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人权维护者处境问题特别报告员访问匈牙利的报告

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary*

Contents

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to Hungary from 8 to 16 February 2016, at the invitation of the Government. The objective of the visit was to assess the situation of human rights defenders in the country in the context of the obligations and commitments of the State under international human rights law and in light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). An examination of the legal, institutional and administrative framework in the country for the promotion and protection of human rights was of particular importance to the assessment.

2. In the course of his visit, the Special Rapporteur met high-level representatives of the Office of the Prime Minister and of the Ministries of Foreign Affairs, Internal Affairs and Justice. He also met representatives of the Legislation Committee of the National Assembly, the Prosecutor-General, the Ombudsman and the Constitutional and Supreme (Kuria) Courts. The Special Rapporteur also held discussions with officials from the Office of Immigration and Nationality, the Government Control Office and the National Authority for Data Protection and Freedom of Information. He also met members of staff of the Office of the United Nations High Commissioner for Refugees and members of the diplomatic corps.

3. The Special Rapporteur visited Budapest, Miskolc and Szeged, where he met local authorities and a wide range of human rights defenders, academicians and representatives of non-governmental organizations (NGOs), which reinforced his impression of an active and engaged civil society in Hungary.

4. The Special Rapporteur thanks the Government of Hungary for extending an invitation to him and for its excellent cooperation throughout the visit, as well as for its continued assistance with additional information after the visit. He is grateful to everyone who took the time to meet him and share their valuable experiences and insights, and to those who helped to organize the visit.

II. Background

5. This was the first visit of a holder of the mandate to Hungary, which has gone through significant and rapid changes over the past decades. Hungary has transitioned towards the free market and has set the foundations of democracy after a long period of authoritarianism. After 1989, the old Soviet-style constitution was amended by Hungary to ensure constitutional checks and balances on State power.

6. The country is a multiparty parliamentary democracy with a unicameral National Assembly. The National Assembly elects the President every five years, who in turn appoints a Prime Minister from the majority party or coalition, following national elections every four years. The governing centre-right party, Fidesz-Hungarian Civic Union (Fidesz) and its junior partner, the Christian Democratic People's Party came to power in 2010 and were re-elected with a two-thirds majority in April 2014. Despite losing their supermajority in the parliament in February 2015 after a by-election defeat, the ruling parties are said to continue to dominate the political scene.

III. International and regional framework

7. Hungary is a party to 14 international human rights treaties and conventions. The country's constitution foresees that the national law be in conformity with the generally recognized rules of international law. Other sources of international law become part of the Hungarian legal system by promulgation into domestic legal regulations. If any domestic rules appear to be in contravention of the human rights obligations of Hungary, the ongoing proceedings are suspended by the courts and transmitted to the Constitutional Court, which can ultimately nullify the conflicting domestic law (see A/HRC/WG.6/25/HUN/1).

8. However, the following international protocols or treaties have yet to be ratified: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance. In that connection, the Special Rapporteur joins the calls by other United Nations human rights mechanisms in encouraging the Government to ratify the remaining treaties.

9. Hungary is a member of the European Union and its membership is contingent upon respect for a set of common principles, on which the Union is founded. For example, article 2 of the Treaty on European Union underlines the "values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."

10. Human rights, democracy and the rule of law constitute the three founding pillars of the Council of Europe, a regional organization of which Hungary is a member. It is also a participating State in the Organization for Security and Cooperation in Europe (OSCE), which strongly advocates for the human dimension of security and for the promotion of full respect for human rights and fundamental freedoms.

11. In line with international human rights law, the primary duty to promote and protect human rights and fundamental freedoms lies with the State. That obligation includes guaranteeing the right of everyone, individually and in association with others, to strive for the protection and realization of human rights. In other words, every person has the right to defend all human rights for all people. That is the essence of the Declaration on Human Rights Defenders, which was reinforced by subsequent resolutions adopted by the General Assembly and the Human Rights Council.

12. The Hungarian State is therefore under an obligation to take concrete steps to create the necessary conditions, including in the political and legal domains, to ensure that everyone in the country can enjoy and promote all human rights and freedoms in practice.

13. As a cornerstone principle of his mandate, the Special Rapporteur has unceasingly emphasized that ensuring a safe and enabling environment for defenders is a principal part of that responsibility. His visit therefore focused primarily on assessing some of the basic elements of the enabling environment, namely a conducive legal, institutional and administrative framework; access to justice; a strong and independent national human rights institution; effective protection policies and mechanisms paying attention to groups at risk and applying a gender-sensitive approach; non-State actors that respect and support the work of human rights defenders; and a strong and dynamic community of defenders. The following sections of the report provide a more detailed analysis in the light of those elements.

IV. A safe and enabling environment for human rights defenders?

14. Overall, human rights defenders have been able to carry out their work in Hungary in safety. The Special Rapporteur was very much impressed during his visit by the dynamism and competence displayed by Hungarian civil society, which is made up of over 63,000 registered organizations and other groups.

15. However, he was alarmed to observe that human rights defenders increasingly operate in a rather polarized and politicized environment. They are exposed to serious challenges which, in some instances, appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to promote and defend human rights, as enshrined in the Declaration on Human Rights Defenders. He hopes that the assessment contained in his report will guide and assist the Government and other related stakeholders to take urgent and concrete measures to address those challenges, with a view to ensuring that defenders carry out their valuable activities in a safe and enabling environment.

A. Legal, institutional and administrative framework

1. The constitutional framework and rule of law

16. Since 2011, far-reaching and extensive constitutional changes have had a profound effect on the civil society environment. The ruling party's supermajority in the parliament has allowed the Government to adopt measures that have reshaped the constitutional and institutional framework of the State. From discussions with many observers in the country, the Special Rapporteur formed an overwhelming impression that the reforms have generally weakened independent institutions and eroded democratic checks and balances, by bringing them increasingly under the control of the executive power, or reducing their capacity to exercise effective control over the Government.

17. A new constitution, the Fundamental Law and over 600 cardinal acts and other pieces of legislation have been adopted since 2011. The Fundamental Law enshrined human rights as inalienable, interdependent and indivisible. However, its contents are specified through the so-called "cardinal" laws (organic laws). It should be noted that the European Commission for Democracy through Law (Venice Commission) raised two key criticisms in its opinion on the Fundamental Law and the use of the cardinal laws.[1] First, it is often left to the cardinal laws to regulate in detail the most important society settings (the constitution has over 50 references to them), resulting in significant gaps in rule of law issues. Secondly, the preference in the constitution for the cardinal laws, rather than ordinary legislation cannot be justified in other areas, such as family legislation or social and taxation policy, and the provisions contained in the cardinal laws are not accessible to any new parliamentary majority unless they secure a two-thirds majority.

