



**Assemblée générale**

Distr.  
GÉNÉRALE

A/HRC/7/28/Add.3  
4 mars 2008

FRANÇAIS  
Original: ANGLAIS

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CONSEIL DES DROITS DE L'HOMME  
Septième session  
Point 3 de l'ordre du jour

**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,  
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,  
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Rapport de la Représentante spéciale du Secrétaire général concernant  
la situation des défenseurs des droits de l'homme, M<sup>me</sup> Hina Jilani**

**Additif**

**MISSION EN SERBIE, Y COMPRIS AU KOSOVO<sup>\*</sup>, \*\***

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

\*\* La soumission tardive de ce document s'explique par le souci d'y faire figurer des renseignements aussi à jour que possible.

## Résumé

Le présent rapport contient les conclusions et recommandations de la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme consécutives à la mission qu'elle a effectuée à Belgrade du 17 au 19 septembre 2007 et au Kosovo les 20 et 21 septembre 2007. Cette visite faisait partie d'une tournée dans la région qui s'est conclue sur une mission de suivi dans l'ex-République yougoslave de Macédoine du 23 au 25 septembre 2007. Les conclusions et recommandations relatives à la visite dans l'ex-République yougoslave de Macédoine sont présentées dans un rapport distinct<sup>1</sup>.

En Serbie, la Représentante spéciale a constaté un certain nombre de faits nouveaux encourageants, notamment un climat généralement non répressif, un meilleur accès à l'information et une communauté très active de défenseurs des droits de l'homme. Elle est en revanche préoccupée par l'hostilité à l'égard de ces défenseurs, particulièrement de ceux qui s'intéressent à la justice de transition et aux droits des minorités, qui font l'objet d'attaques constantes, principalement dans les médias, et sont décrits comme des ennemis de la patrie. Les pouvoirs publics devraient prendre des mesures concrètes pour donner une reconnaissance et une légitimité politiques aux défenseurs des droits de l'homme et à leur travail.

Au Kosovo, le débat politique est dominé par la question du statut, qui compromet la possibilité pour les défenseurs des droits de l'homme de s'affirmer et d'agir. Les défenseurs qui militent pour le statut du Kosovo d'une manière qui est critique ou éloignée de l'opinion majoritaire sont marginalisés. D'autres autocensurent leurs activités et leurs opinions, particulièrement ceux qui critiquent les autorités, de crainte d'infléchir défavorablement la décision concernant le statut. Les carences des mécanismes de responsabilisation pour les actes de l'administration internationale constituent un autre problème majeur qui compromet la possibilité pour les défenseurs des droits de l'homme d'exercer leur fonction et qui devrait être traité en priorité.

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<sup>1</sup> A/HRC/7/28/Add.4.

**Annexe**

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL  
ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, HINA JILANI, ON HER  
MISSION TO SERBIA, INCLUDING KOSOVO  
(17 September – 21 September 2007)  
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## **I. VISIT TO SERBIA**

1. The present report provides an account of the visit to Serbia by the Special Representative of the Secretary-General on the situation of human rights defenders, from 17 to 19 September 2007.
2. During her visit, the Special Representative met the President of the Assembly and other members of the Parliament, the Minister of Justice, the Assistant Minister of Foreign Affairs, representatives of the Ministry of Public Administration and Local Self-Government, the Ministry of Interior, the Government Agency for Human and Minority Rights, the War Crimes Prosecutor, the Public Prosecutor and the head of the first instance criminal department in the District Prosecutor's office. She also met with the Ombudsperson and the Commissioner for Information of Public Importance.
3. The Special Representative is grateful to the Government of Serbia for extending the invitation to visit the country and for its cooperation during the visit. She nevertheless regrets that some of the meetings with public authorities she had requested could not take place. In particular, she was not able to meet the President of the Republic and the Prime Minister. Other meetings did not take place at the level she had requested, as in the case of the Minister of Interior, the Minister of Foreign Affairs and the Minister of Public Administration and Local Self-Government.
4. The Special Representative met with a wide range of representatives of non-governmental organizations (NGOs), journalists and individual human rights defenders, as well as representatives of the international community. A press conference was held on the final day of the visit.
5. She is particularly grateful to the office of the United Nations Resident Coordinator for the support provided during her visit and for the commitment in following up the recommendations of this report.

### **A. A country in transition**

6. Following the break-up of the former Yugoslavia, the armed conflicts in the region during the 1990s and the ousting of Slobodan Milosevic in 2000, Serbia faced the multiple challenges of State building, democratization and economic transition, whilst also having to deal with the crimes committed under the past regime. In 2000, the Federal Republic of Yugoslavia was again admitted into the United Nations and sanctions were lifted. In 2003, the country was reformed into the State Union of Serbia and Montenegro and admitted to the Council of Europe.

However, the pace of democratic reforms slowed down after the assassination of Serbian Prime Minister Zoran Djindjic in the same year. In 2006, Montenegro voted for independence in a referendum; the State Union was dissolved and Serbia as an independent State adopted a new constitution.

7. Uncertainties related to the status of Kosovo and European Union (EU) accession dominate the political discourse in Serbia. The fragility of the democratic process slows down the advancement of the country in many areas, including and in particular in the area of human rights.

8. In 2007, Serbia and the EU initialled a Stabilisation and Association Agreement as a first step towards Serbian membership of the EU. However, full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) remains a condition for its actual signing.<sup>2</sup>

9. Political instability and armed conflict limited economic growth and development, and poverty still remains a great challenge in Serbia. The unemployment rate is high, especially among women and persons with disabilities.<sup>3</sup>

10. This is the context in which human rights defenders operate and that affects their work both in terms of challenges as well as achievements that can be registered.

**B. The legal framework on the rights and freedom set forth in 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  
(Declaration on human rights defenders)**

**1. Constitutional and international human rights law**

11. Serbia is party to almost all the core international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. Serbia is also party to relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. In September 2006, the Serbian National Assembly adopted a new constitution. The Constitution contains provisions that generally safeguard the rights and responsibilities

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<sup>2</sup> European Commission, enlargement candidates and potential candidate countries, Serbia – key events, available at [http://ec.europa.eu/enlargement/serbia/key\\_events\\_en.htm](http://ec.europa.eu/enlargement/serbia/key_events_en.htm).

<sup>3</sup> See concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.108, para. 16).

guaranteed by 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 (Declaration on human rights defenders).<sup>4</sup> There was, however, a general regret amongst civil society actors that the Special Representative met that there was insufficient public consultation and debate during the drafting phase and several civil society organisations criticized the process. It is estimated that just over 50 per cent of voters in a referendum in October 2006 favoured the new constitution.

## **2. Freedom of association**

13. Article 55 of the 2006 Constitution of Serbia guarantees freedom of association. Currently, NGOs are governed by the 1982 Serbian Law on Associations, the 1989 Serbian Law on Foundations and the 1990 federal Law on Associations. These laws are, however, outdated in many respects.

14. A new draft law on citizens' associations has been submitted to the Parliament for debate. The adoption of this law would be a significant development for civil society, as the draft provides for a legal status for civil society organizations, which is a positive step in enhancing their legitimacy. The consultative process involving different sectors of civil society undertaken during the drafting stages of the law is noted as positive. The Special Representative hopes that this process will result in a law that adheres to existing international human rights standards, including the Declaration on human rights defenders. The recommendations of her 2004 report to the General Assembly can be used as guidelines in this area.<sup>5</sup>

15. The Special Representative is however concerned to learn that voluntary organizations are not exempted from taxation. In her discussions on these issues with representatives from the Ministry of Public Administration and Local Self-Government, the Special Representative was assured that the Ministry intends recommending the adoption of a tax-free regime for non-profit organizations, and she trusts such a system will be introduced in the very near future.

