting year continued to show unprofessional attitude towards the function of internal control mechanism”. He therefore recommended a “higher level of professionalism by the official in the area of human rights while performing police affairs and impartial and responsible work of the Internal Control Department”.<sup>17</sup> The Special Representative takes note of the efforts made in this respect through the capacity building project funded by the European Agency for Reconstruction aimed at improving the functioning of this control mechanism.

74. The Special Representative is concerned that an external oversight mechanism to investigate abuses committed by the police does not exist. The problems of the internal mechanism outlined above make the absence of an external control mechanism an even more worrying concern. The Special Representative is encouraged by the ongoing initiative of OSCE, which is coordinating a working group composed of public authorities, civil society organizations, international organizations and the Ombudsman, with the aim of proposing a possible external control mechanism and paving the way to setting it up.

75. Another problem is that human rights defenders do not have access to detention centres and police stations. This is a serious obstacle that prevents defenders from fully performing their monitoring and protection role. The Government has assured the Special Representative that the OSCE initiative will alleviate the problem of access to police stations for defenders.

76. As regards police stations, the Minister of Interior referred to legal obstacles, namely the limitations provided for by the Law on Classified Information, which prevents the access of human rights defenders to police stations. Only the Ombudsman can access police stations.

77. As regards detention centres, which are under the responsibility of the Ministry of Justice, defenders stated that they are either denied access or have difficulty in getting permission to visit detention centres.

### **E. The judiciary**

78. The Law on the Independent Court Budget was adopted in September 2003 and entered into force in January 2004. The law provides for the judiciary to prepare and execute its own budget. It has therefore improved the independence of the judiciary. However, representatives of the judiciary pointed to the need to further amend the law to improve the independence of the judiciary.

79. The lengthy duration of judicial procedures continues to be a major cause of inefficiency of the judiciary. However, the Special Representative appreciates the information provided by

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<sup>17</sup> Republic of Macedonia Ombudsman, *Annual report 2006*, pp. 57 and 59.

the Government on the amendment of some laws on judicial proceedings. These amendments have shown some progress in reducing the duration of judicial proceedings between 2005 and 2006.

80. Another concern is the non-application to domestic jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and of the decisions of the European Court of Human Rights.<sup>18</sup>

81. The Special Representative recalls that 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. For instance, rights like freedom of expression, peaceful assembly and association, are important for the work of defenders. The Constitutional Court plays a fundamental role in interpreting these rights in a manner that is protective of human rights activities and of defenders exercising these rights in their work. An independent judiciary open to human rights also means a judiciary which proactively takes measures to facilitate the use of the judicial system by defenders for the protection and promotion of human rights.

## **F. The Ombudsman**

82. The law strengthening the Office of the Ombudsman was adopted in 2003. The law strengthened the inspection functions of the Ombudsman. For instance, he or she can undertake unannounced visits to police stations. Despite improvements in the investigative functions of the Ombudsman, its mandate is not considered in compliance with the Paris Principles for national human rights institutions. Concerns regarding the limited scope of the mandate and its independence persist.

83. The cooperation of public authorities with the institution also continues to be a concern. "During 2006 a positive trend was noted in the cooperation with the Ombudsman, but the obstruction of its work from certain bodies of the State continued", reported the Ombudsman.<sup>19</sup> Some improvements were brought about by the introduction of reporting obligations established by the Government in 2005. All Governmental authorities are requested to submit quarterly reports on how they collaborate with and respond to the requests of the Ombudsman and justify failure to collaborate with his Office. The Ombudsman acknowledged some improvements in the responsiveness of Governmental authorities after the introduction of the quarterly reports. Nevertheless, he pointed to the poor quality of many responses and the need for improvement in this area.

84. The collaboration of the police with the Ombudsman also needs improvement. The Ministry of Interior issued circulars instructing the police to collaborate with the Ombudsman. This yielded results but more efforts are still needed to have a fully cooperative police force.

85. Another area that needs improvement is the awareness of local authorities of the role and functions of the Ombudsman. The six regional offices of the Ombudsman facilitate access to the

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<sup>18</sup> Ibid., p. 29.

<sup>19</sup> Ibid. p.59.

institution at the local level but they need more visibility, including and especially among local authorities, to perform their functions effectively.

86. The Special Representative welcomes the support provided by international organizations, such as OSCE and OHCHR, to the Office of the Ombudsman, particularly in the area of capacity-building.