18. The general assessment of the legal reforms would indicate that they have had an overall adverse impact on human rights and democracy in the country by including limitations on such fundamental human rights as freedom of expression, information, religion, privacy, family life and the rights of minorities. Those constitutional changes have gradually removed important checks on the executive branch and weakened the independence of the Constitutional Court. They have led to the centralization and tightening

[1] See European Commission for Democracy through Law (Venice Commission), opinion No. 621/2011 on the new constitution of Hungary, 20 June 2011.

of government control over the judiciary, the media, religious organizations and other spheres of public life, directly or indirectly affecting human rights. The new constitution and other controversial measures adopted during the period in question have helped the Government "to entrench its personnel, as well as its nationalist, socially conservative policies, within public institutions".[2]

19. Furthermore, most laws have been introduced in a rushed manner through fast-track procedures. While expeditiousness in enacting legislation may be justified in certain contexts, the Special Rapporteur stresses the importance of observing procedural safeguards to ensure democratic scrutiny of proposed reforms. Legislative reforms in Hungary were not reinforced by procedural safeguards and were adopted with little or no public debate, or meaningful consultation with stakeholders and civil society.

20. The Special Rapporteur acknowledges that the Government has adopted numerous national human rights strategies relating to such fields as the social equality of men and women, elderly people, youth, Roma and environmental protection, which contribute to the strengthening of human rights in the country. However, he emphasizes that those policies will continue to be hindered by the range of other laws and policies in place, which have the opposite effect.

21. There is an increasing consensus among international, regional and local observers that these measures have in sum weakened a well-functioning democracy. In 2013, the United Nations High Commissioner for Human Rights urged the Government to revoke a series of constitutional changes, widely criticized by international and regional human rights bodies as representing a backward step in human rights protection, emphasizing that the changes undermined the independence of judges and were a serious threat to democracy.

22. The Hungarian authorities have been criticized by and been in conflict with European Union institutions and other international organizations regarding the controversial institutional reforms and political practices of the Government.[3] The European Union responded to the deteriorating condition of the rule of law in Hungary by initiating three infringement proceedings to address specific violations of European Union law, namely on new legislation that lowered the retirement age for judges, prosecutors and notaries and resulted in the early dismissal of 274 judges; the independence of the new data protection supervisory authority; and the independence of the National Central Bank. Only the first two infringement proceedings reached the Court of Justice of the European Union, while the third was closed following amendments of the relevant laws by Hungary. In December 2015, another infringement procedure was launched for violating European Union asylum regulations.

23. The Council of Europe, and in particular the Venice Commission, has been vocal in addressing the situation in Hungary through a series of letters, communications, reports and authoritative opinions in the period between 2011 and 2015. The Commissioner for Human Rights of the Council has also been outspoken, including in the report on his country visit of December 2014 and in his public communications. OSCE has also spoken out on several occasions regarding laws and measures that threatened the fundamental freedoms of expression and media, free and fair elections and civil society.

24. The statement made by the Prime Minister in mid-2014 about his plans to build an "illiberal" State raised further controversy and questions about the intentions of Hungary

[2] Economist Intelligence Unit, Hungary country report, December 2016, p. 3.

[3] Ibid., p. 5

concerning its international and regional human rights obligations and commitments.[4] Civil society has consequently made repeated calls for the European Parliament to initiate a procedure under the new Rule of Law Framework adopted in March 2014 to react to threats to the rule of law in member States of the European Union.[5] The new mechanism aims to fill the gap between infringement procedures and the mechanism provided for in article 7 of the Treaty on European Union to deal with situations where there is an apparent breach in a member State of fundamental values or principles, such as the rule of law.

2. Freedom of expression

25. The Hungarian constitution and laws provide for freedom of expression and the media. However, the legislative changes introduced by the Government have had a deleterious impact on freedom of expression in the country.

26. In 2010, two new laws were passed: Act CIV on the Freedom of the Press and the Fundamental Rules on Media Content (the Press Freedom Act) and Act CLXXXV on Media Services and Mass Media (the Media Act), which were dubbed "the media law package". They were followed by constitutional amendments and other measures, which resulted in a complete overhaul of the Hungarian media setting. The media laws were widely criticized.

27. In April 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression voiced concern about the media law in Hungary, stating that it could be used to curb the freedom of the press. The Commissioner for Human Rights of the Council of Europe concluded that the new media legislation encroached on media freedom, threatened the independence and pluralism of the media and as a whole had "a corrosive cumulative impact". He further stated that the "aggregate result is an unfortunate narrowing of the space in which the media can operate freely in Hungary".[6] The OSCE Representative on Freedom of the Media has repeatedly denounced the media laws as inconsistent with OSCE standards on media freedom and pluralism, suggesting they be reviewed in line with those standards.[7] Although the media laws have been amended, concerns remain and they have yet to be brought into full compliance with international standards.[8]

28. Media regulation was consolidated under the supervision of a single entity, the National Media and Infocommunications Authority, with its President also serving as Chair of the Media Council, which is tasked with content regulation. The Chair of the Media Council nominates the executive directors of all public media. According to the report of the United States of America State Department on human rights in Hungary in 2015, the broad powers of the media regulatory body, combined with a high level of media concentration and an advertising market strongly dependent on governmental contracts, has maintained a climate conducive to self-censorship and political influence. The media laws specify new content regulations for all media platforms, outline the powers of the new

[4] See, for example, www.euobserver.com/political/125128and www.bloomberg.com/news/articles/2014-07-28/orban-says-he-seeks-to-end-liberal-democracy-in-hungary.

[5] See International Federation for Human Rights, "Hungary: democracy under threat", November 2016, p. 6.

[6] "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media", 25 February 2011.

[7] See, for example, Katrin Nyman-Metcalf, "Analysis of the Hungarian media legislation", 28 February 2011, commissioned by the Office of the OSCE Representative on Freedom of the Media.

[8] See International Federation for Human Rights, "Hungary: democracy under threat", section 2.2.1.

media regulatory body and set out sanctions for breaches of the law. The media itself has also undergone increased State regulation.