## **3. Access to information**

16. Access to information is essential for the work of human rights defenders and it is a pillar of the transparency that should govern the functioning of democratic public authorities.

17. The Law on Free Access to Information of Public Importance was adopted in 2004. It established the office of the Commissioner for Information of Public Importance, an autonomous

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<sup>4</sup> General Assembly resolution 53/144.

<sup>5</sup> A/59/401, para. 82.

and independent institute receiving complaints if public authorities refuse to provide information they should make accessible according to the law.

18. The Special Representative welcomes the improved access to information for human rights defenders due to the work of this institution. The positive role of the Commissioner was consistently recognized by the defenders as fundamental in the implementation of the law and the actual realization of the right to access information. One thousand, one hundred and eighty-eight cases of access to information, amounting to 68 per cent of the cases submitted to the Commissioner, were resolved by this institution in 2006.<sup>6</sup>

19. Challenges that still exist in the realization of the right to access to information include the attitude and limited or lacking cooperation of some Governmental bodies. The decisions and recommendations of the Commissioner are often not implemented and there is no mechanism to enforce these decisions or to sanction Governmental entities that violate the law.

20. The Commissioner is under-resourced and has accumulated a big backlog of cases. The Special Representative was told that 21 employees are sanctioned for this office, but there was a staff of only six persons at the time of her visit. The reason for this was the shortage of space in the existing premises.

21. The Special Representative was encouraged by the quality of the work of the Commissioner. She hopes that sufficient support will be given to this institution in order for it to continue this important work.

#### **4. Freedom of assembly**

22. Article 54 of the 2006 Constitution states that “Citizens may assemble freely.” The constitutional provisions on limitations on assembly are in conformity with international standards. The Serbian Public Assembly Act (2005) regulates the exercise of this right in more detail.

23. The Special Representative received information that defenders have normally been able to carry out assemblies without restrictions. However, she also notes the case brought to her attention regarding the demonstration in July 2007 staged by the NGO coalition “Facing the Past” which was forcibly dispersed by the authorities.

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<sup>6</sup> Commissioner for Information of Public Importance, “Report of the Implementation of the Law on Free Access to Information of Public Importance in 2006”, Belgrade, March 2007.

## **5. Freedom of expression and the media**

24. The right to freedom of expression and freedom of the press is guaranteed by articles 46 and 50 of the Constitution.

25. Several independent media organizations operate in Serbia. However, there is an environment of political pressure and insecurity for independent journalism. Independent journalists and media have experienced threats, attacks and reprisals for publishing views critical of the Government. The environment is particularly hostile for reporting on war crimes and past abuses.

## **6. Legislation for the protection of defenders**

26. Article 387, paragraph 2 of the new Serbian Criminal Code of January 2006 (racial and other discrimination), identical to article 154 in the previous criminal code, envisages racial and other discrimination as a criminal offence, and stipulates that a sentence (a minimum of six months but not exceeding five years) shall be imposed on anyone who persecutes organizations or individuals for advocating equality among people.

27. This seems a good provision to protect the human rights defenders attacked for their work on equality. However, after consulting with the authorities, the Public Prosecutor, the Ombudsperson and several defenders the Special Representative could not find information on case law applying this provision. The only NGO which claimed the application of this article in about 20 cases provided information to the effect that courts used a narrow interpretation of the provision and rejected the complaints.

28. The Accountability for Human Rights Violations Act, known as the Lustration Law, was adopted in 2003. It covers human rights violations as far back as 1976. However, according to the information received by the Special Representative it has still not been implemented.

## **C. Institutional settings and interaction with defenders**

### **1. The Ombudsperson**

29. The law on the Ombudsperson, Law on the Protector of Citizens, was adopted in September 2005 and the first Ombudsperson appointed in June 2007 by the Parliament.

30. The law provides for a comprehensive mandate. The Ombudsperson has the mandate to supervise respect for human rights within the administration by controlling the work, acts, failures to act, and decisions of Governmental agencies. The mandate includes the right to receive complaints and investigate cases, initiate new laws related to human rights, suggest

amendments to existing laws, as well as to make suggestions about draft laws submitted to the Parliament.

31. The office of the Ombudsperson has yet to become fully operational. The Special Representative recommends to the Ombudsperson to establish a close cooperation with human rights NGOs, providing them with a channel through which they can communicate concerns and suggestions to the Government.

32. The Special Representative considers the creation of the office of the Ombudsperson to be a positive step forward. The mandate is broad and the institution has the power to undertake a wide range of activities. The Special Representative recommends the Government to collaborate with and support the work of this institution to allow it deliver the expected results.

## **2. The Government Agency for Human and Minority Rights**

33. The Government Agency for Human and Minority Rights is the successor of the former Ministry for Human and Minority Rights. It is under the authority of the Prime Minister and its mandate includes reporting to international organizations. The Agency is meant to coordinate human rights work across ministries, however, there does not seem to be a system or procedure of coordination with the result that implementation of its mandate of has been largely ineffective.

34. There is no national plan of action or strategy on human rights that guides the coordination function of the Agency. This reflects, on the one hand, a lack of commitment to its mandate and, on the other renders the Agency unable to take a lead role in driving a Government human rights agenda. The Special Representative was, however, told that national action plans on children and on women are in the process of preparation.

35. The Agency informed the Special Representative that it monitors prisons. However, the reports on this monitoring work are not public, nor are any recommendations it may have made to other concerned organs of the State and administrative units. Human rights monitors are, therefore, unable to assess or report on the impact of the work of the Agency.

36. The Agency also informed the Special Representative that it had organized discussions and awareness programmes prior to presentation of its reports. However other information received by the Special Representative indicated that cooperation with civil society is not systematic, including on the occasion of reporting to the United Nations treaty bodies. Few defenders reported having had any interaction with the Agency.

### **3. The police**

37. A police force trained in human rights and protective of the right to defend human rights is an important factor in providing an enabling environment for defenders.

38. The Special Representative was informed by the Ministry of Interior that a curriculum reform in police training has introduced the principles of human and minority rights, police ethics and community policing. The Special Representative also noted the preparation of a rulebook on filing complaints against police officers, and was informed by representatives of the Ministry that information about this procedure would be printed and distributed to the public in relevant languages. While appreciating the progress made in establishing the complaints procedure, the Special Representative encourages the internal control department of the police to seek cooperation with the office of the Ombudsperson and notes the continued absence of an independent external oversight mechanism.

39. The Special Representative is mindful of claims by some defenders that they have to deal with cases related to police torture and maltreatment and is, therefore, particularly interested in the establishment of an effective accountability system. Access for defenders to such accountability processes would be critical in helping victims receive justice in cases related to abuses by the police.

### **4. The judiciary**

40. In 2003 Serbia passed a law creating the office of the War Crimes Prosecutor and designating a special department at the Belgrade District Court to handle new war crimes cases. Progress in bringing suspected war criminals to justice in domestic proceedings at the special war crimes chamber is a positive development, including the efforts in making these cases and procedures as transparent as possible. The contribution of human rights defenders to the achievements of the Serbian War Crimes Tribunal has been fundamental, in particular their work on collecting evidence and assisting witnesses.

41. The recently adopted law on witness protection provides for several measures to protect the life and integrity of a witness before and during a trial and after its termination. It is an important legislative tool for defenders working on war crimes investigations and trials. The Special Representative believes that support of the Government can encourage witnesses to come forward. More broadly, it would contribute to a healing process among communities to the benefit of the country and the region.