### **G. The international community**

87. The international community continues to play a fundamental role in the country, both financially and in influencing policies and decision-making at the political level. As already mentioned, the EU has gained prominence, as membership is a high priority.

88. This influence has resulted in some positive measures in the short term. However, a commitment of State institutions to continue and sustain the improvement in the environment for the protection and promotion of human rights would be a more dependable guarantee.

89. The Special Representative welcomes the establishment of the Civil Society Advisory Board within the United Nations Country Team as a space for civil society to meet and interact with the United Nations in a regular and institutionalized manner. The Advisory Board is meant to provide a forum to discuss, propose and evaluate United Nations policies at the country level. The Special Representative suggests discussing possible actions to promote the implementation of the Declaration on human rights defenders and to follow up the recommendations of this report.

## **IV. CONCLUSIONS AND RECOMMENDATIONS**

**90. The Special Representative recognizes a considerable number of positive developments since her first visit. The most remarkable is the increased capacity and professionalism of human rights defenders, although human rights organizations still do not form a community in a position to protect defenders.**

**91. Another area of major progress has been in legislation, with the adoption of several laws relevant to the work of human rights defenders, including the law strengthening the inspection functions of the Ombudsperson; the law on free access to public information; the abolition of prison sentences for the offence of defamation; the law on an independent court budget, among others.**

**92. While progress can be registered on the adoption of new laws, the implementation of these laws is often not satisfactory. Enforcing and monitoring mechanisms that defenders can use to report cases of non-compliance and protect affected victims are still lacking, are insufficient or do not function properly. This has created an environment in which Government responsiveness is limited or absent.**

**93. The Special Representative recognizes that the international community has played an important role in strengthening human rights defenders in the country, both in funding**

their projects and in building their capacity. The lobbying and advocacy efforts of human rights defenders have often been more successful when backed by international organizations. The current trend of reducing funds for civil society organizations is a concern. The Special Representative firmly believes that support to civil society organizations by foreign donors is essential even if the Government's capacity to extend grants to NGOs is increased.

#### **Recommendations for the consideration of the Government**

94. **Institutionalize interaction and consultation processes with civil society in drafting legislation and policies, in reporting to international human rights mechanisms, and in other relevant areas of Government action. The Strategy for Government Cooperation with the Civil Society Sector can provide an appropriate framework for such cooperation provided its application is extended to local authorities and the Parliament.**
95. **Establish enforcement and monitoring mechanisms that defenders can use to report non-compliance with legislation and human rights abuses. Among those mechanisms, an external oversight mechanism to investigate abuses committed by the police should be established and the Commission in charge of monitoring the implementation of the law on access to information should be reinvigorated. Ensure that complaints on abuses committed by the Alfi Unit of the police can be independently investigated, including by the Ombudsman. Monitoring mechanisms should be established and accessible at the local level.**
96. **Remove the legal and administrative constraints that prevent human rights defenders from accessing detention centres and police stations and ensure that such access is given.**
97. **Ensure tax exemption for voluntary organizations and expedite the legal and procedural requirements for this purpose.**
98. **Take the appropriate measures to ensure that freedom of association of trade unions in the private sector is respected, so that activities for the promotion of labour rights are protected.**

#### **Recommendations for the consideration of human rights defenders**

99. **Develop and strengthen initiatives aimed at forming a human rights community able to voice the positions of human rights defenders more forcefully and act as a protection network for defenders.**
100. **Improve strategies to work with the media to increase media understanding of and reporting on human rights and the work of defenders.**
101. **Consider the implementation and strengthening of measures aimed at improving the transparency and accountability of civil society organizations in order to build public**

**confidence and to ensure that the human rights agenda remains relevant to the problems faced by the population.**

**102. Strengthen human rights work with a multi-ethnic dimension. This will contribute to overcoming deeply rooted discriminatory practices along ethnic lines and will strengthen the reconciliation process.**

**Recommendations to the international community**

**103. Accompany the transition process until the end and continue supporting human rights defenders, both in terms of funding and capacity-building. This should be done while respecting the independence of defenders in determining their priorities and strategies and preserving their role of monitoring State institutions.**

**104. In assessing the country's compliance with human rights requirements, such as those needed to access the EU, use indicators that go beyond superficial changes. For instance, in the case of legislation, it is not enough to just adopt laws more conducive to the work of human rights defenders, but also to demonstrate effective implementation.**

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