29. All media outlets, including print and online services, must register with the Government within 60 days of commencing operations, a requirement which seems to diverge from Council of Europe and OSCE standards.[9]

30. The funding and content production for all public media is centralized under the Media Service Support and Asset Management Fund, supervised by the Media Council. The law also regulates the content of broadcast media, including specific details as to what type of programming may be aired and when. The Media Council can initiate a regulatory procedure of "unbalanced reporting", which can ultimately lead to suspension of the right to broadcast. Online media can be blocked if they are found to be in violation, with restrictions on legal content. Sanctions are reported to be disproportionately severe, especially those pertaining to interruption of the activities of media outlets for a certain time, withdrawal of their licence or registration, or blocking user access to media content.[10]

31. Defamation remains a criminal offence in Hungary and it is a charge regularly brought against investigative journalists, defenders and watchdog organizations, in combination with related offences, such as hooliganism.[11] For example, in November 2015, prosecutors laid charges against 17 individuals for having posted on Facebook about a suspicious property sale by the mayor of Siófok. A month later, a blogger was charged with defamation for having refuted the Facebook postings of a district mayor in Budapest, who had accused refugees of causing fires, littering and crime.

32. Furthermore, the 2013 amendment to the penal code provides for imprisonment of 1 to 3 years of any person who knowingly creates or distributes false or defamatory video or audio recordings. Journalists who met with the Special Rapporteur during his visit also raised serious concerns about the civil code provision of 2014, which allows for penalties for taking pictures without the permission of everyone in the photograph, as opposed to the previous requirement to seek permission only for publishing photographs.

33. Journalists who publish critical articles are blacklisted from accessing public events or officials, or can lose their jobs. For example, the television channel RTL Klub, along with other Hungarian media outlets such as 444.hu or hvg.hu, has frequently been denied access to events held in government premises or not been invited to government press conferences.[12]

34. During the visit, the Special Rapporteur heard testimonies of growing self-censorship among media professionals in the face of defamation lawsuits, fines, dismissal or retaliation. The tax and advertising policies in Hungary have reportedly also been used to reward government allies and punish opponents, by threatening their economic viability.[13] That has resulted in self-censorship, with private media increasingly refraining from covering politically sensitive issues for fear of losing government support or facing other retaliation.[14]

[9] See resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe and Katrin Nyman-Metcalf, "Analysis of the Hungarian media legislation".

[10] See Venice Commission, opinion No. 798/2015 on media legislation of Hungary, 22 June 2015.

[11] Freedom House, "Freedom of the Press 2016, Hungary".

[12] See Index on Censorship, "Hungary: Independent media facing soft censorship", 21 January 2016.

[13] See Committee to Protect Journalists, "Balancing act: press freedom at risk as EU struggles to match action with values", 2015.

[14] See International Federation for Human Rights, "Hungary: democracy under threat", p. 30.

35. Some interlocutors pointed to growing incidents of censorship in the public media. For example, in August 2015, a leaked memo revealed that the Media Service Support and Asset Management Fund had instructed public television employees to avoid airing images of women and children in their coverage of the refugee crisis, a highly politicized issue at the time.[15]

3. Freedom of information

36. Hungary was once renowned for its Act on Freedom of Information, which used to guarantee access to public interest information and was supported by strong oversight institutions, headed by a parliamentary ombudsman. However, repeated amendments to the regulatory framework have attracted criticism from journalists and watchdog organizations for restricting the accessibility of public interest data and creating the conditions for frequent denials of requests for such information.

37. The 2015 amendment to the Act, adopted within days of its introduction and without public consultation, allows government agencies that possess public interest data to charge the requesting party the "labour costs" associated with completing a request for information, an amount to be determined by the agency concerned. Besides the vaguely defined labour costs, the law allows public bodies to reject requests if the data requested supports future "decision-making" or if the petition is a repeat request, even if the initial request went unanswered.[16] In December 2015, two months after the law took effect, the Budapest Chamber of Commerce told the television channel RTL Klub that the implementation of its freedom of information request into the expenses and finances of the Chamber would cost between Ft 3 million and 5 million (between $11,000 and $18,000).[17]

38. The Special Rapporteur expressed concern during his visit about reports in a number of media outlets of a planned amendment to the legislation on postal services. The Hungarian Post is a one-stop service provider of an array of services, which include postal services, banking and financial and insurance services. The proposed amendment to the law would exclude the contracts of the Hungarian Post and the requests that "disproportionately hamper the business activities" from the scope of public interest information. It is feared that such a law, if adopted, would become a precedent to future strings of decrees exempting State-owned companies from freedom of information oversight.[18]

39. The Postal Services Act was approved by the parliament in March 2016, in yet another expedited procedure. The President however declined to sign it into law and sent it to the Constitutional Court for review. The Court subsequently ruled that since the Hungarian Post provides market services, some of the data related to its activities might constitute business secrets, which if made public could potentially harm its business activities.[19] Lower courts may still exercise their own discretion in deciding what specific data constitutes public information. However, some observers are worried that the ruling by

[15] See www.theguardian.com/world/2015/sep/01/hungarian-media-told-not-to-broadcast-images-refugee-children-memo.

[16] See Freedom House, "Freedom of the Press 2016, Hungary".

[17] See www.hvg.hu/itthon/20151222_Milliokat_kellene_fizetnie_az_RTLnek_ha.

[18] See www.budapestbeacon.com/public-policy/fidesz-mp-submits-dont-bother-us-were-stealing-bill-2-0/32014 and www.444.hu/2016/02/10/benyujtottak-a-torvenyt-aminek-nyoman-soha-tobbet-semmi-sem-fog-kiderulni.

[19] See www.alkotmanybirosag.hu/sajto/kozlemenyek/kozlemeny-a-magyar-nemzeti-bankrol-es-a-postai-szolgaltatasokrol-szolo-torvenyek-modositasarol-szolo-torvenyek-elozetes-alkotmanyossagi-vizsgalatarol.

the Constitutional Court may encourage other State-owned enterprises to reject freedom of information requests on the same grounds.[20]

40. The mandate of the former Data Protection Ombudsman was terminated before the end of his term of office, which was found unlawful by the European Court of Justice in April 2014.[21] The Office was transformed into the National Authority for Data Protection and Freedom of Information, which was not seen by the European Commission as meeting the requirement of complete independence. The previous Ombudsman was elected by the parliament for a six-year period, however the head of the new authority is appointed by the President for a nine-year period. While the Government maintains that access to data is rarely rejected, unless it is a national security issue, the Special Rapporteur received numerous testimonies from journalists and civil society representatives on the challenges they faced in accessing public data.

41. The Special Rapporteur urges the Government to take measures to increase the scope of public interest information and the accessibility to such data, including information belonging to State-owned enterprises. This is an essential part of open and good governance, which should be urgently strengthened.

4. Freedom of association

42. The legal framework in Hungary is generally hospitable to freedom of association. It provides for three legal forms of NGO (association, foundation and civil law society), which are not legally restricted by the type of political activities they undertake, unless they seek "public benefit status", which allows them to access the National Cooperation Fund.