### **5. Cooperation between civil society and the Government**

42. The Special Representative notes some examples of interaction between State actors and civil society. Access of human rights defenders to prisons has improved significantly. The defenders generally reported that they have observed a policy shift and participation of civil society in drafting legislation affecting them and their work has generally improved. They also observed that some of the laws recently adopted reflect their recommendations. It is apparent that NGOs are also involved in institutional capacity-building activities, including as regards the judiciary.

43. The interaction of defenders with the Government and other State actors is, however, not systematic or institutionalized. There is no institutional mechanism to facilitate communication and cooperation with the Government. Interaction occurs on an ad hoc basis and depends on personal contacts or the good will of individuals in public institutions.

44. Defenders reported their difficulties in accessing public authorities. Reports, petitions, communications and other documents that defenders send to Governmental authorities do not engender any reaction from the Government, not even to refute the findings that defenders present. The Government tends to work with NGOs that are less critical, and uses NGO expertise in what are seen as non-sensitive issues, such as poverty reduction strategies, child rights, and social inclusion. In some cases, consultation between the Government and civil society takes place because of the pressure of international donors.

#### **6. International donors and human rights defenders**

45. The role of international organizations and donors has been crucial to support defenders in Serbia and to strengthen their capacity. Their presence and support of the international community for both State institutions and civil society is particularly critical for countries in transition.

46. In recent years, the support from international donors has tended to focus more on State institutions and capacity-building in Governmental institutions. While strengthening Government institutions and their capacity to govern on the basis of democratic rules is critical, building the capacity of civil society is equally important to ensure consistency in good governance and in respect for human rights and the rule of law. NGOs must be supported in such a manner that they are able to function independently and to contribute towards the accountability of the State. Their presence also contributes towards raising public awareness and creating a culture that values human rights. A relationship of trust and confidence between the State and civil society can only be built if there is a balance in their capacity and strength.

47. Some donors provide funding only to NGOs that collaborate with the Government. Such collaboration is to be proven by Government letters that are to be included in the documents that NGOs present when submitting their applications. This prevents independent and critical NGOs from accessing funding.

48. Moreover, the decreasing amount of funding available to NGOs is resulting in a sort of brain drain phenomenon, by which the best qualified NGO personnel take positions in Government institutions or move to other parts of the public sector, or to the private sector, where more stable jobs or higher salaries are available.

#### **D. The human rights defenders community**

49. Civil society in Serbia developed as an anti-war movement in the 1990s, when human rights defenders were systematically targeted by the Milosevic regime. Once the regime fell, the role of Serbian NGOs was central to reporting and denouncing war crimes and human rights abuses, as well as in strengthening and developing the civil society.

50. A large number of NGOs are registered in Serbia today, but only a limited number are actually active. NGOs operate on a low budget and the lack of domestic support makes them dependent on foreign funding, although access to this is also becoming more difficult.

51. However, the Special Representative observed a vibrant and active human rights community in Serbia with a wide range of expertise and knowledge, including the ability to use the international and regional human rights mechanisms.

52. A high-profile coalition of eight NGOs has prepared the ground for other human rights organizations which are now functioning in the country. Many of these defenders work on transitional justice and accountability for past abuses and war crimes.

53. Other areas of work include the rights of minorities, discrimination, women's rights, lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, disability, and children's rights. Defenders provide legal aid, monitor and report on prisoners' rights, and conduct human rights education and training. Some defenders file cases at the European Court of Human Rights and refer to the decisions of the Court at the national level.

54. There are a few NGOs concentrating their work on social, economic or cultural rights, an area in which human rights work should be strengthened and the ongoing efforts encouraged, such as NGO involvement in the Poverty Reduction Strategy.

#### **1. The environment for the defence of human rights**

55. The Special Representative observes that the freedom for human rights defenders to operate in Serbia has improved since the Milosevic era. National and international human rights groups operate without Government restriction and are able to carry out their work without interference.

56. However, the information that she received indicates a hostile environment for human rights defenders working on certain areas of rights. The Special Representative is concerned about the hostile attitude against human rights NGOs and prominent defenders, who are under constant attack, mainly in the media, but also in the Parliament. A report of one human rights organization records 20 attacks on journalists and 14 on NGO activists and their property between October 2006 and April 2007.<sup>7</sup>

57. The victims of these attacks are mostly organizations and individuals who are targeted because of their work on transitional justice and war crimes, which, according to some defenders, are issues that some sectors of the political establishment do not want to address.

58. There are also reports of present human rights violations, such as police torture and ill-treatment, domestic violence, trafficking in women and girls and discrimination against Roma. Defenders working on LGBTI rights are confronted with cases of hate speech, intolerance and homophobia, both in the media and in public discourse.

59. Women defenders working on women's rights have been subject to repeated and systematic intimidation, threats and propaganda in the media, but also to physical attacks by people in the street and death threats. In some cases personal information, such as ethnic background and addresses have been published, in a deliberate attempt to instil fear into them. The Special Representative was told that women defenders in rural areas face specific challenges, as they operate in a more conservative environment in terms of gender roles and with an increasing influence of the church and nationalist movements.

60. From information received during her visit, the Special Representative also gathered that human rights defenders outside the capital are more vulnerable to attacks and harassment as they are more isolated and distant from the protection networks that exist in Belgrade.

61. Some defenders indicated that the Kosovo issue and the wave of patriotism related to it is another source of threat and attacks against human rights defenders. Some of the threats received by defenders lately have specifically stated that attacks will increase depending on the solution

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<sup>7</sup> Youth Initiative for Human Rights, *Political Violence in Serbia October 2006 – April 2007*, p. 3.

of the Kosovo issue.<sup>8</sup> Such incidents have caused fear amongst NGOs that work at the regional level and are engaged with the issue of minority rights.

62. Many of the defenders that met with the Special Representative considered that parts of the political establishment support what they described as a style of governance with strict regulations and control over civil society and limited space for the expression of dissent.

63. This environment is further damaged by the lack of an adequate legal framework for NGOs, donors downsizing their presence, generally weak human rights knowledge amongst the wider public, and campaigns trying to discredit the work of human rights defenders.

64. The Special Representative was disturbed by accounts by defenders of incidents in which the very organizations that have been in the forefront of Serbia's human rights movement are targeted for marginalization and criticism by some parts of the Government and Members of Parliament. The Special Representative is concerned about the Government's failure to denounce more forcefully verbal and physical attacks against human rights defenders. This stigmatization of defenders, which portrays them as traitors and enemies of the country, should be countered by supportive statements of State authorities that would give them legitimacy. A firm stand by State authorities would contribute to community recognition and protection of defenders.

65. Some of the specific cases of human rights defenders brought to the attention of the Special Representative include the case of Maja Stojanovic, a human rights defender, who was charged with hanging posters in an unauthorized place, convicted and the highest possible fine imposed on her for putting up posters urging the Serbian authorities to arrest and transfer the alleged war criminal Ratko Mladic to the ICTY.. The defender risked imprisonment if she did not pay the fine, which was ultimately paid by her organization.

66. The Special Representative was also informed of attacks against women defenders belonging to the organization Women in Black. In January 2007, two members of this organization were allegedly attacked, with one sustaining serious injuries. It was presumed that the attackers were the same individuals who threw tear gas at the Women in Black in July 2005 during an assembly to mark the tenth anniversary of the Srebrenica massacre.

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<sup>8</sup>For instance, a message received in December 2006 by the Director of the Lawyers' Committee for Human Rights (YUCOM) was brought to the attention of the Special Representative. The message said that "if Kosovo gets independence we will massacre you and [...] and all other traitors".

67. More recently, in a communication of 29 November 2007 the Special Representative brought to the attention of the Government information received on alleged insults and hate speech addressed against Natasa Kandic, Executive Director of the NGO Humanitarian Law Centre, by members of the Parliament belonging to the Serbian Radical Party. The Special Representative is concerned that this episode illustrates the hostile environment surrounding human rights defenders in Serbia.