43. However, there have been critical amendments to two laws: the civil code and the non-profit act, which required NGOs to revise and modify their by-laws. The non-profit act laid out new conditions linking public benefit status to legally prescribed State services. Owing to a combination of a complex interpretation of the new conditions, absent legal aid and a lack of awareness of the new requirements, only a small fraction of NGOs that previously had public benefit status reportedly met the deadline of May 2014.

44. The new civil code required NGOs to amend specific details in their statutes once again, with a grace period up to March 2016. The procedure for registering an NGO is reported to be lengthy, often involving several rounds of requests by the courts for modifications. The Prosecutor's Office, which oversees the legality of civil society work, regularly appeals court decisions. According to legal experts, re-registration to obtain public benefit status takes on average 6-8 months and for some NGOs it has taken up to 16 months. Although the amended non-profit act foresaw the introduction of a simplified electronic registration system, it was not yet operational at the time of the Special Rapporteur's visit (while business enterprises have already been using simplified online registration). Furthermore, the regulations are considered by civil society as unnecessarily bureaucratic and stringent.

45. The Special Rapporteur urges the Government to support civil society organizations in their attempts to comply with new laws by providing them with legal aid and introducing a simple electronic registration system. He further recommends that the Government make registration more simple, non-onerous and expeditious and adopt a notification procedure, whereby associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization has been created. The Government should

[20] See www.budapestbeacon.com/economics/hungarys-constitutional-court-takes-one-step-forward-two-steps-back/33493.

[21] See *European Commission v. Hungary*, European Court of Justice, case No. C-288/12.

avoid adopting new laws that would require previously registered associations to re-register.

46. The information given to the Special Rapporteur during his visit confirms the reports that the situation of civil society in Hungary has worsened in the last several years. Besides the more rigid legal environment, the financial sustainability of NGOs, their ability to assert their interests, the underlying infrastructure servicing civil society, the general public's opinion of human rights defenders and the support base of NGOs have all reportedly changed for the worse.

47. Human rights defenders face enormous pressure due to public criticism, stigmatization in the media, unwarranted inspections and a reduction in State funding. The Special Rapporteur heard many testimonies of incidents, where the authorities had tried to delegitimize defenders and civil society representatives and, at the same time, undermine their work through excessive administrative and financial hurdles, as well as criminal defamation.

48. Furthermore, the authorities have effectively sought to restrict the work of civil society and increase supervision through such indirect means as investigations into funding, increased auditing, new Internet laws and increased media campaigns stigmatizing human rights defenders. Several organizations have decided to close their offices, discontinue programmes and lay off staff, owing to insufficient or unsustainable funding. Some NGOs providing community or social services have seen their contracts simply discontinued or interrupted after they published information or testimonies perceived as hostile to the Government.

49. Nearly every civil society interlocutor who met the Special Rapporteur raised alarm about the deeply regrettable targeting of the Fund Operator Consortium (composed of the Őkotárs, Autonomia, Demnet and Kárpátok Foundations), which managed the Norwegian NGO fund, and other NGOs that benefited from it. Since August 2013, Őkotárs and 13 other NGOs receiving European Economic Area grants have been stigmatized by newspapers as entities "serving foreign interests". Between April and July 2014, senior government officials from the Office of the Prime Minister called the NGOs "party-dependent, cheating nobodies" and "paid political activists who are trying to help foreign interests".[22] They also called for the Norwegian NGO fund to be suspended. A number of beneficiary organizations (mostly those working on human rights, women's rights organizations and watchdogs) were disturbingly blacklisted as the "dirty 13" by the authorities.

50. Subsequently, the Government Control Office began to investigate those NGOs and their financed projects. Since the mandate of the Control Office extends only to the use of Hungarian public money and the Norwegian NGO fund was financed by the European Economic Area, the legality of its audits has been questioned. In addition, the Control Office requested that various documents be handed over, but the NGOs refused to comply with those requests in which the names and personal details of their volunteers and participants in their past events were demanded.

51. On 8 September 2014, in a chilling message to civil society, police officers carried out raids on the offices of Őkotárs and Demnet, confiscating their files and computer servers. The raids were found to be unlawful by the courts in January 2015. The Government Control Office also requested the prosecutor to initiate criminal proceedings against the targeted NGOs, despite the fact that external audits carried out at the request of

[22] See Transparency International and others, "Timeline of governmental attacks against Hungarian NGO sphere", September 2016.

Norway revealed no irregularities. Even though no breaches of the law were found after the wide-ranging investigation, senior government officials continued to publicly denounce Őkotárs for carrying out its activities in an unlawful manner.

52. The Special Rapporteur is concerned about reported breaches of due process. There was clearly no presumption of innocence on the part of the Government, with senior government officials showing an openly biased approach to the NGOs in question and stigmatizing them in the media. The official website of the Government Control Office only cited news articles that portrayed the NGOs in negative terms, even though it was legally obliged to remain objective in its investigation.

53. During his visit, the Special Rapporteur was informed that the investigation had ended. Despite the serious accusations raised during the investigation, not a single proceeding had resulted in a conviction, but in at least one case a court had ruled that government measures in connection with a search warrant had been unlawful.[23] In fact, some government officials admitted to the Special Rapporteur that the investigation had been of a political nature and that the enormous amount of time and resources spent on scrutinizing civil society in vain could have been directed to unearthing serious white-collar crime in public offices Given the damage done to their reputations by the public stigmatization of the NGOs in question, it is regrettable that there has been no public apology from the authorities for breaches in due process or a public admission that they were proven to be innocent.

54. Following the court order of 5 September 2016, the Government Control Office was reportedly obliged to release official documents that revealed that the Prime Minister had actually ordered the investigation by the Control Office in 2014.[24] The revelations are even more regrettable, given that the futile and politicized investigation lasted two years, involved the auditing of 58 NGOs and triggered a police investigation lasting 16 months.

55. To date, the Special Rapporteur has received no updates on the future cycle of the Norwegian NGO fund, but was reassured by the Government of Norway that sustainable funding to independent civil society organizations will be continued in the next funding period.

5. Stigmatization of human rights defenders

56. During the second cycle of the universal periodic review, the Government stated that civil society played a crucial role in public life and in the justification of public decisions and had room for criticizing the Government. It further stated that it evaluated critical comments and encouraged dialogue (see A/HRC/33/9, para. 105).

57. Despite the establishment of an interministerial human rights working group and other platforms for civil society dialogue, the Special Rapporteur notes with regret that the scope and quality of the dialogue between civil society and decision makers has been steadily shrinking in Hungary. The authorities have displayed a growing lack of interest in such a dialogue, especially when it entails an exchange and debate of dissenting views.

58. During his visit, the Special Rapporteur noted that, given the disrupted checks and balances and feeble political opposition, human rights defenders who criticize the Government or raise human rights concerns are quickly intimidated and portrayed as “political” or “foreign agents”. In October 2016, the Vice-Chair of Fidesz and of the

[23] Ibid.

[24] www.tasz.hu/informacioszabadsag/kideritettuk-hogy-orban-viktor-szemelyesen-rendelte-el-civilek-vegzalasat.

Parliamentary Committee on National Security announced his proposal to the Committee to investigate civil society organizations "cooperating with the (George) Soros network".[25]

59. The Special Rapporteur is concerned about the continued stigmatization of human rights defenders and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society. He shares the sentiments of civil society that "describing reputable organisations as paid political activists serves no legitimate purpose based on the known facts" and that "the role that civil society can play in the promotion of the rule of law and as a check on the misuse of power should be respected".[26]

60. In addition to unfriendly rhetoric from government officials, independent civil society organizations are denied access to State-run media outlets, face funding impediments, are blacklisted from government cooperation and are subjected to excessive and unjustified inspections.

61. The Special Rapporteur urges government officials to refrain from stigmatizing and intimidating human rights defenders. The Government should instead support the work of independent civil society, despite disagreements or criticisms, bearing in mind their invaluable role in advancing Hungarian society. The Government should review and abolish all administrative and legislative provisions that restrict the rights of defenders or obstruct their legitimate activities. National legislation should be brought into line with Hungarian obligations under international human rights law.

62. The Special Rapporteur urges the Government to widen and strengthen the civil society space, in view of the valuable role that human rights defenders play in the promotion of the rule of law and fundamental rights in Hungary.

6. Freedom of assembly

63. Hungarian law provides guarantees for the exercise of the right to freedom of peaceful assembly. Assemblies do not require a police permit to be obtained, but organizers must inform police of a planned demonstration in a public place at least three days in advance. Hungarian law authorizes the police to prohibit any gathering if it seriously endangers the peaceful operation of representative bodies or courts, or if it is not possible to provide for alternate routes for traffic. Police will disband an assembly in cases where a crime is committed or its commission is incited, or if the gathering results in the violation of the rights of others, involves armed protesters, or is organized despite an official ban. A decision to prohibit a public demonstration is open to judicial review. For example, the refusal of permission to hold a peaceful demonstration in front of the Prime Minister's residence was found unlawful by the Budapest court in July 2015.

64. However, the Special Rapporteur has received testimonies that demonstrations by human rights activists promoting the rights of the Roma and lesbian, gay, bisexual, transgender and intersex communities are held in a climate of fear and are strictly controlled for safety reasons. Human rights defenders from those communities cannot understand why the authorities could not take preventive measures to address threats arising from far-right extremists, rather than treating them as a threat to public security. In that context, it is noted that in September 2016, the tribunal in Eger ruled in a case related to discrimination by the police against Roma residents in Gyöngyöspata, during a march by the "For a better future" far-right neighbourhood watch group and other extremist groups in

[25] Frontline Defenders, "Annual report on human rights defenders at risk in 2016", p. 15.

[26] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary", October 2015, p. 45.

2011. The court later found that the police had failed to protect the Roma residents threatened by the extremist groups and imposed excessive fines on local Roma for minor misdemeanours.

65. Concerns have also been raised about the excessive and indiscriminate use of force by the Counter-terrorism Centre against protesting migrants and journalists observing the protests on 16 September 2015. During the visit, the Special Rapporteur received reports of indirect intimidation of teachers and trade unionists from Miskolc, who organized a national protest in Budapest on 13 February 2016. Some of the teachers who wanted to participate in the protests were advised by officials to reconsider and the police were allegedly asking individuals about their plans to take part in the demonstration.

66. The Special Rapporteur urges the Government to ensure that human rights defenders who assemble peacefully are protected from individuals or groups of individuals, including agents provocateurs and counterdemonstrators, who aim to disrupt or disperse such assemblies. He further urges the Government to ensure that restrictions to peaceful assembly do not impair the essence of the right to assemble, are prescribed by law, are proportionate and necessary in a democratic society, and still allow demonstrations to take place within sight and sound of its object and target audience.

B. Access to justice

67. The Special Rapporteur considers it vital that constitutional reforms are accompanied by meaningful participation by the public, human rights defenders and civil society. The Human Rights Committee has interpreted the right to participation in public affairs, enshrined in article 25 of the International Covenant on Civil and Political Rights, as including a specific right to participate in constitution-making.[27] The Constitutional Court plays an important role in this regard and in preventing the abuse of power by other governmental institutions by reviewing their actions against the principles and rights enshrined in the constitution. According to the Government, in more than 100 cases since 2012, the Constitutional Court has declared some of the laws it has examined to be unconstitutional and overruled some judicial decisions (see A/HRC/33/9, para. 45).

68. However, there has been a reported tendency of the Government, especially with its prior parliamentary supermajority, not to respect independent constitutional control or to use the legislative majority to overturn Constitutional Court judgments almost as soon as they were issued.[28] Furthermore, access to the Constitutional Court has been radically limited by scrapping the previously robust system of *actio popularis*, which allowed any human rights defender to bring a case to the Court on issues of broad public concern.

69. The fourth amendment to the constitution of 2013 drastically limited the jurisdiction of the Constitutional Court, repealing all the decisions it had taken before 1 January 2012. As a result, all previous precedents of the Court cannot be invoked in new cases and there is no longer a judicial review of laws related to the central budget and to taxation issues. The legal changes banned the Court from reviewing constitutional amendments for substantive conflicts with constitutional principles, a measure which allowed the Government to reintroduce, through a constitutional amendment, the proposals that had been previously

[27] See Human Rights Committee general comment No. 25 (1996) on participation in public affairs and the right to vote.

[28] International Bar Association Human Rights Institute, "Courting controversy: the impact of the recent reforms on the independence of the judiciary and the rule of law in Hungary", September 2012, chap. 4.

struck down by the Court as unconstitutional. The substantively weakened Court is now only allowed to review the procedural validity of new amendments.

70. The increase in the number of constitutional judges from 11 to 15 and the extension of their mandate from 9 to 12 years, starting on 1 January 2012, have contributed to ensuring greater control of the Constitutional Court by the executive branch and its parliamentary majority.[29]

71. The Special Rapporteur calls for the restoration of the jurisdiction of the Constitutional Court through the repeal of the legal provisions that limit its jurisdiction and for a review of the composition of the committee that nominates constitutional judges, in order to address the perception of politicized judicial appointments.