68. In communications of previous years, the Special Representative raised other incidents concerning attacks and threats against defenders or criminal proceedings prosecuting defenders for their human rights activity. These are the cases of Vladan Vlakovic of the Helsinki Committee for Human Rights, Svetlana Djordjevic, and the television and radio station B92.<sup>9</sup> In its replies on these cases, the Government provided information on ongoing investigations to identify and prosecute the perpetrators. The Special Representative regrets that the Government failed to provide information on further measures taken to remove the impunity of those who attacked human rights defenders in the cases concerning the television and radio station B92 and Svetlana Djordjevic, and that it did not prevent the criminalization of what appeared to be legitimate human rights work in the case of Vladan Vlakovic.<sup>10</sup>

69. These incidents, cumulatively, indicate a lack of respect for the freedom of assembly and the right to protest and for academic and media freedom. In several incidents reported to the Special Representative, non-State actors were allegedly the perpetrators. These cases raise concerns regarding the commitment of Government to its responsibility to protect defenders and to prosecute the acts of non-State actors that obstruct the performance of their functions.

## **2. Impunity**

70. The Special Representative is particularly concerned by the lack of investigation and public condemnation by State officials of some of the gravest human rights violations from the past, or of attacks on human rights defenders who deal with these violations.

71. Research conducted by human rights defenders describes the lack of State response to politically motivated assaults in the period October 2006 – April 2007, showing that perpetrators of 85 out of 119 recorded incidents were not caught. In 34 incidents with clear evidence

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<sup>9</sup> E/CN.4/2005/101/Add.1. paras. 477-479.

<sup>10</sup> E/CN.4/2006/95/Add.1, paras. 458-460.

regarding the perpetrator's identity there is no information on an adequately conducted investigation, or the prosecution and punishment of these persons.<sup>11</sup>

72. In April 2007, the well known journalist Dejan Anastasijevic survived an attempted murder with a bomb blast. Dejan Anastasijevic reports on war crimes cases and testified before the ICTY in the Milosevic trial. Investigations in this case have not yet resulted in the identification of the perpetrators. The Special Representative considers this case an emblematic one to illustrate the overall climate of impunity regarding attacks committed against defenders. If even cases of defenders with the visibility of Dejan Anastasijevic remain unpunished, the community of defenders inevitably feels at risk and without protection. The attempted murder of Dejan Anastasijevic is not only an attack against his person but also a threat addressed to defenders working on sensitive issues, such as war crimes.

73. The Special Representative was also informed of the outstanding cases of journalists Dada Vujasinovic, Slavko Curuvija and Milan Pantic. The Special Representative encourages the Serbian authorities to complete investigations into the circumstances of their deaths as a matter of priority, to identify, prosecute and punish the perpetrators and to fully disclose the facts to the public.

### **3. State security files**

74. The Special Representative has previously commented on the Government practice of maintaining intelligence files, which is not regulated by law and lacks transparency.<sup>12</sup> Defenders in Serbia expressed serious apprehension regarding this practice and resented the attempts at surveillance of human rights defenders and the treatment of them as a security risk.

75. A decision on the opening of State security files has not been taken yet. There have been frequent declarations on the will to do so but no action has followed so far. Opening secret files would be an important sign of transparency, particularly crucial during the transition period through which Serbia is living. Such a step would contribute to confronting the totalitarian past of the country and to overcoming it.

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<sup>11</sup> Youth Initiative for Human Rights, *Political Violence in Serbia October 2006 – April 2007*, p. 30.

<sup>12</sup> E/CN.4/2006/95/Add.5, para. 1443.

## **E. Recommendations**

**For the consideration of the Government and relevant State actors**

- 76. Establish and institutionalize interaction and consultation processes with civil society. This also includes involving civil society in the preparation and follow-up of the reports to United Nations treaty bodies and to the Human Rights Council in the context of the universal periodic review.**
- 77. Adopt a national plan or strategy on human rights with specific measures for the protection of human rights defenders and their activities. The plan or strategy should include the protection of defenders in vulnerable positions, like women defenders in rural areas and defenders working on lesbian, gay, bisexual, transgender and intersex rights. The Government should engage non-governmental organizations and other members of civil society in the process of discussion of such a strategy at the national level.**
- 78. Take forceful action on investigating, prosecuting and sentencing cases regarding violations against human rights defenders and provide adequate protection and redress to human rights defenders affected by these violations.**
- 79. Ensure a tax exemption regime for non-profit organizations, in order to establish a stronger framework for the freedom of association.**
- 80. Create better systems and procedures for the implementation of the decisions and recommendations of the office of the Ombudsperson and the Commissioner for Information of Public Importance. Set up accountability arrangements, like a reporting system, to monitor the degree of collaboration of Government ministries and departments.**
- 81. Continue to incorporate human rights education in the curriculum for training of the police forces, as well as judges and lawyers, and ensure access of human rights defenders, as well as victims, to the accountability mechanisms that address human rights violations by the police.**

**For the consideration of human rights defenders**

- 82. Improve coordinating networks aimed at strengthening the protection of defenders, particularly those outside the capital and those in a more vulnerable position.**

**For the consideration of the international community, including the United Nations country team, and donors**

- 83. Continue and strengthen support provided to 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 in monitoring State institutions.**

**84. Ensure that diplomatic missions of the European Union countries are aware of and committed to the implementation of the European Union Guidelines on Human Rights Defenders in all cases where they can be applied to support and protect defenders.**

## **II. VISIT TO KOSOVO**

85. The Special Representative conducted a mission to Kosovo on 20 and 21 September 2007. The Special Representative would like to thank the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government (PISG) for allowing her to undertake a fruitful visit. The Special Representative expresses her deep gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Kosovo for its commendable assistance in the organization of the agenda. She values the involvement of OHCHR in the visit and considers it a good basis to ensure follow-up to the recommendations of this report.

86. The mission visited Pristina/Prishtine and an enclave of Kosovo Serbs outside Pristina/Prishtine in the village of Caglavica/Cagllavice. The Special Representative had 19 meetings during her two-day visit. She met with representatives of the Provisional Institutions of Self-Government, the international community, and human rights defenders. In particular, she met with the President of Kosovo, members of the Kosovo Assembly, the Minister of Interior, the Minister for Communities and Returns, the Government Coordinator for Human Rights, the acting Ombudsperson, the Special Representative of the Secretary-General for Kosovo, the Office of the personal representative of the EU High Representative for Common Foreign and Security Policy, and the Head of Mission of the Organization for Security and Cooperation in Europe (OSCE). She also met with representatives of non-governmental organizations (NGOs), journalists and individual human rights defenders. She took part in the television debate “Life in Kosovo” (*Jeta ne Kosove*) to provide information on her mandate and its relevance to the promotion of human rights.

### **A. The quest for status and how it affects human rights defenders**

87. The historically difficult relationship between Kosovo Albanians and Serbs was exacerbated under the Milosevic regime in the 1990s. Discrimination and repression was followed by armed conflict involving the loss of lives, “disappearances” and abductions, massive displacement and forcible expulsions affecting mainly Kosovo Albanians, but also Kosovo Serbs

and members of other ethnic groups. The deterioration of the humanitarian crisis prompted the intervention of the North Atlantic Treaty Organization (NATO) in the spring of 1999 and the withdrawal of Serbian military and police forces from Kosovo in June 1999. Security Council resolution 1244 (1999) authorized the creation of an interim international administration (UNMIK) and the stationing of a NATO-led force (KFOR) in Kosovo. UNMIK assumed all legislative, executive and judicial authority throughout Kosovo, pending the creation of provisional governmental institutions. Since then, although Kosovo has remained legally part of the Republic of Serbia or its predecessors, Kosovo and Serbia have been governed in complete separation, in a situation in which Serbia has not exercised any governing authority over Kosovo.