72. He also notes the concerns shared by local and international observers about the weakening of the independence of the judiciary. For example, the new legal provisions to lower the retirement age for judges from 70 to 62 have allowed the Government to immediately remove almost all the presidents of courts and more than 270 judges. Besides concern about the compulsory retirement provisions,[30] the Venice Commission opined that concern about the legislation related to the endangerment of the independence of the judiciary as a whole.[31]

73. In its decision No. 33/2012 (VII.17), the Constitutional Court of Hungary found the legal provisions unconstitutional and in contravention of the independence of the judiciary, and abolished them with retroactive effect. Parliament subsequently passed a law enabling former judges to be reintegrated, but on conditions less favourable than before.[32] Nevertheless, the remedial steps taken by the Government in respect of that legal reform were considered to be unsatisfactory.[33]

74. Furthermore, in May 2014, the European Court of Human Rights ruled on a petition from a former President of the Supreme Court, András Baka, who was relieved of his position as a result of the entry into force of the Fundamental Law and the reorganization of the functions of the Supreme Court. In its judgment, the Court found that Mr. Baka's right to access a court to review his dismissal had been breached and that his right to freedom of expression had been violated in retaliation for his public criticism of the Government's judicial reforms.[34] On 23 June 2016, the Grand Chamber of the European Court reaffirmed that Hungary had violated Mr. Baka's right to access a court and to freedom of expression.[35]

75. A new National Judicial Office has been established, with the power to replace the retiring judges and name new ones, as well as reassign specific cases from one court to another. The president is elected by the parliament, and as such "cannot be regarded as an organ of judicial self-government".[36] According to the International Bar Association, the

[29] International Federation for Human Rights, "Hungary: democracy under threat", p. 15.

[30] See *European Commission v. Hungary*, judgment of 6 November 2012, case No. C-286/12.

[31] Venice Commission, opinion No. 663/2012 on Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organization and administration of courts in Hungary, 19 March 2012.

[32] See Hungarian Helsinki Committee and others, "Undermining constitutionality", Hungarian fact sheet No. 1, September 2014, available from http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf.

[33] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary", pp. 26-27.

[34] *Baka v. Hungary*, application No. 20261/12, judgment on the merits, 27 May 2014, paras. 73-79.

[35] Ibid., judgment, 23 June 2016.

[36] Venice Commission, opinion No. 663/2012, para. 51.

decision-making powers and effectiveness of the Office remain limited by legislative and practical impediments, and "contrary to international standards, the administration of justice is not governed by an independent authority with a substantial representation of the judiciary".[37]

76. Notwithstanding the above, the Special Rapporteur received many testimonies from human rights defenders indicating their confidence in the overall independence of the judiciary, which continues to provide remedy to violations of their rights and of the individuals they represent. In that context and given the increasing litigation facing human rights defenders, there is general agreement within civil society about the woeful lack of legal assistance. This is particularly the case because of a general fear among lawyers of taking human rights and sensitive cases for fear of retaliation from the Government.

77. The Special Rapporteur urges the Government to allocate budgetary resources to ensure independent legal assistance to human rights defenders. As weaknesses in the judicial system and flaws in the legal framework deprive human rights defenders of adequate access to justice, he encourages the Government to implement the recommendations of the Venice Commission to ensure that the judiciary can operate independently and effectively.

C. Effective protection policies and mechanisms for human rights defenders

78. In Hungary, there are no specific policies or mechanisms to protect human rights defenders from attacks, threats or harassment. Several testimonies heard during the visit show that some of the most vulnerable human rights defenders, namely those working on migration and Roma issues, would benefit greatly from such protection.

79. One of the outcomes of the first cycle of the universal periodic review was the establishment in 2012 of an interministerial human rights working group with an advisory nature. The working group has established a round table to facilitate consultations with civil society organizations (see A/HRC/33/9, para. 10). The draft national report prepared by the Government for the second cycle of the universal periodic review was circulated among the members of the round table for observations and inputs.

80. During the visit, however, the Special Rapporteur heard concerns that human rights activism had been labelled as a "political vocation" and NGOs are often perceived and labelled as political entities by government officials, drawing negative counter-attacks on critical views they may have expressed. Senior government officials have described NGOs as paid political activists who are trying to help foreign interests, which has encouraged the authorities to target human rights organizations through surprise financial audits, criminal investigations and public shaming, thus curtailing their activities. The frequency and tenacity of those political statements, which many perceive as an attempt to silence dissenting voices that speak out for human rights, raises concerns.

81. The Special Rapporteur urges the Government to distinguish between a political debate among political parties and a social dialogue with civil society pertaining to the promotion of human rights, and to refrain from conflating the two discourses, which is contributing to delegitimizing independent organizations and stifling critical views.

[37] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary".

82. In recent years, several States have developed national mechanisms to protect human rights defenders through adopting laws and policies in consultation with other stakeholders. The Special Rapporteur recommends that the Government consider adopting national guidelines on the protection of human rights defenders and aim to establish a national mechanism for their protection, in consultation with civil society organizations. Such a mechanism should include specific measures to ensure prompt and independent investigation of all violations of the rights of defenders and the prosecution of alleged perpetrators, regardless of their status. It should also ensure access to just and effective remedies, including appropriate compensation. The Special Rapporteur remains available to the Government for any advisory assistance it may require in this connection.

D. Specific human rights defenders at risk

83. Not all human rights defenders see their situation as particularly exposed to risk, besides the general stigmatization and shrinking civil society space. However, some face particularly serious challenges that, in some instances, appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to defend human rights.

84. In Hungary, such groups include women human rights defenders, who are exposed to risks both as defenders and women, especially those who promote sexual and reproductive rights. Some of them face multiple and aggravated forms of discrimination, as well as visible and invisible forms of violence, that prevent them from carrying out their work in a safe and enabling environment. The Special Rapporteur's concerns were shared by the Working Group on the issue of discrimination against women in law and in practice in its end of mission statement in May 2016, in which it regretted that women's NGOs and NGOs representing lesbian, gay, bisexual, transgender and intersex and minority interests faced incidents of harassment, marginalization and accusations by senior government officials of having politicized and hostile agendas. Some women's NGOs were included in the government blacklist of 13 NGOs and government funding of NGOs has been directed mainly to organizations with nationalist and conservative agendas.

85. Lesbian, gay, bisexual, transgender and intersex defenders sometimes face difficult situations and are more often subject to social prejudice than others. For example, the 2015 Budapest Pride parade took place behind a heavy police barricade, where activists nonetheless experienced threats and hostility from some observers.

86. Defenders promoting economic, social and cultural rights and environmentalist organizations are sometimes labelled as being against development when they oppose development projects that have a detrimental impact on the rights of the local community. Some have been sued by companies and intimidated by the authorities for raising questions about factories or industries which pose environmental risks.