88. Under UNMIK authority, the Provisional Institutions of Self-Government in Kosovo (PISG) have been created since 2001 and have increasingly taken on responsibility for most aspects of government although UNMIK retains the ultimate authority over all actions undertaken by PISG and still governs under “reserved” powers which mainly relate to policing, the judiciary and international representation. The establishment and reinforcement of PISG had the merit of setting in motion a political process. However, the role of UNMIK as an interim administration, which is at the same time a United Nations body whose staff members enjoy privileges and immunities, the gradual transfer of competences to PISG, and the existence of Serbian parallel court and administrative structures in some parts of Kosovo raise questions of accountability and legal uncertainty.

89. Legal inconsistencies affect the enjoyment of human rights of the people of Kosovo and impair the ability of human rights defenders to defend these rights. An emblematic example is the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. The standards contained in the Convention must be observed by PISG in Kosovo through an UNMIK regulation<sup>13</sup> but people in Kosovo cannot claim its violation before the European Court of Human Rights.<sup>14</sup> To do so, Kosovo would have to become a member of the Council of Europe and this is linked to the issue of status.

90. This is one among the many problems that are in a situation of impasse because of the uncertainties surrounding the political status of Kosovo.

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<sup>13</sup> UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government for Kosovo, promulgated 15 May 2001, chapter 3, para. 3.2.

<sup>14</sup> European Commission for Democracy through Law (Venice Commission) Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms, Opinion no. 280/2004, CDL-AD (2004)033, 11 October 2004, para 78.

91. All the interlocutors met by the Special Representative agreed on this point. “People need security and this is what status provides”, said a representative of the international community. “Time has come to decide on status. We have come to a stage in which we cannot do more to prepare the ground. A lot still needs to be done for democratic institutions to work but this cannot happen in the present institutional set-up, which lacks accountability”, said the Head of the OSCE Mission.<sup>15</sup>

92. The question of status dominates the political debate even more acutely than in Serbia and negatively affects the possibility of human rights defenders to grow and function. The quest for status is a polarizing element: those who want independence against those who do not. There is no place in between and the expression of dissent on how status should be decided is subtly but strongly discouraged.

93. Human rights defenders who advocate for status in ways that are critical of or somewhat distant from the predominant view are silenced and marginalized. Other defenders somehow self-censor their activities and positions, especially those critical of the authorities, for fear of being accused of endangering decisions on status.

94. Such a sanitized environment, which discourages civil society organizations from criticizing, protesting, resisting, and monitoring public authorities is not conducive to the development of a strong and vibrant community of human rights defenders and it is a major concern of the Special Representative in her assessment of the situation of human rights defenders in Kosovo.

### **B. The Ahtisaari status proposal**

95. In November 2005, the Secretary-General appointed Martti Ahtisaari as his Special Envoy for the Future Status Process for Kosovo. In March 2007, the Special Envoy submitted his report proposing a political settlement for Kosovo.<sup>16</sup> The Special Envoy proposed that the independence of Kosovo be supervised for an initial period by the international community, the International Civilian Representative, who would be double-hatted as the European Union Special Representative. After a transition period, UNMIK’s mandate would expire and all legislative and executive authority vested in UNMIK would be transferred en bloc to the authorities of Kosovo.

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<sup>15</sup> Ambassador Werner Wnendt.

<sup>16</sup> S/2007/168.

96. In December 2007, the troika following negotiations on status, composed of the EU, the Russian Federation and the United States of America, reported to the Security Council that despite four months of intense and high-level negotiations, Belgrade and Pristina/Prishtine were unable to reach an agreement on Kosovo's final status. At the time of writing this report, an outcome on this process was still awaited.

### **C. Human rights defenders in Kosovo**

#### **1. The lost origins of the human rights movement**

97. The interlocutors of the Special Representative, including representatives of civil society organizations, consistently considered that human rights defenders are not particularly strong in Kosovo. With different degrees of intensity, they described their disappointment or disillusion over what ten years ago was a civil society movement anchored in human rights that moved Kosovo forward in denouncing violations and crimes committed during the Milosevic regime, but that today has lost its potential. "It is a paradox. We moved from a decade when the whole discourse on Kosovo was sustained by human rights and human rights defenders to a decade of total apathy", remarked a defender.

98. "Before the NATO bombing, human rights activists had a common enemy. After the bombing, many activists entered politics. Their priority became the status of Kosovo and not human rights. They swallowed past abuses in exchange for independence", commented a defender to explain the rise and fall of what was perceived to be a strong human rights movement.

99. An emblematic case is the Council for the Defence of Human Rights and Freedoms, which did consistent work in documenting and reporting human rights violations committed under the Milosevic regime. It was the leading organization of the human rights movement which brought crimes and violations against Kosovo Albanians to the attention of the international community and the media. Today the Council complains about having been marginalized and prevented from undertaking activities that were core functions of the organization for many years, like monitoring elections. The Council further complains of being unfairly labelled as an organization that protects only the rights of Kosovo Albanians.

100. Without entering into the merits of the specific situation and without expressing views as to whether these allegations are well-founded, the Special Representative considers that the marginalization of the Council may also be partly due to its views and positions that do not fit the predominant discourse on status.

## **2. Human rights defenders today**

101. At the time of the Special Representative's visit there were over four thousand registered NGOs in Kosovo many of whom list human rights among their activities, but it was unclear how many were actually functioning. Most of them are donor-driven and flourish and perish with the availability of foreign funding or lack of it.

102. Most defenders reported they have contacts with PISG but consultation processes are ad hoc rather than systematic or institutionalized. NGOs find it particularly difficult to be involved in policy-making processes within PISG. Information provided by PISG on NGOs with which they collaborate mainly indicates international NGOs. The collaboration between civil society organizations and UNMIK was reported to be even more difficult.

103. The ethnic divide appears to be a major source of animosity between some civil society organizations and an obstacle to uniting for common human rights objectives. "Unfortunately, we have come to a situation in which human rights are just ethnic rights", commented a representative of an NGO.

104. Organizations working on the rights of Roma, Ashkali and Egyptian minorities are particularly affected by the enmity between the Kosovo Serbs and the Kosovo Albanians and feel excluded from decision-making processes at the political level as "they do not belong".

105. While civil society organizations as a whole are quite fragmented, NGO work on some thematic areas is solid and well-coordinated. The Special Representative was encouraged by some examples of multi-ethnic coalitions and networks of organizations working on thematic areas, such as women's rights and disability. These organizations are part of networks within both Kosovo and the wider region, and have linkages with international platforms.

106. Other prominent human rights NGOs are those with headquarters in Belgrade and local offices in Kosovo. They work mainly on transitional justice and war crimes, and on public accountability issues, such as monitoring the implementation of the law on access to information.

107. Defenders working for the rights of lesbians, gays, transgender and intersex (LGBTI) persons are in a particularly vulnerable situation. They have chosen not to register as an association for fear of being then identified as individuals and harassed or attacked. In the recent past, members of this group were confronted with homophobic episodes at the hands of the police, who did not protect their privacy when they reported cases of attacks. The Special Representative was reassured by the Ministry of Interior, who was aware of these episodes,

acknowledged the problem, and was committed to addressing it. Improvements in the attitude of the police were confirmed by defenders working on LGBTI rights, who stressed the need to train the police on these issues. They also pointed to the ostracism they face vis-à-vis other human rights organizations, which, with few exceptions, are openly against considering LGBTI issues as human rights issues.

## **D. The environment**

### **1. Freedom of expression and access to information**

108. Freedom of expression is generally respected in Kosovo. However, the Special Representative is concerned about an overall climate of self-censorship among journalists, who avoid writing about sensitive issues. This is not necessarily for fear of blatant acts of harassment and violence against journalists but rather of subtle forms of retaliation, like marginalization, unemployment or being confined to less challenging areas of work.

109. The area of journalism where journalists are most at risk is the investigation of organized crime. In September 2004 a journalist was wounded and another killed in June 2005, presumably in connection with their investigative work on organized crime. The Special Representative is concerned that there has not been significant progress in the investigation of these crimes.

110. Despite the existing legislation establishing a right of access to official documents of PISG,<sup>17</sup> journalists and defenders reported deficient implementation. Defenders and journalists pointed to the problem that there is no legislation allowing access to UNMIK documents.

### **2. Freedom of peaceful assembly**

111. At the time of the visit, the Kosovo Assembly had recently adopted a law on public assembly, which was in the legal office of UNMIK for examination. The Special Representative was later informed that the law could not be promulgated because legislation in this area is not within the competency of the Kosovo Assembly. The legislation in force on freedom of assembly is therefore a law adopted in 1981 under the former Socialist Federal Republic of Yugoslavia.<sup>18</sup> Without entering into procedures regulating the complicated legal setting of Kosovo, the Special Representative urges the authorities to adopt adequate legislation on freedom of peaceful assembly. Adequate legislation and its scrupulous implementation are fundamental to preventing the reoccurrence of the tragic incidents that happened on 10 February 2007. The Special

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<sup>17</sup> Law on Access to Official Documents, Kosovo Assembly Law 2003/12, promulgated and amended by UNMIK Regulation 2003/32.

<sup>18</sup> Law on Public Assembly, Socialist Autonomous Province of Kosovo, Official Gazette 8/81, 27 February 1981.

Representative suggests using the Guidelines on Freedom of Peaceful Assembly published by the Office for Democratic Institutions and Human Rights (ODHIR) of OSCE to draft and implement legislation in this area. She further refers to the recommendations of her reports to the General Assembly of 2006 and 2007, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly.<sup>19</sup>

### **3. The events of 10 February 2007**

112. In Kosovo, the most controversial demonstrations in the streets have been around the issue of status. Tensions mounted around the issuing of the Ahtisaari proposal (see paragraph 95 above), which generated strong reactions from radical elements and in particular within the *Vetevendosje* (Self-Determination) movement. This movement advocates a policy of non-negotiation and antagonism towards the international establishment and the provisional authorities.

113. On 10 February 2007, the *Vetevendosje* movement under the leadership of Albin Kurti organized a demonstration in Pristina/Prishtine. The demonstration turned violent and UNMIK Special Police Units (SPU) started using teargas and firing rubber bullets into the crowd. This resulted in the injuring of over 80 persons and the death of two men.

114. The investigations by UNMIK into the case led to the conclusion that Romanian policemen had been responsible for the death of the two men, who died from the injuries caused by the rubber bullets, but that the evidence available and the lack of further access to the Romanian police officers meant that the individual officers who fired the rubber bullets could not be identified.

115. As it emerged from reports on the incident,<sup>20</sup> Romanian legislation permits a significantly greater use of firearms and deadly force than that accepted in international law and guiding United Nations principles on the use of lethal force. When there are such divergences between the domestic legislation of a contributing country to a peacekeeping mission and international standards, measures are to be taken at the level of training, command, control and supervision to ensure the application of United Nations standards in operations under the responsibility of the United Nations.

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<sup>19</sup> A/61/312 and A/62/225.

<sup>20</sup> R.L. Dean, *Second report of the Special Prosecutor to the SRSG regarding the deaths and serious wounding of protestors during the 10 February 2007 demonstration in Pristina*, 29 June 2007.

116. These legal inconsistencies, together with other factors including ammunition which was long past its expiry date, ambiguities in operational orders and imprecision in authorizing the deployment of rubber bullets, and a breakdown in the chain of command and supervision, indicate the responsibilities of the international police in the deaths of two persons and the injury of many others, and are illustrative of the problem of accountability of the actions of UNMIK. The Special Representative appreciated the information provided by the Special Representative for Kosovo who reported that rubber bullets have been removed from the arsenal of UNMIK police as a consequence of the independent investigation carried out into the incidents of 10 February. She nevertheless considers this measure to be just one among many that should be taken to prevent the occurrence of similar incidents and to ensure that those responsible for the excessive use of force during the demonstration of 10 February are held accountable.

117. A further concern is expressed about the situation of Mr Albin Kurti, who was arrested on 10 February 2007 in connection with his role in the demonstration. He has been indicted for the offences of (a) participating in a crowd committing a criminal offence (causing general danger and/or damage to property); (b) participating in a group obstructing official persons in the performance of their official duties; and (c) calling for resistance.<sup>21</sup> Without entering into the merits of the case, the Special Representative calls on all those responsible for the judicial situation of Mr Kurti to ensure that his right to a fair trial is respected. The case is highly politically charged as it is linked to key issues for Kosovo, i.e. its political status and the accountability of the international administration. The perception that Mr Kurti is a scapegoat paying for the faults of the international police is dangerous and is to be dissipated. The best way to do it is through a fair trial. Human rights defenders can contribute by monitoring the trial to ensure its transparency and should be encouraged to do so.

#### **4. Human rights structures within the Provisional Institutions of Self-Government**

118. The international community, and OSCE in particular, have made considerable efforts to inject into governmental structures an institutional framework conducive to human rights being mainstreamed in the policies and actions of the Kosovo governmental authorities. The role of the OHCHR office in Kosovo has also been crucial in supporting human rights structures at the

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<sup>21</sup> Interim administration of Kosovo, Office of the District Public Prosecutor, PP No.571/07, Pristina, 31 May 2007, Indictment.

governmental and non-governmental level and in monitoring compliance with human rights standards.

119. Since 2005, human rights units have been progressively established in each of the 15 ministries. They are coordinated by the government coordinator for human rights and Director of the Advisory Office of Good Governance (AOGG). The AOGG is a small office within the Office of the Prime Minister. It has a broad mandate including human rights, counter-trafficking and gender. The AOGG organizes training programmes on human rights for governmental staff in collaboration with international organizations.

120. The AOGG and the human rights units within the Ministries are very under-resourced and rely on the support of donors and international organizations to carry out their activities.

121. The governmental structure on human rights is still nascent and needs more time to start yielding the expected results. Adequate resources are needed, as well as a genuine commitment to human rights within the political establishment, to ensure that this institutional setting is actually instrumental in the promotion and protection of human rights through governmental action and does not remain an empty framework established because of international pressure and for the sole purpose of formally satisfying the requirements for independence.

## **5. The police**

122. Pending further transfer of policing powers which are proposed under the Ahtisaari plan, the Kosovo police service (KPS) is commanded by the KPS Deputy Commissioner who is supervised by the UNMIK Police Commissioner. The Ministry of Interior has a strategic role in preparing for the transfer of authority and overseeing policies such as police training. An UNMIK international police force (1,993 police officers from 44 countries as at August 2007),<sup>22</sup> exists alongside the KPS and has mainly monitoring functions, but it is also operational in certain situations or for certain types of crime.

123. The Kosovo Police Inspectorate is an agency within the Ministry of Interior that acts as an independent supervision mechanism with the mandate to investigate all complaints for misconduct of KPS police officers, regardless of their rank. The Minister of Interior further informed the Special Representative of the existence of an internal oversight mechanism to investigate police allegations of misconduct.<sup>23</sup>

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<sup>22</sup> Report of the Secretary-General on the United Nations Interim Administration in Kosovo, S/2007/582.