87. Whistle-blowers play a vital role in exposing corruption, fraud and mismanagement, and in preventing disasters that arise from negligence or wrongdoing. However, they are granted little protection beyond the mere existence of a law on whistle-blower protection. Most whistle-blowers have been subject to harassment and retaliation, including loss of employment and being blacklisted for future employment. The media portrays them in negative terms by naming and shaming them as troublemakers or foreign agents. That has a chilling effect, which could deter others from denouncing corruption or misconduct by public officials. Those who have suffered retaliation have sought reinstatement and compensation through the courts, but testimonies received show that a positive outcome is far from guaranteed. The Ombudsman function seems to be restricted to receiving reports and forwarding them to the competent authorities.

88. The right of journalists not to disclose their sources is limited because of the obligation to reveal sources in "exceptional circumstances". This exception, which does not apply to independent journalists, has reportedly been interpreted as only applying to criminal cases and following a court order.[38] The Special Rapporteur stresses the importance of protecting journalistic sources for press freedom and urges the Government to strengthen the legal and policy framework to protect whistle-blowers. Given the chilling effect that the failure to ensure such protection can have on the role of journalists and civil society as public watchdogs, he recommends reinforcing the existing legislation and establishing a strong and independent national agency that would have the power to grant legal protection and support for whistle-blowers.

89. During the visit, it became apparent that human rights defenders who were excessively at risk were Roma activists, owing to a widespread and long-term climate of xenophobia, leading to direct physical threats and intimidation. Several testimonies indicated severe threats or physical attacks against Roma activists throughout the country. In Miskolc, the Roma community and their leaders face rejection by the majority of residents and the local municipality. About 450 Roma residents on the outskirts of Miskolc were put at risk of forced eviction and possible homelessness in May 2014. Residents were threatened with eviction in August 2014, as part of efforts by the local administration to eliminate slums under a government-sponsored law adopted in May 2014.

90. According to the Government, a policy of zero tolerance of xenophobia and racism has been established (see A/HRC/33/9, para. 15). Anti-Semitic and anti-Roma statements are officially denounced by the Government. The rules of procedure of the parliament concerning hate speech have been strengthened and the Speaker has broad disciplinary authority, including the ability to request the exclusion of a member of parliament from a session and impose fines if he or she uses expressions deleterious to national, ethnic or religious groups or individuals.

91. Human rights defenders and grass-roots activists working on the rights of asylum seekers face acute risks of threats to their person and their families due to the increased politicization and stigmatization of their work. The Special Rapporteur has received several reports of direct threats, anonymous phone calls and text messages, hacking of personal social media and trolling on social media. There are credible reports that festering anti-immigrant sentiment has led to increased scrutiny and harassment of organizations assisting refugees in Hungary.[39] According to reports, 22 NGOs that issued a statement calling for the invalidation of the referendum on refugee quotas due to low turnout, were threatened by the authorities with "full screening" of their activities.

E. National human right institution

92. The previous system of four ombudsmen has been replaced by one Parliamentary Commissioner for Fundamental Rights (the Ombudsman). Despite the accreditation in 2014 of "A" status for the institution as compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), the amendments to the law and the lack of enforceability of its recommendations have weakened protection in relation to certain rights and the effectiveness of the Ombudsman's mandate.

[38] See the report by Nils Muižneks, Commissioner for Human Rights of the Council of Europe, following his visit to Hungary from 1 to 4 July 2014, 16 December 2014.

[39] See Frontline Defenders, "Annual report on human rights defenders at risk in 2016", p. 15.

93. The Special Rapporteur recognizes that the Office of the Ombudsman is active in the conduct of investigations and raising awareness of human rights issues through annual reports and public outreach. Along with the parliament and the President, the Ombudsman can request the Constitutional Court to review laws passed by the parliament, either ex officio or based on complaints submitted by individuals or groups. Unlike before, it may not request the Court to provide an abstract interpretation of the Fundamental Law. Nevertheless, there are concerns that despite its mandate, the Office of the Ombudsman has been reluctant to refer complaints to the Constitutional Court for review in cases that it deems political or institutional.[40]

94. The continuous lack of funding could hamper the independence of the Ombudsman and his capacity to act as a strong and effective mechanism. The Ombudsman was recently also designated as the National Preventative Mechanism, however, the budget of his Office was not adequately increased to cover the greater workload. In order to ensure the credibility and effectiveness of its work, the Government should increase the budget allocated to the Office of the Ombudsman and take measures to ensure adequate follow-up and implementation of its recommendations, lest its functions be perceived as merely restricted to receiving reports and forwarding them to the competent authorities.

95. The Special Rapporteur also recommends that the Ombudsman expand the scope of his activities to provide protection for human rights defenders, as it is inherent in his mandate. Human rights defenders could be considered as a specific group at risk and, as such, could fall within the mandate. This protection could be offered in a number of ways, including through formal complaints mechanisms and protection programmes; advocacy and awareness-raising; public support when violations are committed against defenders; and capacity-building. Protection could also be offered with more specific and direct means, including acting on individual complaints; visiting defenders in detention; and providing legal aid in the context of violations of the rights of defenders.

F. Non-State actors

96. Non-State actors have frequently taken part in the intimidation and stigmatization of or threats against human rights defenders. According to international human rights law, the State is responsible for protecting defenders from detrimental action by non-State actors and for carrying out effective investigations into such cases.

97. The media landscape is increasingly dominated by outlets closely affiliated or loyal to the Government, a phenomenon that has been bolstered since 2010. Media laws allow political interference in the editorial content of public broadcast channels. Freedom of the press has been severely limited by laws that have restricted the opportunity for diversity of service and established a powerful control mechanism to strictly regulate broadcast, print and online media. This concentration of media in the hands of the Government has reduced access to the media by human rights defenders and civil society organizations. As a result, they get little media coverage and few opportunities to raise their concerns, express dissenting views or defend their human rights positions.

98. The Special Rapporteur is also aware of numerous cases of verbal and physical attacks and threats by far-right extremists who harbour ultranationalist views, mainly targeting members or volunteers of organizations dedicated to migrant rights and Roma issues. He also met environmental defenders who pointed to increased criminal defamation litigation by companies, following their actions to protect the right to a safe and healthy

[40] See International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary".

environment. Local media usually portray environmentalists and watchdogs as those who obstruct development.