<sup>23</sup> Kosovo Ministry of Internal Affairs, Strategic Plan 2007-2010, p. 34.

124. Allegations of misconduct by the police reported to the Special Representative essentially related to episodes of harassment and inadequate protection of defenders working on LGBTI rights already referred above (paragraph 107 above). The envisaged enhancement of community policing and community/police problem solving<sup>24</sup> is perceived as a step forward in improving the attitude and the capacity of the police to deal with members of vulnerable groups and defenders supporting them. Training in this area is also recommended.

## **6. The judiciary**

125. In Kosovo there are 311 local judges, 88 local prosecutors, 14 international judges and 10 international prosecutors.<sup>25</sup> Judges are nominated by the Kosovo Judicial Council and appointed by the SRSG for Kosovo. This system in which the final decision on the appointment of a judge rests in the hands of the Special Representative for Kosovo creates an imbalance of power and is an obstacle to the independence of the judiciary.

126. International judges and prosecutors are appointed directly by the Special Representative for Kosovo. The length of their term of office is not established by UNMIK regulations and the procedure attached to their appointment is not transparent. These factors make their impartiality and independence questionable. Moreover, there is no supervisory body to complain to in cases of misconduct.

127. Of further concern is the lack of clarity on the cases for which international judges are competent. Section 1.2 of UNMIK regulation No. 2000/06 merely states that international judges may select and assume responsibility over criminal cases. Some cases go directly to international judges, other are transferred to them by local judges.<sup>26</sup>

128. The Human Rights Committee has also raised concerns about the absence of adequate guarantees for the independence of international judges and prosecutors and recommended that UNMIK, in cooperation with PISG, establish independent procedures for the recruitment, appointment and discipline of international judges and prosecutors.<sup>27</sup>

129. In Kosovo four sources of law apply: international standards, UNMIK regulations, laws adopted by the Kosovo Assembly and laws of the former Yugoslavia (including some laws which were enacted under the Milosevic regime in the 1990s). Legal uncertainties due to the

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<sup>24</sup> Ibid., p. 44.

<sup>25</sup> UNMIK Fact-sheet, November 2007, p. 6.

<sup>26</sup> Ombudsperson Institution in Kosovo, Seventh annual report 2006-2007, July 2007, pp. 20-21.

<sup>27</sup> CCPR/C/UNK/CO/1, para. 20.

many sources of law applying in Kosovo, coupled with a judiciary lacking guarantees of independence lead to a wide diversity and often inconsistency in decisions taken by judges, which negatively affect the ability of the judiciary to provide justice. The Human Rights Committee also raised concerns about the lack of legal certainty resulting from the failure to specify which provisions of the formerly applicable law are being replaced by those UNMIK regulations and Kosovo Assembly laws which merely state that they supersede any inconsistent laws or provisions.<sup>28</sup>

## **7. The Ombudsperson**

130. The Ombudsperson Institution was created in 2000 with the appointment of an international Ombudsperson whose main focus was the oversight of UNMIK. In February 2006, in UNMIK regulation 2006/06 the “localization” of the Ombudsperson, who was to be a local person appointed by the Kosovo Assembly, was started. After the departure of the international Ombudsperson, on 1 January 2006 one of the two Deputy Ombudspersons was appointed acting Ombudsperson by the Special Representative for Kosovo. At the time of writing this report, the Kosovo Assembly still had not appointed the Ombudsperson and the institution was still headed by the acting Ombudsperson. The long duration, over two years, of a temporary position at the head of the institution has been detrimental to the development and strengthening of the office of the Ombudsperson.

131. The Ombudsperson has the mandate to accept and investigate cases he/she has received and can open investigations in the absence of a formally filed complaint. Section 3.1 of UNMIK regulation 2006/6 clearly states that the Ombudsperson can only deal with cases in which human rights violations occur as a result of actions of Kosovo institutions. The Ombudsperson is therefore no longer competent to investigate complaints against UNMIK although Section 3.4 provides for the possibility of concluding a bilateral agreement with the Special Representative for Kosovo on procedures for dealing with cases involving UNMIK.

132. The acting Ombudsperson informed the Special Representative that he had sent a letter to the Special Representative for Kosovo asking him to clarify this provision of the regulation and to give clear instructions on the cases against UNMIK still pending with the institution. A letter received in August 2006 by the acting Ombudsperson from the Principal Deputy Special Representative for Kosovo stated that UNMIK’s position was that the Ombudsperson Institution

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<sup>28</sup> Ibid., para. 8.

should focus on PISG structures and that the Human Rights Advisory Panel (see below) will provide a mechanism for examining complaints against UNMIK, but did not explicitly clarify the Ombudsperson's mandate during the transition to a local Ombudsperson. The Special Representative raised this concern during her meeting with the Special Representative for Kosovo and his staff. The legal advisor of the Special Representative for Kosovo stated that the Ombudsperson would continue to have oversight functions over UNMIK until the Human Rights Advisory Panel was operational. However, UNMIK only clarified the mandate in January 2008.

133. The Special Representative is surprised that the office of the Special Representative for Kosovo did not clarify such a fundamental point relating to the issue of accountability through the appropriate institutional channels, i.e. by responding to the letter of the acting Ombudsperson in a clear and timely manner. This lack of clarity and communication between UNMIK and the office of the Ombudsperson on such an important matter related to the accountability of UNMIK action raises concerns that should not exist with regard to the practices of an administration that is governed by United Nations standards.

134. The complaints received by the acting Ombudsperson are mostly related to the functioning of the judiciary and lengthy proceedings, several others related to the public administration and minority issues, particularly those affecting Kosovo Serbs. The acting Ombudsperson considered the fact that he had received complaints from all ethnic groups was an indication of the trust of Kosovo people in the institution. Complaints are mainly submitted by individuals and very few by civil society organizations. This may suggest that civil society organizations are not conversant with the use of accountability mechanisms as a means to defend human rights.

135. The Special Representative is concerned about the unsatisfactory level of implementation of the findings of the Ombudsperson that was reported to her. The Human Rights Committee had already expressed its concern "that UNMIK and PISG have not always extended due cooperation to the Ombudsperson Institution, especially as regards interim measures requests by the Ombudsperson".<sup>29</sup> It is regrettable that no progress can be registered since the recommendations of the Human Rights Committee in August 2006.

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<sup>29</sup> CCPR/C/UNK/CO/1, para. 10.

## **8. The Human Rights Advisory Panel**

136. In March 2006, UNMIK regulation 2006/12 established the Human Rights Advisory Panel with a mandate to examine complaints about violations committed by UNMIK. The rationale for the establishment of the Advisory Panel was to respond to a recommendation of the Venice Commission of the Council of Europe to create additional accountability mechanisms.<sup>30</sup> However, upon completion of the “localization” of the Ombudsperson (see above) the Advisory Panel would become the only accountability mechanism for human rights violations committed by UNMIK.

137. The Advisory Panel is composed of three members appointed by the Special Representative for Kosovo upon the proposal of the President of the European Court for Human Rights. The three members of the Panel were appointed on 12 January 2007 but had their inaugural session only on 15 and 16 November 2007.

138. The delays in the establishment of the Advisory Panel and in putting it into motion were aggravated by the limbo around the delay and a lack of clarity over the competence of the Ombudsperson on cases related to UNMIK action in the responses provided by UNMIK. This gravely obstructed the functioning of accountability mechanisms for the international administration.

139. The Special Representative is now reassured to learn that the Advisory Panel is finally functioning and will examine complaints filed since 23 April 2006. However, she is concerned at the long delay leading to this and the limited publicity that has been given to the Panel. The Special Representative recommends disseminating information through all relevant means, including by reaching out to human rights defenders. She also recommends that the Panel be provided with the necessary resources to carry out its mandate.

## **9. The problem of accountability**

140. The concerns related to the obstacles and constraints affecting the work of the Ombudsperson and the functioning of the Human Rights Advisory Panel illustrate the seriousness of the accountability problems of the international administration.

141. Accountability is essential for public confidence in the actions of the international administration. It is also essential to the rule of law and the enjoyment of human rights, as it is

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<sup>30</sup> European Commission for Democracy through Law (Venice Commission), Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms, opinion No. 280/2004, CDL-AD (2004)033, para 159.

essential for the work of human rights defenders. The mission of human rights defenders is to defend human rights. To do so they report human rights violations by bringing them to the attention of competent mechanisms. Effective accountability mechanisms are a fundamental component of an enabling environment for the work of defenders. Regrettably, this is not what the Special Representative found in Kosovo during her mission.

#### **10. The role of the international community**

142. The international community, both as donors as well as implementing agencies, has played a vital role in Kosovo. Almost all the activities of NGOs rely on international funding. The availability of large amounts of funding in the early period of the international presence allowed the establishment and functioning of several important programmes and the improved capacity of civil society organizations. However, this also resulted in the creation of many NGOs for the sole purpose of accessing funds. The Special Representative noted with concern that many of the over 4,000 existing NGOs are donor-driven, and are generally engaged with programmes that are determined by donors.

143. In recent years, the approach of international donors has rather shifted to the reinforcement of PISG.

144. OSCE did a lot of monitoring work in the early years of the international administration as well as capacity-building for PISG and civil society organizations. In recent years, OSCE has shifted its activities towards capacity-building, mainly for PISG. While capacity-building is an important area of work for the development of Kosovo institutions, the Special Representative is concerned that the monitoring role played by the international community is less prominent, while local organizations still do not seem to have enough expertise in this area. An effective monitoring system is essential in countering the problems of the accountability mechanisms.

#### **E. Conclusions and recommendations**

**145. The Special Representative is concerned about the overall climate that discourages expressions of criticism, dissent and resistance that characterize the action of human rights defenders. Several factors explain such a climate in Kosovo. The recent conflict with its wounds still open, vividly visible in the ongoing tensions along ethnic lines, has somehow absorbed and nullified all human rights issues and turned them into two issues: the determination of the political status of Kosovo, and the rights of minorities. The many years of international administration have distorted the dynamics between civil society and public authorities. In a system in which powers are vested in an international entity and**

are then transferred to a transitional national authority, there is all the more need to ensure that this process of transition has catered for the informed participation of civil society in decision-making, with the space to allow for critical assessment of progress. It is not enough to make funds available for the mushrooming of NGOs, but to ensure the growth of a vibrant and vigilant civil society and a human rights community that is able to carry out its advocacy and monitoring functions with independence and without fear.

146. While the Special Representative is aware of the extremely challenging environment for governance in Kosovo and fully acknowledges the positive contributions and good intentions of the international presence there, she is concerned about grievances expressed to her that indicate a sense of marginalization amongst many human rights defenders stemming from the practices or attitudes of the international administration. The Special Representative finds that an environment of trust can only be created if there is space to voice these sentiments and genuine grievances are addressed. She hopes that this will be done before the international presence leaves Kosovo, so that it does not leave behind any perceptions that observance of the best standards of transparency and accountability for the promotion and protection of human rights were in any way ignored or neglected in the implementation of its mandate by UNMIK, or other international partners.

147. The Special Representative considers the issue of accountability a central element of an enabling environment for the defence of human rights. If accountability mechanisms are deficient, human rights defenders are deprived of one of their primary means of action.

**Recommendations addressed to UNMIK and the future international presence**

148. Address the problem of accountability as a matter of priority. The following measures should be adopted:

a) Provide the Human Rights Advisory Panel with adequate resources to carry out its functions and ensure that there is no accountability gap on human rights violations committed by UNMIK and the future international administration. In the event UNMIK withdraws from Kosovo, complaints on violations committed should still be investigated and identified perpetrators held accountable;

b) Extend full cooperation to the Human Rights Advisory Panel and the Ombudsperson and implement their findings.

149. Adopt measures to ensure that personnel of the international administration and NATO forces operate on the basis of United Nations standards, including when the

domestic legislation of the countries of origin of personnel of NATO forces, UNMIK regulations and those of a future international presence differ from United Nations standards.

150. Implement the recommendations of the Human Rights Committee on the independence of the judiciary and lack of legal certainty.<sup>31</sup>

151. In the event that UNMIK withdraws from Kosovo and a future international presence takes over part of the functions it currently performs, ensure a system to address pending human rights issues both during the transitional period and after, and create accountability mechanisms for the future international presence. OHCHR should be asked to provide assistance and guidance in this area.

152. Hold a series of consultations at the highest level with the human rights community and other civil society actors on the legal and policy framework for human rights and the institutional development of Kosovo.

**Recommendations for the consideration of the Provisional Institutions of Self-Government**

153. The process of consultation with civil society and human rights defenders should be institutionalized and systematized so that their active participation in legislative and policy decision-making is ensured, particularly that of defenders working on the human rights of people discriminated against or marginalized. These include defenders working on Roma, Ashkali and Egyptian rights, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights.

154. The Kosovo Assembly should consider institutionalizing the holding of regular public hearings.

155. Legislation on freedom of peaceful assembly complying with international human rights standards should be adopted. In drafting and implementing this legislation, the Guidelines on Freedom of Peaceful Assembly published by OSCE/ODHIR and the 2006 and 2007 reports of the Special Representative to the General Assembly, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly<sup>32</sup> () should be used for reference.

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<sup>31</sup> CCPR/C/UNK/CO/1.

<sup>32</sup> A/61/312 and A/62/225.

156. **Bearing in mind that political commitment to mainstream human rights within governmental structures is fundamental, adequate resources should be provided to the human rights units within ministries and to the government human rights coordinator.**

157. **Full cooperation should be extended to the Ombudsperson, his/her reports debated and his/her recommendations implemented, and the institution should be provided with adequate resources for fulfilment of its mandate.**

158. **An appropriate and independent mechanism should be established to monitor the implementation of the legislation on access to information and it should be provided with the necessary resources to carry out its functions. Access to information of public interest should be granted as regards the documents and actions of UNMIK and any future international presence.**

159. **Programmes of continuous learning on human rights for the police should be envisaged; and training should be provided on non-discrimination and respect for diversity and on the specific vulnerabilities of LGBTI persons and of defenders working on their rights.**

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

160. **Strengthen networks, coalitions and initiatives that have a multi-ethnic dimension. This will reinforce the credibility of the human rights message that is being taken forward and will contribute to a much needed healing process among communities.**

161. **Work towards a constructive engagement with accountability mechanisms like the Ombudsperson and the Human Rights Advisory Panel; disseminate information on their existence and the modalities to access them; and provide support to individuals who want to use them.**

162. **Enhance monitoring skills in order to monitor the actions of public authorities, including of the international administration, and ensure the credibility of reports by adopting the best standards of accuracy and objectivity. Human rights defenders should play a proactive role by making concrete recommendations and by creating effective strategies for their implementation.**

**Recommendations for the consideration of the international community**

163. **Continue to provide support to civil society and human rights defenders. This should be done while respecting the independence of defenders in determining their**

**priorities. When funding is given to international organizations, ensure that the programmes they implement envisage the transfer of capacities to local organizations.**

**164. Strengthen the capacity of defenders to do monitoring work and to use accountability mechanisms. A strong community of defenders in a position to monitor public authorities and report on their violations is the best way to ensure the accountability of the authorities and the good functioning of democratic institutions.**

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