G. Community of human rights defenders

99. The Special Rapporteur met numerous brave and courageous human rights defenders working on different issues during the course of his visit. Those who help asylum seekers, support Roma communities, defend the rights of women and lesbian, gay, bisexual, transgender and intersex persons, environmentalists, lawyers and social workers. However, apart from some of the bigger organizations, defenders can feel isolated and not sufficiently interconnected. Some NGOs are not sufficiently embedded in society and have not secured sufficient support from the broader society for their work, which can in the longer run weaken their ability to seek solidarity and mobilization.

100. Furthermore, the contraction of available funding has over the years resulted in a greater competition among NGOs, which have become increasingly aware of overlapping projects in the same community with similar objectives and results. In the work of human rights, collaboration is crucial. A single organization will struggle to have sufficient resources or skills to ensure broader social change. It is encouraging to see that the attacks on NGOs have inadvertently caused more interest from the wider society in human rights activism and strengthened civil society cooperation.[41]

101. The Special Rapporteur recommends that civil society in Hungary establish national and local networks of support with shared objectives and reinforce partnerships in fundraising.

102. The lack of access to independent funding is a concern. As the access to European Union funding is channelled through government-controlled agencies, the discontinuation of funding can be used as a tool to silence dissent or encourage self-censorship. The Special Rapporteur urges civil society organizations to establish stronger links to European and international networks in order to gain more support and address the shortage of independent funding.

103. The Special Rapporteur calls for concrete measures to be put in place to prevent governmental agencies from interrupting or misusing European Union funding, or favouring organizations that are closely affiliated to the Government. He urges the European Union to examine carefully the impact of channelling its financial resources through governmental agencies on the weakening of independent civil society organizations in Hungary. It is important to explore alternative ways to fund those organizations directly.

V. Conclusions and recommendations

A. Conclusions

104. **The Special Rapporteur considers that, overall, human rights defenders in Hungary are able to operate safely in Hungary. However, the environment in which they function is increasingly not a conducive one. His visit has revealed that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, of**

[41] See www.index.hu/belfold/2016/04/20/norveg_civil_alap_tamadasok_okotars_civilek/.

peaceful assembly and of association. Legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.

105. **The Special Rapporteur would like to caution against the use of legislation to overregulate, undermine or obstruct the work of human rights defenders. He emphasizes that in article 2 (2) of the Declaration on Human Rights Defenders and in resolutions of the Human Rights Council and the General Assembly, States are called upon to adopt legislative, administrative and other measures to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed. Furthermore, the Special Rapporteur considers it important for the Government to reinforce its efforts in raising public awareness of human rights and fostering a spirit of dialogue and cooperation with civil society.**

B. Recommendations

106. **In this connection, the Special Rapporteur puts forward the following recommendations to various stakeholders.**

107. **The Special Rapporteur recommends that the Government:**

(a) **Ensure full compliance with the international standards related to respect for human rights, democracy and the rule of law by, inter alia, promptly implementing the outstanding recommendations and decisions of international and regional human rights mechanisms and courts;**

(b) **Review all administrative and legislative provisions that restrict the rights of human rights defenders and ensure that domestic legislation is in line with international human rights law and standards;**

(c) **Ensure procedural safeguards in the legislative process to provide for a reasonable time for genuine public consultation between policymakers, civil society and other stakeholders;**

(d) **Mainstream human rights into the institutional and policy framework, including by adopting a national action plan on human rights with clear and specific goals and indicators;**

(e) **Adopt a zero-tolerance approach, whether by public officials or non-State actors, towards the stigmatization and intimidation of defenders, and ensure they carry out their work in a safe and enabling environment;**

(f) **Formulate national guidelines on the promotion of human rights defenders and consider establishing a national mechanism to protect them, in consultation with civil society organizations;**

(g) **Strengthen the role and independence of the Ombudsman and reinforce the financial autonomy of his Office;**

(h) **Consult the Ombudsman on legislative processes and ensure adequate implementation of his recommendations;**

(i) **Review the legal provisions related to freedom of information and data protection in order to guarantee free and uncontrolled access to public interest information;**

(j) **Make registrations of associations simpler, non-onerous and expeditious and adopt a notification procedure;**

(k) **Strengthen the judiciary by ensuring it can operate independently and effectively, and allocate budgetary resources to ensure independent legal assistance to human rights defenders;**

(l) **Establish an independent body to safeguard the independence of the judiciary and supervise the appointment, promotion and regulation of the profession in accordance with international human rights standards;**

(m) **Ensure that restrictions on peaceful assembly do not impair the essence of the right to such assembly, are prescribed by law, are proportionate and necessary in a democratic society, and still allow demonstrations to take place within sight and sound of their object and target audience;**

(n) **Provide protection during peaceful assemblies from individuals or groups who aim to disrupt or disperse such assemblies;**

(o) **Reinforce the existing legislation on the protection of whistle-blowers and establish a strong and independent agency with the power to grant legal protection and support for whistle-blowers;**

(p) **Ensure that both public and private actors, including companies, respect the rights of human rights defenders, and investigate instances where non-State actors commit violations against defenders, resulting in the prosecution of those responsible and providing remedy to the survivors.**

108. **The Special Rapporteur recommends that the Ombudsman:**

(a) **Strengthen the scope of his activities by prioritizing and reacting to concerns raised by human rights defenders;**

(b) **Actively engage the Constitutional Court on constitutional complaints, including those that may be considered political or institutional, and proactively follow up on the implementation by the Government of his recommendations.**

109. **The Special Rapporteur recommends that human rights defenders:**

(a) **Become better informed about the Declaration on Human Rights Defenders and publicize it widely in society;**

(b) **Make full use of the human rights mechanisms of the United Nations, the European Union, the Council of Europe and OSCE in connection with human rights monitoring and protection;**

(c) **Develop and strengthen national and local networks aimed at protecting defenders and facilitating coordination.**

110. **The Special Rapporteur recommends that non-State actors, such as political parties, the media, private companies and other groups, refrain from inciting, organizing or participating in harassing, threatening or stigmatizing human rights defenders.**

111. **The Special Rapporteur recommends that public and private media ensure and are provided with unfettered access to the coverage of issues of concern to human rights defenders and civil society, in order to publicize their human rights work.**

112. **The Special Rapporteur recommends that the international community, the European Union, the Council of Europe and OSCE:**

(a) **Continue monitoring the situation of human rights defenders in Hungary and intensify efforts to empower and support them, including through political, legal and financial assistance;**

(b) **Engage with the Government to encourage meaningful dialogue between the Government and civil society, in order to ensure that institution-building, development and other programmes are human rights compliant.**

113. **He also recommends that the European Union review its policy on funding civil society organizations exclusively through the State budget and explore alternative sources and means of funding for independent civil society, with a view to ensuring free and non-politicized access to funding, including small grants, for all civil society organizations.**